CANADIAN JOURNAL OF
Disability Studies
Published by the Canadian Disability Studies Association · Association Canadienne des Études sur l'Incapacité

Canadian Journal of Disability Studies

Published by the Canadian Disability Studies Association
Association canadienne d'études sur le handicap

Hosted by The University of Waterloo

www.cjds.uwaterloo.ca

MAID Resistance in Canada: Sounding the Five-Minute Entreaty

Catherine Frazee
Professor Emerita
Toronto Metropolitan University, School of Disability Studies

frazee [at] web [dot] net

Tomorrow's historians will find rich veins of meaning in the crush of narrative and counter-narrative that swirl around Canada's controversially named "Medical Assistance in Dying" (MAID) regime. Expanded in March 2021 to authorize medical practitioners to administer euthanasia or suicide assistance to disabled persons who are still very much alive and in no way approaching the end of their natural lives, the regime has been championed in public policy debates as progressive and humane. Such glowing accounts, however, gloss over the near-unanimous protest and warnings of the Canadian and international disability rights sector – protest and warnings as of yet, unheeded. Future historians will have to probe well below the surface veneer of MAID to offer an accurate rendering of disability rights opposition, which, although vigorously discounted as hyperbolic and irrational, has instead been substantive, consistent, principled and evidence-based.

Whose voices will prevail when the story of MAID is written? This special issue of the Canadian Journal of Disability Studies argues, not surprisingly, for disabled voices to be heard with resounding force. To this end, we have assembled in this volume testimonial statements entered into the parliamentary record by disabled and disability-aligned citizens immediately prior to a radical and – as argued in these texts – discriminatory, expansion of MAID law and the regime it authorizes.

Although these testimonial urgings did not ultimately register with a majority of lawmakers in the 2021 legislative assembly, their value and weight extend well beyond the immediate context of their once-only utterance in a hostile legislative committee room. They are embedded in a parliamentary moment that has passed, but a moment that continues to reverberate in life-or-death outcomes for disabled Canadians. They have a place in our history, a place of continued relevance to our present, and perhaps most consequentially, a place of strategic importance to our future.

Of course there is no fixed boundary between the past, considered the domain of history and its chroniclers, and the present, the domain of what has been called "a disorderly straggle of memoirists and journalists."[1] But within that *disorderly straggle* are everyday citizens who venture to speak on the record in legislative processes of democracy, and for those citizens, there are present moments which feel very much to have history's ear. Capturing the words brought contemporaneously to those moments is, especially in volatile circumstances, "a technical necessity to rescue and preserve evidence for future historians."[2]

Responding to that necessity, this volume of CJDS carves out a distinct place in the Disability Studies canon for the ***five-minute entreaty***. Situated along the continuum between scholarship and journalism, each of the testimonial statements reproduced in this volume chips away at the ableist and eugenic underpinnings of a law that claims to be rights-affirming at the same time as it effectively renders disability and disabled lives dispensable.

> Selected for their range of expressive styles and perspectives, the submissions you will read in this volume provide glimpses into a much larger body of evidence in favour of returning Canada's MAID law to its original 2016 formulation – a narrow exemption to the Criminal Code prohibitions against homicide and assisted suicide, authorizing

physicians and nurse practitioners to take active measures to cause the death of only consenting adult patients for whom natural death is “reasonably foreseeable.” Each entreaty takes on a different angle arguing against the expansion of Canada’s regime for Medical Assistance in Dying. Some are deeply rooted in discourses of disability studies, anti-oppression, human rights and theories of ableism and equality; others draw from groundings in everyday ethics and fairness, or from expertise in law, philosophy, suicidology, medicine and psychiatry. Most, if not all, are informed by intimate connection to the worlds of disability and mental illness,[3] either through lived experience, extensive front-line service, or bonds of family connection. Taken together, they capture the complexity and nuance of a critique of MAID expansion beyond the end-of-life context – a critique that places disability at its centre.

The evidence and arguments that you will read in these pages have struggled to be heard through the cacophonous roar of partisan politics and ideological rhetoric that have dominated our national conversations about MAID expansion over the past three years. They are presented here to inform and invite critical dialogue about what MAID, and in particular its 2021 expansion, does and does not offer to the project of disability liberation. As authors and contributors to this issue, we dare to hope as well that collectively, our words will forge a marker for history, inscribed with urgency before the norm-bending effects of a state-sanctioned eugenic law imprint themselves more fully and indelibly upon the Canadian psyche and ethos.

I. Setting the Scene

The Joint Committee on Medical Assistance in Dying was established by Parliament in April 2021, pursuant to a requirement in the 2016 law that called for a review of its provisions “at the start of the 5th year”[4] after its enactment. Although Parliament may have technically met the legal requirement for its launch of MAID's promised 5-year review, the bulk of the Committee's work was compressed into a 12-week period between September 2022 and February 2023[5], owing to multiple delays and adjournments for a federal election and various lengthy recess periods. It was during these 12 weeks of active Committee work that each of the entreaties in this volume was authored and presented.

Despite its compressed and rushed process, the scope for the review was extremely ambitious. The Joint Committee was mandated to consider "the provisions of Canada's MAID law and its application, including but not limited to issues relating to mature minors, advance requests, mental illness, the state of palliative care in Canada, and the protection of Canadians with disabilities."[6]

Witnesses appeared before the Committee by invitation only, with generally little more than one week's notice. They were assigned to one-hour panels focusing on one of the five topic areas and featuring three or four witnesses, each of whom were given five minutes to make an opening statement. Time limits were rigidly enforced, with witnesses frequently interrupted mid-sentence and told to wrap up. After witnesses presented their prepared testimony, Committee members would pose questions in small units of time allocated to each member. Witnesses might have the opportunity to augment their five-minute statements when called upon to answer questions, but panels were typically configured with witnesses from both sides of the debate. This meant that members could choose to direct all of their questions to witnesses whose views mirrored their own. The sessions were simultaneously translated in English and French, live-streamed on ParlVu[7] and transcribed as part of the evidentiary record reported on the Committee's website[8].

Appearing before the Committee was a high-stakes venture. Each witness who testified was privileged to do so, and in most cases mindful that theirs would be one of a few voices among many who desired to be heard. At the same time, each of the contributors to this collection was mindful that they might be ruthlessly interrogated by a majority of Committee members who had publicly declared their support for MAID expansion and their hostility toward those who held an opposing view. Contributors chose every word carefully, recognizing they risked being challenged as hyperbolic or irresponsible.[9] They arrived for their appointed five minutes prepared to substantiate everything or be publicly disparaged. Reasoning and logic were distilled to their most minimal expression and calibrated to individual capacities for rapid but intelligible speech.[10]

These conditions alone would be sufficient to establish the five-minute entreaty as a demanding and rigorous form, but the 2022 MAID entreaties compiled in this issue of CJDS are exponentially more complex. Each of these submissions actively builds from and in many cases layers in historical threads that are critically relevant to understanding why the expansion of MAID beyond end-of-life is inherently eugenic and discriminatory and how it runs counter to the principles of substantive equality at the heart of Canada's Charter of Rights and Freedoms.

The historical threads that converge in Canada's MAID debates are deeply rooted in generations of disability resistance and struggle. As American activist Carrie Ann Lucas observed, "Disabled people have been fighting for the right to exist since the beginning of history."[11] The project of fleshing out the antecedent conditions, proclivities, alliances and events that constitute the backdrop for these entreaties is of course beyond the scope of any single author or chronicle. This limitation notwithstanding, the remaining sections of this introductory essay gesture toward the layers of MAID history that give these entreaties their full resonance.

II. BEFORE MAID: Undercurrents and Rogue Waves

Government messaging about MAID expansion, from rank-and-file bureaucrats to cabinet ministers and the Prime Minister himself, have quite effectively branded MAID expansion as fully compliant with the constitutional protections of the Charter, and in fact inevitable, given the obligations of equality.[12] This messaging is entirely consistent with ableist and colonial discourses of the western neoliberal project, and for that reason alone merits precise and deliberate unpacking. It must also be said that this messaging resonates strongly with that of a powerful lobby of expansionist support that situates Canada's expanded MAID regime as ahistorical and apolitical, and its logic as natural. But as will become evident in this collection, witnesses before the Joint Committee were insistent that the actual record of our law's origins be surfaced, and further, that the Committee's deliberations on "the protection of Canadians with disabilities" take honest account of how ableism and eugenic ideologies shape the present reality of disabled people's lives in this country.

A. In The Shadow Of Eugenics

The global 20th century project of eugenic world-building has deep roots in Canadian history, and to approach contemporary debates about state-sanctioned death-making without due acknowledgement of this truth would be reckless in the extreme. Scholars like Strange and Stephen have made clear that Canada's eugenic past was decidedly not a "gentler version of its American counterpart"[13] and that eugenic innovations in public health and public policy were sweeping and enjoyed widespread mainstream acceptance. Eugenic approaches were endorsed and promoted by leading progressive figures in politics, medicine, religion, philanthropy and the academy. Regulatory and legislative measures in immigration, healthcare and education embraced eugenic "solutions" which included deportation, incarceration, involuntary sterilization, and the forceful abduction and assimilation of children. At the heart of all of these efforts was a determination to manage, contain and eliminate "problem people: criminals, prostitutes, paupers, [indigenous and racialized populations], immigrants and persons judged mentally and physically subnormal."[14] In the wake of the second world war, eugenic rhetorics became somewhat muted, but numerous cruel and oppressive practices continued.[15] As Alison Bashford concludes, "eugenics more correctly waxed and waned than disappeared."[16]

Although some have argued that the eugenic era is a now-distant and firmly closed chapter of Canada's history, it must at least be acknowledged that our eugenic past is within living memory, and that memory shapes consciousness in different ways. For disabled activists and scholars imprinted with knowledge of that history, the echoes of eugenics in Canada are still fully alive and critically relevant to any conversation about a state sanctioned regime for euthanasia and assisted suicide. We hear those echoes in the ways in which MAID enthusiasts disparage and demean our bodily conditions and styles of function,[17] and the ways in which our fellow citizens extol the benefits of MAID as a remedy to "help overcrowding hospitals, lower funding requirements, reduce the needs for beds in long-term care, etc."[18] We keenly feel its proscriptive authority in the indignant censure with which any use of the word *eugenic*, or any attempt to invoke the lessons of its history, is met by proponents for MAID expansion.[19]

Pushing past such prohibitions, some of the contributors to this collection have made explicit reference to eugenics in their 5-minute entreaties. Gabrielle Peters, for example, makes the point forcefully that "Canada's expansion of MAID to disabled people whose deaths are not reasonably foreseeable… breathes new life into the goals of the never-dismantled eugenics."[20] In a similar vein, Megan Linton laid bare the evidence of suicide and unnatural death in prisons, psychiatric facilities and long-term care, and reminded Committee members of the staggering statistics of pandemic deaths in those same institutions. Addressing the Committee members directly, she then said, “To all of you, disabled people do not need your help to die. You have been killing us for years … Do not be mistaken, this provision of death under [MAID expansion] is eugenics…”[21]

Is MAID expansion an expression of “the new liberal eugenics”?[22] This question is fiercely debated within disciplines of medical science, ethics and disability, largely centering on the extent to which MAID choices are or are not truly voluntary, and if the veneer of individual choice is sufficient to render the role of the state entirely benign. Addressing this same debate in the context of reproductive technology and genomics, Canadian anthropologist Margaret Lock argues essentially that contemporary eugenics is like old wine in a new bottle, more skilfully packaged but unchanged in potency and effect:

> [D]espite laws passed since the late 1940s in connection with human rights, including disability rights acts, continuities with the past in which certain lives are deemed of less worth than others remain evident. Today, unlike in the past, interventions that may result in a neo-eugenics are usually masked by a rhetoric very different from that of the early 20th century, one in which individual choice is dominant and in which the role of government is rendered invisible.[23]

As will be discussed later in this introduction, many of the witnesses who contributed to this collection expressed compelling critiques of the particular formulation of individual autonomy that figures strongly in defences of MAID expansion. Moreover, given that MAID expansion was initiated at the peak of Canada’s experience of the COVID-19 pandemic, when healthcare resources and capacities were stretched to their limits, and given its persistent branding as a public health program, the power that our MAID regime confers upon medical professionals is fair ground for scrutiny. As Isabel Grant pointed out in her submission:

> It is frankly irresponsible to delegate your authority to define murder and aiding suicide to doctors and ask us to “trust” a health care system that is strapped for resources and near the breaking point. When we look at Canada’s record of eugenics – residential schools, the warehousing of people with mental illness, and the sterilization of Indigenous and disabled women and girls – we must remember that doctors were deeply implicated in all of these practices.[24]

Placing disability at the centre of eugenic history has permitted scholars like Michael Rembis to recognize the logic of ableism as a unifying thread linking the past to present practice. Rembis makes a compelling argument in his characterization of the global eugenics project as “[d]riven by an ableist logic that was always infused with racialist, gendered, and class-based thinking”. His analysis points to a global enterprise whereby physicians, social workers, state officials, and others join forces to “relieve suffering, reduce welfare costs, and eliminate poverty, immorality, and crime, by segregating, sterilizing, and generally restricting the world’s disabled population.”[25]

Rembis concludes that “while much of the old eugenics no longer exists, its chief concern—the systematic elimination of people defined as disabled—has endured.”[26] This systematic devaluation and elimination of disabled lives is taken up in several of the testimonial statements featured in this issue. Krista Carr, for example, situated MAID expansion as being of a piece with a litany of past and present eugenic practices. Karr invoked the memory of “a Canada where persons with intellectual disabilities were warehoused by the tens of thousands in institutions… run by healthcare practitioners who segregated, isolated, maltreated, forcibly sterilized, and anonymously buried" the people in their care. As if anticipating the dismissal of this history as having no bearing on present practice, she went on to enumerate more recent and ongoing atrocities: the denial of life-saving transplants, the imposition of unwanted DNR orders, the tacit condoning of homicide and lethal negligence: "We know a Canada where when a parent murders their child with a disability they are characterized as mercy killers. A Canada where during COVID people with disabilities were threatened by triage policies."[27]

The ever-present echoes of our eugenic past were perhaps most vivid in the testimony of Conrad Saulis, Executive Director, Wabanaki Council on Disability, whose powerful rebuke of the ongoing trauma and catastrophic losses from eugenic colonialism probed deeply into a well of history still very much alive in Canada.

> Colonization has brought over 500 years of death, of language and cultural knowledge loss and loss of ancestral lands for our Nations and our people. … We are tired of mourning the losses and deaths of our young people and of persons with disabilities.… We don't trust that medical people will offer good advice to our peoples when the topic of MAID arises. We don't trust that options to continue the lives of our youth and persons with disabilities will be explored. I guess it's extremely hard for us to trust Canadian systems given all of the 500 years of destructive impositions that we endured and continue to endure to this day.[28]

The shattering of trust that Saulis and Carr give voice to in their entreaties directly implicates Canadian regimes of medicine, law, and governance in an ongoing global eugenic advance. As disabled Canadians would witness firsthand in the era of Rodriguez and Latimer, the force of these systems of authority would ultimately be dwarfed by regimes of popular media and cultural narrative. The following section outlines the distinctly Canadian characters and events that prepared the ground for MAID, seeding eugenic ideas that would become all but unstoppable.

B. Rodriguez And Latimer: Law, Politics And The Spotlight's Glare

Debates about euthanasia and assisted suicide in relation to disabled persons garnered much public attention in Canada in the 1990s, especially as two landmark cases in quick succession came to dominate the Canadian media universe and made their way to the Supreme Court of Canada. Both cases – Rodriguez v. British Columbia (Attorney General)[29] and R. v. Latimer[30] – are firmly etched in the annals of Canadian disability history. Both set in motion deep currents of polarity that are still keenly felt in today's MAID discourse; they therefore factor significantly in the backdrop for many of the 5-minute entreaties of 2022. Importantly, both cases centred upon strong-willed individuals who stood up well under the gaze of sympathetic media and quickly became larger-than-life avatars for the causes that they championed: for Rodriguez, assisted suicide and for Latimer, involuntary euthanasia.

In their own way, both Sue Rodriguez and Robert Latimer turned out to be highly relatable characters in modern Canadian folklore. Rodriguez, a white Victoria, BC woman from the Boomer generation, embodied the story of a devoted wife and mother senselessly struck down in her prime by a diagnosis of amyotrophic lateral sclerosis (ALS) at the age of 41. Robert Latimer, a white Saskatchewan farmer of the same generation, embodied the story of a hard-working, self-reliant, "salt of the earth"[31] prairie man, dutiful husband and loving father of four children, and a man who did not shirk from what he perceived as a moral obligation to end the life of his eldest daughter Tracy when her suffering was too great to bear. These narratives, as archetypal characterizations invariably are, were stripped of all the complicated details: such as Rodriguez's marital estrangement, the "inexcusable behaviour" of her unfaithful husband and the piercing and persistent grief of her family breakdown[32] ; or Latimer's trial for rape of a minor in 1974[33], and his clinical diagnosis of a phobia about the kinds of medical interventions his daughter required to survive[34]. Cast as they were in the flattering gloss of a media spotlight, both Sue Rodriguez and Robert Latimer accrued widespread attention and popular support.

The quest of a disabled woman to die with medical assistance and the quest of a nondisabled man for exoneration after terminating the life of his disabled daughter were both ultimately unsuccessful in Court. In a decision rendered on September 30, 1993, a narrow 5-4 majority of the Supreme Court ruled against Rodriguez's efforts to strike down the prohibition against assisting suicide in the Canadian Criminal Code. And in a decision rendered on January 18, 2001, a unanimous Supreme Court of Canada rejected Latimer's claims, upholding his life sentence for second-degree murder.

But neither of these cases had emerged from a vacuum, and neither would be laid to rest by a Supreme Court defeat.

Rodriguez was not a solitary crusader. Quite the contrary, her case had been initiated on her behalf by the Right to Die Society of Canada[35], an organization founded in 1991 by John Hofsess. Hofsess was a notorious and controversial figure known as the "Canadian Kevorkian", who in his own words, "killed people who wanted to die".[36] Although Rodriguez ultimately distanced herself from Hofsess' aggressive media campaigning, the story of her death "appeared In almost every newspaper as well as every radio and television news broadcast in the country."[37] By the time her case had advanced to a Supreme Court hearing, public support for Rodriguez was overwhelming.[38] That support included prominent Canadian politicians, jurists, and physicians.

When the Court rendered its judgement on September 30, 1993, Rodriguez was secure in the knowledge that regardless of the legal outcome of her case, her personal quest for suicide assistance would be fulfilled. As her friend and confidant Svend Robinson wrote two decades later, “When the Supreme Court of Canada ruled against her …, she quietly said to me, “The Court may have spoken, but I have the last word.[39]” Sue Rodriguez died in Svend Robinson’s arms, with the unlawful assistance of an anonymous volunteer physician, on February 12, 1994. An investigation was undertaken by the RCMP, but no charges were ever laid.

Robert Latimer’s actions and subsequent campaign for clemency were similarly nested in the fertile soil of a media primed and ready for heart-wrenching stories about disabled existence falling short of the threshold for life worth living. As Dick Sobsey made clear in his revealing 1995 analysis of how Canadian media came to sanction and normalize the forfeiture of disabled life, “Robert Latimer made the decision to kill his daughter on October 12, 1993, 12 days after the Supreme Court turned down Sue Rodriguez's request for assisted suicide, in the midst of a massive media discussion about the Rodriguez case.” Sobsey then reflects upon the impact of a pervasive narrative that reduced Rodriguez to a one-dimensional portrait of suffering. “… [I]f Robert Latimer watched Canadian national news,… he was exposed to the Canadian media coverage of the case and of other "mercy killing" cases, the vast majority of which supported the notion that death was better than disability.[40]

Although Latimer had been unable to escape serving much of his ten-year sentence for second-degree murder, with various day parole arrangements and other forms of conditional release commencing after seven years, like Rodriguez, he met with unqualified success in the court of public opinion. As one of the contributors to this collection, Heidi Janz, observed in a 1998 review of the Latimer case,[41] overwhelmingly favourable media coverage not only shaped public perceptions, but was unduly influential in at least one of Latimer's appeal proceedings. She cites the Saskatchewan Court of Appeal 1995 judgement in which Chief Justice Bayda dissented from the majority in favour of a more lenient sentence, referring explicitly to:

> [T]he hundreds of letters received by the appellant and his family, the many petitions and telephone calls, as well as the editorial commentary in the country's newspapers, [which] were an unsolicited, spontaneous (and in many respects an unprecedented) public outcry in response to the sentence.[42]

More than two decades later, in her five-minute entreaty, Gabrielle Peters underscored that this pattern of careless disregard for disability perspectives has continued to shape media coverage of MAID expansion – or lack thereof:

> The media was locked down and dominated by the endless public relations work of those lobbying for… expansion. … No mention was made of the publicly articulated and enthusiastic support for involuntary euthanasia of disabled people during the time of Tracy Latimer's murder by many of the same people and groups who were now anointing themselves as champions of a demonstrably false version of autonomy.[43]

Will Robert Latimer, like Sue Rodriguez, ultimately have "the last word" on Tracy Latimer's fitness for life? That the question remains a live one, thirty years after her murder, speaks volumes about Robert's resiliently remorseless posture, the ardent loyalty of his ideological supporters, and the deep-rooted, pervasive ambivalence with which non-disabled actors regard embodied states that depart significantly from ableist norms. The Supreme Court of Canada may have spoken definitively in denouncing Tracy's murder, but a core finding of their judgement has failed to imprint on the stubborn consciousness of those who now argue for MAID expansion:

> Killing a person — in order to relieve the suffering produced by a medically manageable physical or mental condition — is not a proportionate response to the harm represented by the non-life-threatening suffering resulting from that condition.[44]

As Tim Stainton made clear in his five-minute entreaty, Tracy Latimer's murder and the ethical faultlines revealed in the wake of that murder, leave unsettled a haunting possibility for the future of MAID expansion:

> … Sadly, we know from the public reactions to the murder of Tracy Latimer and many other cases that so called mercy killing has widespread public support. If we continue to weaken the need for direct consent through permitting advance directives and allow for children to be euthanized it is a very small step to involuntary euthanasia of disabled people considered unable to consent.[45]

When Rodriguez died at the age of 44, she died with the support of a majority of disabled Canadians, who had argued with her in court for the primacy of disability autonomy in matters of life and death.[46] But Tracy Latimer's death, a wake-up call for disability rights defenders nationwide, made plain the risks of making a special case for disability in relaxing the protections of the Criminal Code. A public deeply ambivalent about the value of disabled lives, and a national media demonstrably incapable of differentiating between a consenting disabled adult and a non-consenting disabled child, rendered any tinkering with the law of homicide a high-stakes venture. As this awakening to peril took hold, in 1996, the Council of Canadians with Disabilities would reverse its earlier position, adopting a resolution to oppose any decriminalizing of assisted suicide “because of the serious potential for abuse and the negative image of people with disabilities that would be produced if people with disabilities are killed with state sanction”.[47]

Almost two decades later, as the events detailed in the following pages would unfold, a new generation of disabled scholars and leaders would witness the terrible sequelae to all that was left simmering below the surface from the Rodriguez/Latimer years. This time disability rights movements would confront an ever-more formidable alliance of medical, legal and political authority, mobilized by a modern, sophisticated, and well-resourced public messaging apparatus.

III. The Advent and Advance OF MAID

The groundswell of critical public support for an easing of Canada’s Criminal Code prohibition of “counselling or aiding suicide” did not dissipate in the years following the Rodriguez decision, nor was it tempered by Robert Latimer’s criminal conviction. Owing in part to the very effective lobbying efforts of groups like the Right to Die Society of Canada and Dying with Dignity,[48] the issue was pursued outside of the courts and kept on the public radar through a number of parliamentary studies, task force recommendations and private member bills.

In a demographic pattern of embrace reminiscent of the 20th century eugenic era, the concept of choosing one’s own time and manner of death held considerable appeal for an elite class of powerful public figures in politics, journalism, academia and the literary world. Whereas in 1920, an enthusiasm for ‘social hygiene’ grounded their convictions, by 2020 the calculation had become less abstract. Persons well-endowed with social capital and material security, with much to lose from the inevitable attenuations of age and the losses of privilege and authority widely associated with disablement, sought to avoid the scourge of physical and cognitive decline if such could be achieved painlessly and honourably. By some accounts, an entire generational cohort afflicted with "boomer angst about depleted sexuality, aging, and mortality"[49] would readily align in support of the ultimate expression of personal liberty – the choice to die on one's own terms, remaining in full command until the final moment of life.

The appeal of a bespoke death appears to have been contagious. In the nearly two decades leading up to a legal challenge that would ultimately overturn the Rodriguez decision, the momentum of the lobby for legal reform continued to build, as proponents became more sophisticated in their methods, more strategic in their discourse and more powerful in their influence. The nuancing required to factor complex intersectional disability and the equality rights and personhood of disabled citizens into the law reform equation was entirely absent from proponents' carefully crafted messaging about dignity, autonomy and liberty. That work would be left for disability activists and scholars to develop and express in the brief windows of opportunity afforded by early variants of the five-minute entreaty.

A. The Carter Case

In various ways, a prevailing discourse of MAID as progressive and rights-driven has operated to reshape and distort the judicial and legislative history of MAID. While it is true that MAID came to Canada as a result of the unanimous decision of our Supreme Court in the Carter case in February 2015, there are many details in its origin story that have been lost in the excited chatter of its enthusiasts.

When the Carter case was first filed by the BC Civil Liberties Association [BCCLA] in April 2011, conditions aligned favourably toward an ultimate reversal of the legal precedent that had been established in Rodriguez. Public opinion in support of some form of assisted suicide had strengthened and consolidated, notably among leaders and influencers in medicine and civil society, and a handful of European nations and American states had legalized regimes that, while controversial, had proven defensible in their respective jurisdictions.[50] As Sandra Martin observes in her apostolic account of the rise of doctor-assisted suicide and euthanasia in Canada, the Carter case effort:

> … was a degree of magnitude greater than Rodriguez…. In 1992, Rodriguez was represented by a single overworked lawyer, the Right to Die Society was run out of somebody's house, the evidentiary record was negligible, and the entire case rested on one plaintiff, Sue Rodriguez, whose health was rapidly disintegrating. Unlike the Right to Die Society, which was barely functioning in 2011… the BCCLA had expertise, a track record, and resources… [with] more than fifty years of experience agitating and litigating…[51]

Whereas the entire evidentiary record in the Rodriguez case had filled one binder,[52] the Court in Carter reviewed 36 binders of affidavits, transcripts and documents, including evidence from just under 60 experts and 14 lay witnesses.[53] Even a cursory review of the plaintiffs' filings reveal a meticulous crafting not only of legal arguments omitted from Rodriguez, but also a highly effective linguistic strategy that quite purposefully avoided the word "suicide" altogether, replacing it with "physician assisted death"[54], and introduced entirely new phrasings like "grievous and irremediable" that would prove foundational to the Court's decision[55] and the legislation that would follow.

Three individual plaintiffs were initially recruited by BCCLA, including a general practitioner who wanted to be able to offer suicide assistance to his end-of-life patients, and two surviving adult children of Kay Carter, an 89-year-old Vancouver nursing home resident and long-standing member of the Right to Die Society. Carter had advanced spinal stenosis and had travelled to Zürich in January 2010 to die in a Swiss assisted suicide clinic, at a total cost of $35,000.[56] A fourth plaintiff, Gloria Taylor, was added to the case two months after initial filing of the challenge. Taylor would soon become the face of the campaign: like Sue Rodriguez before her, Taylor was a well-spoken white woman with ALS who was approaching the end of her natural life. A tattooed motorcycle enthusiast in her youth, Taylor had been a postal worker, residential care worker, trailer park superintendent and active volunteer/health advocate; she was respected in her community and beloved by her family. Confident in her identity as a capable and self-reliant woman, she expressed herself in terms that fused the rhetoric of control and choice with popular ableist tropes about dignity and independence, and as such, contributed mightily to the success of the Carter case, both in court and in the media.[57]

When Gloria Taylor received the call from her BCCLA legal team on June 15, 2012, ending her suspense about how Madam Justice Lynn Smith would rule in their case, only a few words were required to summarize the British Columbia trial court's 398-page judgement. "We won," the team lead reported. "We won big. We won everything."[58] It was scarcely an exaggeration. The Supreme Court of British Columbia had embraced the plaintiffs' evidence, reasoning and linguistic framings and had delivered a ruling that essentially mirrored the remedy sought by BCCLA.

The Carter decision, which would be endorsed in February 2015 by a unanimous Supreme Court of Canada, found that the Criminal Code prohibition against suicide assistance[59] created a discriminatory distinction on the basis of disability. In its foundational logic, the Court differentiated between nondisabled persons who wished to commit suicide and physically disabled persons who might require assistance to do so:

> The law, viewed as a whole, embodies the following principles: (1) persons who seek to take their own lives, but fail, are not subject to criminal sanction because there is no longer a criminal offence of suicide or attempted suicide; (2) persons who are rendered unable, by physical disability, to take their own lives are precluded from receiving assistance in order to do so by the Criminal Code offence of assistance with suicide. Those principles create a distinction based on physical disability.[60]

Specifically, the Court found a violation of the right to *life, liberty and security of the person* guaranteed by section 7 of the Canadian Charter of Rights and Freedoms[61]. According to the Court, this infringement arose because the law interfered with Gloria Taylor's personal autonomy and control over her bodily integrity. As the Supreme Court of Canada would later affirm:

> An individual's response to a grievous and irremediable medical condition is a matter critical to their dignity and autonomy. The law allows people in this situation to request palliative sedation, refuse artificial nutrition and hydration, or request the removal of life sustaining medical equipment, but denies them the right to request a physician's assistance in dying. This interferes with their ability to make decisions concerning their bodily integrity and medical care and thus trenches on liberty. And, by leaving people like Ms. Taylor to endure intolerable suffering, it impinges on their security of the person.[62]

With respect to the right to life under section 7, evidence before the Court from Taylor and other witnesses had suggested that some persons, fearing that they will become unable to commit suicide as their debility progressed, would "take their own lives at an earlier date than would otherwise be necessary"[63]. Although it has since faded from MAID discourse, this apparent infringement of the right to life under section 7 was strongly emphasized in BCCLA's submissions and their public communications about the case: for example, in a 17-minute documentary film professionally produced for BCCLA in 2015, a full 2 ½ minute segment repeats this predicament in multiple voices.[64] The BC Court relied heavily on this argument, concluding that the law had the effect of "forcing an earlier decision and possibly an earlier death on persons in Ms. Taylor's situation".[65]

This pillar of the Carter decision logic has proven in the years following the passage of Canada's MAID law to be its shakiest[66]. As will be readily apparent in the pages that follow in this issue, there is a bitter irony in the explicit linking of a constitutional value to protect life, with a federal regime that has demonstrably caused the death of many disabled individuals who clearly desired to continue living. Some of these people, like Archie Rolland[67] and Sean Tagert,[68] had come to public attention quite quickly in the wake of the Carter decision. More recently, others like Sathya Dhara Kovac,[69] were memorialized in this record of legislative entreaties. Isabel Grant, for example, decrying the MAID deaths of "real people who were not at the end of life and did not want to die," reminded legislators that "This is a system that would not provide Sathya Dhara Kovac with home care but would give her death by house call. She wrote her own obituary before her MAID death saying 'It was not a genetic disease that took me out, it was a system'".[70]

Some witnesses pressed this point more forcefully still, no longer able to abide the hypocrisy of a regime constitutionally premised as life-affirming, that nevertheless leaves more and more dead in its wake. John Maher spoke for many when he disputed the very legitimacy of an ever-expanding MAID regime. "You know [the 2021 expansion of MAID] is not consistent with the Supreme Court's stated principle in Carter to preserve life. The ruling explicitly supported people getting help killing themselves only when they could no longer physically do it themselves."[71] Although Maher urged the Committee to refer the question to the Supreme Court of Canada, the Court has not yet been provided with an opportunity to confront the paradox of its Section 7 ruling.

B. Reacting to – and Unpacking – Carter

The sweeping and exuberant language with which the Carter decision was greeted by the pro-euthanasia lobby did not precisely capture the actual scale or reach of the judgement that Justice Smith had authored in 2012 or that the Supreme Court had confirmed in 2015. BCCLA proudly declared that "Canadians have the constitutional right to choose physician assistance in dying"[72], as if all Canadians could now exercise this option as a matter of right. The soundbite was clear and simple and felt powerful on the tongue; accordingly, it has continued to prevail in MAID discourse, much to the chagrin of the contributors to this issue and our allies who advocate for a regime that honours the spirit of the Carter ruling but does not put disabled people in harm's way in its march toward unfettered expansion.

Our reading of the Carter decision, for the most part, takes as a starting point that the Court decriminalized suicide assistance when it is performed by physicians or nurse practitioners on a very limited group of eligible persons, and under very strict conditions. Whether or not the difference between *decriminalizing* particular conduct and *entrenching a broad human right to be served by such conduct*[73] is a difference of more than semantic significance, the fact remains that the Court was explicit in its conclusion that the absolute prohibition against suicide assistance served a legitimate and constitutionally defensible purpose in Canadian society and could not be struck down altogether, but should be subject to a limited exception in order to address the particular violations to life, liberty and security of the person that it presented. As

Justice Smith wrote, “I believe that the salutary effects of the legislation can be preserved by leaving an almost-absolute prohibition in effect and permitting only stringently-limited exceptions.”[74]

In his five-minute entreaty, Trudo Lemmens reminded Committee members that the Court’s ruling in Carter was calibrated in ways that would require a far more “precautionary approach” than that which has since been condoned in current practice. He urged the Committee to be mindful of the ruling of the BC Supreme Court in Carter, which made clear that “if it is ever ethical… for a physician to assist in death, it would be only in limited and exceptional circumstances… The concern about imposing stringent limits stems from the consensus that unlimited physician-assisted death would pose serious risks.”[75, 76]

In the early flush of victory, those who believed they had “won everything” in Carter projected optimism that the new law would reflect their expectations for broad and unencumbered access to medically assisted death. BCCLA applauded the outcome as “a tremendous victory for the protection of human rights and compassion at the end of life”[77], and Dying with Dignity Canada [DWDC] described Carter as “a fantastic victory… [for] compassion and choice at end of life.”[78] Although Wanda Morris, CEO of DWDC, reminded her membership that there was still “real work” to be done to ensure that “this wise and just decision will lead to wise and just legislation,”[79] her cautionary note was nonspecific, and more likely intended to signal that the organization she headed was still relevant, even in the wake of its primary mission having been soundly accomplished. Dying with Dignity Canada had lost its charitable tax status in January 2015,[80] and maintaining donor enthusiasm would have been an organizational preoccupation at the time.

Perhaps for champions of the campaign for legalized euthanasia, it appeared for a time that the way was cleared for a decisive legislative rollout. By contrast, disability advocates were hard at work, both in absorbing the shock of a bitter defeat and in efforts to make themselves heard above the roar of applause for the Court's decision in mainstream media. In a rare and greatly appreciated expression of disability rights solidarity, Orsini and Kelly published a response in which they observed how "[o]therwise progressively oriented people have been competing to find the appropriate terms to gush over the recent Supreme Court decision on doctor-assisted suicide – watershed, landmark, game-changer." The authors decried that the public's "blatant disregard for how such a decision might be interpreted by people with disabilities is galling."[81]

In a press release issued jointly by Canada's two largest national disability rights organizations, the Council of Canadians with Disabilities and the Canadian Association of Community Living, both of whom had held intervenor status in the Carter appeals, made plain the magnitude of losing the Supreme Court appeal, and the toxic and debilitating nature of the so-called 'choice' that now lay ahead for disabled Canadians:

> As we each near the end of our lives, at the time when we are likely to be most vulnerable to despair and fear, we have now lost the protection of the Criminal Code.…In the final stages of a terminal illness, at the time when grief and fear may be most powerfully present in our lives, Canadians must now decide for themselves whether life is worth living.…At the time when our physical powers fail us, every Canadian will now be obliged to calculate how much love and support is too much to ask of others.[82]

There was little in the Court's judgment to alleviate the sense of betrayal that disability rights advocates expressed in the aftermath of the Carter decision. The trial judge had concluded that there was “no evidence” of heightened risk for people with disabilities, and “no compelling evidence” that an assisted dying regime in Canada “would result in a ‘practical slippery slope’”[83] ; those findings on “social and legislative facts” had been upheld as “reasonable” by the Supreme Court.[84] Similarly, the trial judge had rejected arguments about the risks of such factors as “systemic prejudice (against the elderly or people with disabilities)”[85] ; the Supreme Court had concurred with the trial judge that such risks were “already part and parcel of our medical system”[86] and therefore manageable in an assisted dying regime with appropriate safeguards.

As in any legal proceeding, the BC Court trial judge in Carter had considered only evidence proffered by the parties and arguments made by counsel for the parties and intervenors. Judges control the timelines for filing of evidence and intervention applications and can choose to expedite proceedings when, for example, a plaintiff’s health condition is precarious. In the Carter trial, BCCLA had controlled the initiation of the case and had ultimately prepared and filed more than 80 affidavits, 37 of which were from experts. By contrast, the Attorney General of Canada was given only 30 days in which to submit evidence; their application for an extension of this deadline was denied.[87]

As the case unfolded rapidly, five organizations had sought and been granted intervenor status[88] by the Court: one “right to die” advocacy group, one anti-euthanasia advocacy group, two faith groups and a loosely constituted ‘coalition’ of people with disabilities affiliated with Dying with Dignity Canada.[89] No national, provincial or territorial disability rights organizations were present as parties or intervenors when the case went to trial in 2011.[90] In terms of evidence, a total of 57 academics, researchers and practitioners provided expert opinion evidence to the Court; of these, 43 (or 75%) were medical experts, six were legal experts, and six were experts in ethics/philosophy[91]. Only one of 57 expert witnesses offered expertise in critical disability studies and disability rights[92]. This grossly disproportionate imbalance of perspectives would, not surprisingly, yield a judgement that was heavily skewed toward the framing, logic and vocabulary of medicine. The Carter decision was inscribed in Canadian law as a ruling on individual medical decision-making authority. As such, the judgement did not benefit from any critical interrogation of the history of medicine and bioethics in relation to disability, nor did it explicitly reckon with the implications of systemic ableism or the inherent fragility of universal human rights norms.

It is of course impossible to know whether the BC Court might have ruled differently had relevant evidence and analysis from a plurality of disabled scholars and activists figured more centrally in the Court's proceedings. This said, however, it is reasonable to expect that a Court better informed about the relations of power and ableist authority forming the backdrop to its deliberations might have been less quick to commit itself to a simple determination of whether medical practitioners had the requisite skills, judgement and temperament to satisfy a disabled adult's stated desire for a hastened death. Instead of devolving into a review of clinical procedures and possibility, a differently premised trial might have offered more nuanced readings of the facts before the court, robustly informed by a critical disability perspective. From opportunities missed at the trial level, had come a fundamentally flawed decision at the Supreme Court. Indeed, the Court telegraphed its ableist-blinkered perspective in the very first paragraph of its judgement. Completely absent from the Court's self-assured declarations of "compassion" was the possibility of lives in which "suffering" is attenuated by adaptations both personal and structural, by ever-evolving states of insight and selfhood, by relations of trust and affection in personal and community spheres – in short, by the myriad of ways in which disabled lives are lived. Affording no credence to such possibility of our flourishing, the Court reduced its weighty conundrum to a simplistic binary:

> … [P]eople who are grievously and irremediably ill cannot seek a physician's assistance in dying and may be condemned to a life of severe and intolerable suffering. A person facing this prospect has two options: she can take her own life prematurely, often by violent or dangerous means, or she can suffer until she dies from natural causes. The choice is cruel.[93]

Moreover, and perhaps most problematically, the Supreme Court had designated a class of persons named "the vulnerable" who could lawfully be protected by a criminal prohibition against assisted suicide.[94] Not only did this categorization uncritically embrace a stigmatizing frame that would be offensive to persons so labelled, but its lack of definition would lead to a clinical conflation of vulnerability with decisional incapacity. The Court had been clear that the plaintiff Gloria Taylor was not a member of the vulnerable class because she was "competent, fully informed and free from coercion or duress".[95] Further, the Court had concluded that "vulnerability can be assessed… using the procedures that physicians apply in their assessment of informed consent and decisional capacity"[96] . This highly reductive framing would provide the underpinning logic for "solving" the problem of MAID-related vulnerability by means of simple procedural "safeguards".

Taking the Court's lead, medical regulators would frame vulnerability as an attribute that could affect decision-making, much like other attributes such as arrogance or vanity but with potentially disqualifying consequences in terms of MAID eligibility. Moreover, by simultaneously medicalizing vulnerability as an individual patient risk factor for practitioners to assess, the Court effectively depoliticized the social and political relations of power and their historical antecedents that ought to be at the heart of a substantive equality analysis. Future challenges to the Carter precedent that centre a critical disability perspective will no doubt push the Court toward richer and more equality-affirming theories of vulnerability[97], but in the immediate aftermath of the Carter judgement, as the nation awaited the advent of a new regime for medically assisted dying, disability rights champions would be preoccupied with shorter-term campaigns to maximize the protections of the new law.[98]

Indeed, as is evident in many of our 2022 entreaties, “vulnerability”, as addressed in the assisted dying regime, continues to be a cornerstone for advocacy on behalf of those who have been or will be casualties of MAID expansionist logic. Several of the authors in this collection build from the law’s promise to protect vulnerable persons as a springboard for their critique of its actual effects. In so doing, they illustrate the depth and range of meanings for vulnerability in the context of MAID.

From her vantage point on the front lines of disability rights and poverty law, Kerri Joffe spoke of structural vulnerabilities never accounted for in Canada’s MAID regime: “The reality is that there is no real, free choice for people with disabilities who exist in pervasive socio-economic deprivation and who have no alternatives for living a dignified life in the community”. [99,100] With 20 years of experience caring for adults with “the most severe and persistent forms of mental illness”, Dr. John Maher invoked a relational account of vulnerability inherent in the MAID dynamic: “You who voted for this law have not understood vulnerability and what it means for your doctor to offer you death over life.”[101] Brian Mishara, suicide prevention researcher and author of 12 books and scores of scientific papers, exposed the vulnerability baked into a regime that authorizes irreversible, deadly choices in response to the fluid and ever-changing conditions and dispositions of human life: “[B]ecause of your failure to protect vulnerable people from making irreversible wrong decisions, so many people will die needlessly”.[102] Surviving family members Gary and Trish Nichols, still haunted by the nightmare of their failed but desperate attempts to rescue Gary’s brother Alan from a MAID death for which he was surely not eligible, made clear the ways in which both families and loved ones are rendered vulnerable in the aftermath of MAID: “There are currently no laws protecting the vulnerable or their families FROM MAID. Most Canadians think MAID is to alleviate the physical suffering at the end of a life, not a ploy to end a life.”[103]

The complex yet complementary framings of vulnerability expressed in these entreaties make clear the chasm of difference between its clinical and substantive meanings. According to these entreaties, the promise of the Carter court was at best naïve. A safe and humane regime for euthanasia and assisted suicide would require so much more than trust in the medical profession and its clinical skillsets of consent and capacity determination. In the rollout of Canada’s first MAID legislation, as will be seen in the following section, there were early warnings that the drift away from substantive protections had taken root and would continue their outsized influence in public policy and public discourse.

C. Bill C-14 and MAID 1.0

The Supreme Court of Canada in Carter gave the government one year in which to amend the Criminal Code by legislating an exception to the prohibition against suicide assistance. A four-month extension was granted in deference to a new government, providing some cushion for a new cabinet as shifting political allegiances and ideology were brought to bear on an issue of great consequence for Canadian society. This extended timeline had afforded a lengthy runway for advocates on both sides of the Court proceedings to recalibrate their positions on the issue in accordance with the Court's judgement and to mobilize their respective public relations and lobbying campaigns in interpreting Carter and attempting to influence the new law.

The Supreme Court in Carter had acknowledged Parliament's broad authority to craft a "complex regulatory regime"[104] in amending the Criminal Code to accord with section 7 of the Charter. The only parameters specified in the Court's declaration of invalidity were that "competent adult persons" who "clearly consent" to a life-ending procedure should be exempt from the assisted suicide prohibition provided that they have "a grievous and irremediable medical condition (including an illness, disease or disability) that causes enduring suffering that is intolerable to the individual in the circumstances of his or her condition."[105]

As legislative drafters worked behind closed doors to interpret and codify the novel phrase "grievous and irremediable medical condition," and to give shape and form to a regime that would operationalize a euthanasia/assisted suicide exemption in every Canadian region and territory, disability rights activists and our allies in legal, medical, academic and civil society domains worked to contribute strategically and constructively in shaping public discourse and legislative outcomes. Notable among these efforts was an ambitious collective project to create an evidenced-based policy tool that came to be known as the Vulnerable Persons Standard (VPS).[106] Authored by a diverse team of 40 Advisors, the VPS articulated five essential pillars for an assisted dying regime that would not jeopardize the lives of vulnerable persons.[107]

A primary pillar of the VPS, and indeed a central plank of disability rights advocacy leading up to the ultimate passage of Canada's first iteration of MAID-enabling legislation, was the requirement that euthanasia and assisted suicide be only authorized for "end-of-life conditions for adults in a state of advanced weakening capacities with no chance of improvement and who have enduring and intolerable suffering as a result of a grievous and irremediable medical condition."[108]

One might have expected, given the extent to which BCCLA, DWDC and other champions for the so-called "right to die" had stressed the imperative of "end-of-life choices" and "compassion in end-of-life care," that the end-of-life requirement for a medically assisted death would be non-controversial. This however proved far from correct.

When Justice Minister Jody Wilson Raybould tabled Bill C-14[109] in the House of Commons on April 14, 2016, she unleashed a storm of protest among all those who had championed Gloria Taylor's cause. Impatient for a legislative response that would reflect their sense of a bold and unflinching victory, they chafed against the government's more prudent approach. The Bill punted for further study, eligibility questions arising in relation to "requests from mature minors, advance requests from persons who might later lose their capacity for consent, and requests where mental illness is the sole underlying medical condition"[110]. Although disability rights advocates breathed a sigh of relief that these battles would be fought another day, reaction to the Bill from the proponents for a broad "right to die" was swift, damning and coordinated. BCCLA expressed deep disappointment that "the federal government has decided to exclude people from this medical treatment in an arbitrary and discriminatory way", claiming that "the inevitable result is that people will be trapped in intolerable suffering, or be left with no choice but to take their own lives prematurely in potentially dangerous situations."[111] DWDC's CEO Shanaaz Gokool slammed the government's "narrow and discriminatory" approach, asserting that the draft legislation was inconsistent with the Carter decision and would violate the Charter of Rights and Freedoms, excluding "millions of people" from relief from intolerable suffering.[112] Influential journalists like André Picard echoed their refrain, asserting that the proposed law showed “a shocking disregard for the court ruling” and that “too many Canadians will continue to suffer unnecessarily at the end of their lives.”[113] Most forceful of all was the frenzy of outrage and castigation provoked by the Bill’s definition of *grievous and irremediable medical condition*, which included the requirement that a person’s “natural death” had to be “reasonably foreseeable”[114]. The preamble to the Bill set out the rationale for its approach as striking “the most appropriate balance between autonomy… and the interests of vulnerable persons… and those of society”[115], but neither balance nor caution would be embraced by the pro-euthanasia lobby. Instead, the Minister would come under heavy fire in the days leading up to the Bill’s passage into law. Her defence was that “highly permissive assisted dying regimes tend to privilege personal autonomy above all other rights and interests, which is not consistent with the Charter nor good public policy.”[116] Parliament's task” she argued, citing Carter, was to “. . . weigh and balance the perspective of those who might be at risk in a permissive regime against that of those who seek assistance in dying.”[117]. Put another way, the Justice Minister understood the conundrum that the Court’s ruling presented for lawmakers: to craft a law that would authorize suicide assistance for persons for whom death was a benefit, while simultaneously and equitably preserving the Criminal Code protections against suicide assistance for persons for whom death would be a harm. Perhaps in some ways the Minister’s reference to “balancing” reflected a deep understanding of the impossibility of her task and the political costs of authoring a legal regime that would differentiate between lives that should be preserved and lives that should be terminated.

In this swirl of debate around Bill C-14, disability rights advocates faced a difficult predicament.[118] Disinclined to offer a full-throated defence of a law that in many ways reflected its ableist origins, many of the contributors to this collection felt nevertheless compelled, for strategic purposes, to support the government’s draft legislation. Failing to do so would risk losing the few protections, notably the requirement of “reasonably foreseeable natural death” [RFND] and specific exclusions that the Bill did offer, or worse still, provoke the government to abandon its own legislation, miss the Court’s deadline and subject the country to a legislative vacuum.[119]

In the parliamentary committee hearings that unfolded as Bill C-14 proceeded through the legislative process,[120] a few of the contributors to this volume who were invited to testify[121] did so in a manner that echoed the ambivalence of the moment. Some, like Sonu Gaind, expressed strong support for the exclusion of mental illness from the definition of a grievous and irremediable medical condition, in terms that he and many colleagues in the mental health sector would find themselves repeating in 2022. In his 2016 entreaty, Gaind would patiently explain to parliamentarians that:

> In mental illness, remediability cannot be looked at only in biomedical terms of symptom improvement. Psychosocial factors such as isolation and loneliness, poverty, housing and underemployment or role in society are all things that impact suffering from mental illness and need to be considered…[122]

In 2022, he would be called upon to make the same arguments, now supported by a growing body of evidence, and to present that evidence more forcefully and with greater urgency to lawmakers who had not taken his earlier messages to heart:

> … [W]hen expanded to the non-dying disabled for mental illness… a different group gets MAID, the group of non-dying marginalized who have never had autonomy to live a life with dignity.… Evidence shows this group is more marginalized, has unresolved psychosocial suffering like loneliness and isolation, and a terrifying gender gap emerges,

> of twice as many women as men receiving death to avoid life suffering. Introduced to help avoid painful deaths, MAID expansion provides … death to escape painful lives.[123]

In 2016, our early iterations of the five-minute entreaty offered constructive proposals for amendments to strengthen the protections of Bill C-14, while endorsing the government's somewhat cautious approach. Readers of this collection will observe that a more muted tone prevailed in 2016, compared to 2022. Notably, there was a strong sense of loss running through many of our 2016 submissions, much of it arising not from the Court's decision, but from the deep cultural ruptures that had only worsened in its wake.[124] Michael Bach's testimony, for example, made these feelings explicit:

> I want to begin by saying how saddened we are by how bitter this debate has become. We wonder if we've lost common cause in this country about what being compassionate means, our shared understanding of suffering, and a sense of what it's going to take to protect the right to autonomy but also respect vulnerable Canadians.… we're very concerned about how divisive this is going to leave us as Canadians…[125]

At the same time, there was, among disability rights advocates, a building consternation about what appeared to have been a "bait and switch" tactic deployed by pro-euthanasia advocates as the arena for debate shifted from the formal discipline of the courtroom to the freewheeling tumult of political manoeuvring and spin. Reviewing the additional safeguards that disabled Canadians were proposing, Bach explained that the disability rights proposals aimed simply for "what the plaintiffs had put forward in the trial decision as the safeguards that they said must be in place". He continued:

> The reaction we're getting now is that we're just being obstructionist.… Actually, all we've tried to do is detail what the plaintiffs put forward in the first place, because we agree with them. We agree with the submissions, and we agree with what the trial judge arrived at and the evidence that she drew from the plaintiffs on which safeguards were needed — evidence that the Supreme Court of Canada … didn't challenge in any way.[126]

The consequences of an increasingly charged discourse, if unchecked, would be a legislative approach driven by political expedience, rather than principles of equality. As Bach went on to observe:

> We've been surprised at the ferocity of the negative reactions to our proposals for safeguards for vulnerable Canadians. I was struck by the representatives from FRMAC[127] who said, "Listen, the main objective here is to ensure access." Absolutely, but the other objective that the Court said is how to protect vulnerable Canadians. We just don't think it's necessarily that simple. Vulnerable Canadians don't show up with a sign on their chests that say, "I'm a vulnerable Canadian. Don't give me access."[128]

The testimony presented in response to Bill C-14 by disabled Canadians and our allies did not penetrate in the Canadian Senate, where influential members like Senator James Cowan and Senator Serge Joyal were far more favourably disposed to submissions made by BCCLA and the DWDC lobby. When a majority of the Senate voted in early June of 2016 to remove the RFND requirement from Bill C-14,[129] a swift response of unambivalent support for the Bill as written was called for. Urging the House of Commons to hold the line on this critical protection, disability rights leaders across the country[130] mobilized an 11th hour demonstration of solidarity in support of the Bill with its RFND requirement intact. A National Disability Community Forum[131] with presentations from disability rights, mental health, medical and policy sectors was organized in a matter of just three days. Held in Ottawa on June 16, 2016, the event was live-streamed, bilingual and fully accessible – a monumental feat in the days before accessible hybrid events became a standard of pandemic-era best practice. The event was attended in person and online by politicians from all parties, by the Cabinet Minister responsible for the federal disability portfolio, Hon. Carla Qualtrough, and by hundreds of disabled people across the country.

In the 24 hours that followed, the House would reject a number of Senate amendments, including the amendment that would have removed the RFND requirement. In doing so, they explained that these changes:

> would undermine objectives in Bill C-14 to recognize the significant and continuing public health issue of suicide, to guard against death being seen as a solution to all forms of suffering, and to counter negative perception about the quality of life of persons who are elderly, ill or disabled.[132]

Only four members of the governing Liberal party dissented in the final vote in the House of Commons that would reject the Senate amendments. Notable among these was Québec MP David Lametti, who made it clear to his constituents that "as a professor of law in Canada for 20 years and a member of two Canadian Bars," he objected strongly to the RFND requirement, which in his view amounted to "passing legislation that is at serious risk of being found to be unconstitutional. On these grounds, I was not able to give up my vote in good conscience."[133] Despite Lametti's objections, Bill C-14 was returned to the Senate with the RFND requirement intact. This time, the Senate would concede.[134] On June 17, 2016, Bill C-14 received royal assent. Medical Assistance in Dying would now be permitted for Canadians whose natural death was reasonably foreseeable, whose medical condition had reached an advanced and irreversible state of decline and whose suffering from that condition was intolerable to them.

The certainty of these legislative provisions would prove to be stunningly short-lived. So too would the relationship of trust and mutual respect between disability rights champions and our elected federal representatives that had evolved through a gruelling process of democratic participation.

IV. The Relentless Expansion of MAID

Juxtaposed against the Court's category of "the vulnerable", the Carter judgement essentially created a new social and medical category of MAID-able persons, tasking the government with defining that group and giving shape to the mechanisms and conditions that would lead to their demise. Although it was hotly contested on legal, ethical and political grounds, the category of MAID-able persons confirmed in the law that came into force in June of 2016 was limited to adult persons whose death was reasonably foreseeable, whose medical condition had reached an advanced and irreversible state of decline and who experienced intolerable suffering as a result of their medical condition that could not be relieved by any means acceptable to them.[135] Persons less than 18 years of age, persons lacking the capacity to give informed consent and persons whose suffering arose entirely from a mental health condition were not MAID-able, but their status in this regard would be subjected to further study and would return for legislative consideration.

In the short span of 5 years following the passage of Canada's first MAID law, the boundaries of MAID-able status would be breached, stretched or threatened along virtually every one of these axes. The first bulwark to fail would be RFND.

A. The Julia Lamb Challenge

The initial assault on the RFND requirement came a mere 10 days after the passage of Bill C-14 and the launch of Canada's national MAID regime. On June 27, 2016, the British Columbia Civil Liberties Association filed a constitutional challenge on behalf of Julia Lamb, a 25-year-old white woman from British Columbia, disabled since early childhood as a result of a genetic condition called spinal muscular atrophy, type 2 (SMA2). A motorized wheelchair user with one year of college education, Lamb lived in her own apartment with the assistance of a small team of support workers and was employed as a part-time marketing assistant/social media manager for a local retail outlet. Like Rodriguez and Taylor before her, Lamb was well-spoken and resolute; her claim would be supported by the same capable litigators who had represented Gloria Taylor and would be similarly bankrolled by a moneyed class of committed supporters.[136]

Unlike her predecessors, however, Julia Lamb likely had decades to live.[137] Her partnership with BCCLA arose not in the context of an unbearable process of dying but rather from what she considered an insufferable forecast for living. Lamb's assertion was that the law deprived her of the "peace of mind" of knowing that she would be MAID-able if her impairments were to progress to a state that she found intolerable at some unspecified future time. In an affidavit filed with the Court in December 2018, she asserted that she wanted "the peace of mind of knowing that I, as a person whose death is not reasonably foreseeable, am nonetheless worthy of having my intolerable suffering recognized and brought to a dignified end."[138]

Lamb's story broke away from the typical MAID narrative, where someone who has lived an essentially unfettered life refuses to endure the perceived mortifications of a body in rapid decline toward death. Instead, Lamb's suffering was anticipatory and slow-moving, premised in medical conjecture that aligned with stigmatized accounts of her disability experience.[139] In her own words:

> I feel a shadow looming over me. I know I can lose the ability to breathe well enough on my own and require a ventilator which will affect my ability to speak. I can lose the remaining function in my hands and arms which would lead to the inability to use my computer, write and use my phone. If I reach a point where I require constant care, I will lose my independence and freedom. I am terrified by the idea I can become trapped in a state of physical and mental suffering that goes on for months, years or even decades. Having to think about the future causes me immense stress.[140]

Lamb's circumstances were very different from those of her predecessors Rodriguez and Taylor. She was already living a life that she valued as a conspicuously disabled person – motorized wheelchair-reliant and accustomed to dependence on the physical support of others for intimate personal care and basic activities of living. Her impairments, though significant, were not intolerable to her – they were, as they are for a great many disabled persons, simply a fact of her being in the world. What she dreaded, according to media reports, were possible future progressions of her impairment that she could not yet imagine herself adapting to, such as a diminishment of respiratory capacity or manual dexterity. Nondisabled persons hearing her pleas – including, presumably, her own medical advisors – would uncritically hear this as a fully rational and meritorious call for deliverance from abject disabled existence. The Globe and Mail rendered this nightmare scenario in vivid terms in a 2016 editorial comment on the case which seemed to ask "who could possibly endure such a life of torment?":

> Wheelchair-bound and in need of constant care, she fears she will eventually lose the use of her hands and require a permanent tracheotomy in order to breathe. She dreads being

> trapped in her pain-wracked body, eating through a tube, with no means of communicating.[141]

But disabled audiences heard something very different in Julia Lamb's cri-de-coeur. Our direct knowledge of tried-and-true treatments, technologies and adaptations, particularly in the context of slowly progressive conditions, led us to equally urgent but radically different questions. Why was Lamb, a seemingly well-adjusted and assimilated young disabled person, so preoccupied with the uncertainties of her long-term future and so quick to embrace worst-case prognostications? How was Lamb, a well-informed and capable self-advocate, so unaware of the non-invasive treatments and technologies[142] that could preserve and extend her functional capabilities for many years of active, satisfying and autonomous living? Could her own health care team be oblivious to these possibilities, thus fueling her worst fears, and if so, contributing to what has been recently described in other contexts as an example of "MAIDism"[143] or an "iatrogenic MAID"[144] fixation? Was it possible that Lamb had no guides or mentors from the world of disability, and no awareness of where and how to find the indispensable support of her peers? Would other young disabled people and newly disabled people be similarly lured down the path of MAID, under the influence of news media ever more enthralled with grim renderings of their *fate-worst-than-death* disability narratives? Would Lamb and others be casualties of the toxic ableism underpinning MAID and now rapidly promulgating through the Canadian cultural ethos?

At the heart of the Lamb challenge was BCCLA's position that the requirement for reasonably foreseeable natural death deprived non-dying persons with grievous and irremediable medical conditions of their Charter rights to life, liberty and security of the person. Further, BCCLA argued that the RFND requirement violated the equality rights of persons with disabilities who were “unable to act to die in any lawful way,”[145] by disadvantaging them relative to nondisabled persons having the physical capability to end their own lives. This position was expressed somewhat differently in Julia Lamb’s own affidavit, suggesting a fundamental misunderstanding of the law's actual requirements that appears to have been overlooked or perhaps quietly endorsed by her BCCLA counsel:

> I want the peace of mind of knowing that I, **just like any other informed and consenting person**, **am entitled to seek MAID** to alleviate my intolerable suffering **regardless of the fact that I am disabled** and **regardless of whether my disability is the medical condition that my suffering arises from.**… I want my government to acknowledge that I am a capable and competent adult and just as able to give and withhold informed consent **as any non-disabled person.** [Emphasis added.][146]

This particular blurring of the autonomy argument, casting RFND as a purportedly paternalistic denial of a disabled person’s capacity for consent, and one that somehow burdens disabled persons in ways that nondisabled persons are spared from, is one that has continued to bedevil those who oppose MAID expansion from a disability rights position. Readers will note in the entreaties that follow in this issue how authors like Brian Mishara refute the inference that limits on MAID eligibility such as the RFND requirement are an affront to the decision-making capacity of the capable citizen:

> [S]ociety does impose limits to protect us from making decisions that are dangerous to ourselves. We are legally obliged to wear a helmet on a motorcycle and a seat belt in a car, and a hard hat in a construction site. Our government acts to protect competent people from making decisions that may endanger their health and wellbeing, whether they like it or not.[147]

As to the inference that disabled persons are disadvantaged relative to nondisabled persons by virtue of the RFND requirement, as Lamb herself seemed to suggest, entreaties such as Isabel Grant's address this misapprehension head-on:

> … I remind you that MAID is legislated as an exemption to the crimes of murder and aiding suicide in the *Criminal Code*.… The *Code* makes explicit that ending a life is so serious that we don't allow people to consent to their own deaths. The MAID regime makes an exception to that but only for disabled Canadians. Only their lives are not worth saving… [148]

As would be expressed by ARCH Disability Law in a 2022 submission made by a coalition of 20 Canadian disability and civil society groups and organizations to the Inter-American Commission on Human Rights:

> Canada's MAID legislation explicitly includes a distinction based on the legally protected ground of disability: **under the law, disabled people who experience intolerable suffering may be eligible for MAID, while those who experience intolerable suffering but are not disabled cannot be eligible for MAID.** This distinction in the law reflects the discriminatory view that the lives of people who experience disability-related suffering are less tolerable, less valuable, and less worthy of protection than the lives of people who experience suffering for reasons unrelated to a disability. [Emphasis added.][149]

Disability rights defenders were quick to respond to the threat that the Lamb claim presented to the MAID law's most fundamental safeguard. Within a few days of the Lamb announcement, a small group of disability activists with SMA and similar impairments launched a social media campaign called Project Value[150], featuring short autobiographical videos curated to refute the demonstrably false narrative that disability is “a fate worse than death”.[151] On the legal front, two national disability rights organizations, CACL and CCD, immediately joined forces, retained counsel and provided instruction to seek intervenor status at the BC Supreme Court. With a trial date set for November 18, 2019, disability rights defenders coordinated with these intervenors and with counsel for the Attorney General of Canada to ensure that the perspective and expertise of disabled persons would be well represented at the trial level, both in legal submissions and in evidence gathered from expert and lay witnesses.[152]

The impact of these efforts, however, would ultimately be eclipsed by developments elsewhere in Canada. Almost exactly one year after Julia Lamb’s claim was filed in BC by BCCLA, a similar claim would be initiated in Québec, in a case that would dramatically escalate the advance of toxic ableism in Canadian euthanasia law.

B. The Jean Truchon and Nicole Gladu Challenge

On June 13, 2017, two disabled Montrealers, Jean Truchon and Nicole Gladu, filed a second and parallel constitutional challenge to Canada’s MAID law, alleging that the law’s RFND requirement violated their right to life, liberty and security of the person under section 7 of the Charter and their equality rights under section 15.

Jean Truchon was a 49-year-old white man with cerebral palsy. Little is known about him first-hand: unlike Rodriguez, Taylor and Lamb, all of whom were outspoken champions for their own cause, much of what we know about Truchon comes from secondary sources such as Court filings made on his behalf. Unlike Sue Rodriguez, Jean Truchon did not co-author an autobiographical memoir;[153] unlike Gloria Taylor, his life did not feature in published chronicles or documentary films;[154] unlike Julia Lamb, he did not author parliamentary submissions[155] or work as a marketing/communications professional.

What we do know, from the statement of claim prepared by his counsel,[156] is that Truchon had been a wheelchair user for all of his life, that he had completed a university degree in literature and for 20 years had maintained an active lifestyle, living on his own in supportive housing in Montréal. This period of his life, during which we are told he enjoyed social relationships with family and friends and recreational activities such as going to the pool, playing wheelchair ball hockey and competing in chess,[157] afforded him, in the language we must presume to have been crafted by his counsel, "the rewards he could expect from life"[158]. Without Truchon's own words, we do not know whether his own account of the satisfactions of his earlier life would have been qualified in this way, or if the phrasing was calibrated to maximize the pathos evoked in response to a particular story of disabled life.

According to that same court filing, at the age of 45, as a result of neurological deterioration in his dominant arm, Truchon found himself no longer able to manage at his prior levels of independent function. While some adaptations were made, including a transition to mouth controls on his motorized wheelchair, he was eventually transferred to a full-care institutional facility. Little to nothing is known about Truchon's objections to this placement, and what efforts, if any, were made to accommodate his new level of impairment through mechanical and/or personal supports that might have permitted him to remain in his home environment and live autonomously, if not fully independently. Regrettably, these were not questions that the Court or the media appeared to deem relevant to Truchon's MAID story. In describing the life-changing events that gave rise to Truchon's request for assisted death, counsel for the plaintiffs completely conflates autonomy with having the physical capacity to perform functional tasks independently. According to the statement of claim, a complete paralysis of Truchon's dominant arm "meant a complete loss of his autonomy."[159] This framing of what Gabrielle Peters refers to in her entreaty as "a demonstrably false version of autonomy"[160] is of course consistent with an ableist worldview that dominates in law and culture. It is a framing that would be reproduced in the Court's finding of facts, which notes the detailed physiology that precipitated Truchon's loss of left arm function, then accepts without any elaboration, as a clear statement of cause and effect, that:

> He can no longer live in an apartment alone. He had to move into a health and social services centre adapted to his needs. Although the transition has not always been easy, Mr. Truchon has tried to cope with his new reality and life in an institution.[161]

The Court records indicate that Truchon became depressed as a result of his loss of independence and "made several plans to commit suicide"[162] that culminated in a request for MAID that was denied because he did not meet the RFND requirement.

Truchon was present at the press conference when his appeal was launched and with the support of an assistant, made a statement he had prepared in advance of the event. In his own words, his motivations for pursuing MAID, and by extension, this legal challenge, were very clear: "A life in institutions is not for me. I've tasted what living for myself is like and since I've lost that, the little pleasures of everyday life are no longer enough for me."[163]

In his testimony in court, Truchon was even more blunt. Referring to the year in which he was moved to an institution, he told Justice Christine Baudouin, "For me, I died in 2012,". According to press reports, he wept as he described his life in the care facility and the loss of dignity he experienced.[164] As Megan Linton had emphasized in her entreaty, "Jean Truchon was clear—he would rather die than live in an institution."[165]

In this respect, Truchon's quest was situated very differently from those of the three women who had preceded him, each of whom were living in their own homes, where they called the shots on the myriad regimes of daily life. While it is true that all four individuals had sought MAID in response to the progressions of their respective impairments, only Truchon's request originated in the abject conditions of institutional life. Most likely Truchon's suffering would have been largely remediable through appropriate social and policy measures. While "life in an institution" does not appear to have held significance for the Court other than as a marker of Truchon's MAID-able status, its significance becomes ever more clear from a critical disability perspective as more disabled persons in the years since 2019, have resorted to MAID as a means of escape from incarceration in both long-term care and correctional institutions.[166]

The second plaintiff in this case was a 71-year-old white woman named Nicole Gladu. By her own account, she had been homeschooled in her youth, and her spirit of adventure and ambitions actively nurtured. A polio survivor who retained considerable mobility for most of her adult life, Gladu's biography included a Masters degree in Public Administration, a highly successful professional career in journalism including as a parliamentary correspondent, international deployment in Communications at the UN and other key positions in her trade union and for the Québec provincial government. With the onset of post-polio syndrome first diagnosed in 1992, she began to experience physical limitations that according to the statement of claim, led her to "hate her body 'as if it were another person'. She thought about 'not living endlessly' and about 'checking out' when she no longer drew any satisfaction from life."[167]

Like her co-plaintiff, Jean Truchon, Nicole Gladu had been treated for depression related to her own declining health. But their counsel had made a point of advancing medical evidence to the effect that any such depression had been resolved for both plaintiffs and that neither of them were depressed at the time of their MAID requests. This detail arose at least in part from an important differentiation that MAID proponents asserted between transient and/or suicidal desires on the one hand, and durable MAID desires on the other hand. The former would be constructed as irrational, whereas the latter were deemed to be fully rational. Indeed, as had become part of a widely held justificatory narrative, the mere availability of MAID would boost morale and mental health for patients in dire conditions of suffering: Gladu's court documents asserted that she had overcome her depression "by deciding to choose for herself the time of her death, at a time when she would no longer be able to look after herself."[168]

Not surprisingly, Gladu's court filings state clearly that her fear of Jean Truchon's ultimate fate was pivotal in her MAID calculation. The statement of claim indicates that she was "extremely anxious about the idea of being moved to an adapted living facility and having to depend on others."[169] Unlike her co-plaintiff, however, Gladu was flourishing in her retirement. In an interview she gave by email from her home in December 2020, Gladu declared, "I am grateful to have lived my retirement on the 14th floor of a condominium building, which offers not only all the necessities, but also a breathtaking view of the river that mirrors the beauty of the sunsets." [170]

For Gladu, the argument for MAID was bluntly utilitarian: "At age 71, I am concerned far more by the quality of my life than by its extension,"[171] she had told reporters in 2017. Gladu's profile closely mirrored the demographic most commonly associated with MAID, featuring group characteristics that have been frequently described as "the three W's": white, well-educated and well-off.[172] While critical scholars might categorize the three W's differently as "white, wealthy and worried" – since *education* is most often simply one of the endowments of wealth, whereas *worry* about losing personal power and status is most frequently the common thread that runs through mainstream MAID narratives – Gladu's profile fits either mold, perhaps more than any of her fellow MAID litigants. Indeed, as she famously quipped, her desire was to die "with a glass of rose champagne in one hand and a canapé of foie gras in the other."[173] Clearly out of touch with the harsh realities of disabled life Canada, Gladu's privileged assertion would provoke angry callouts in the entreaties of social justice activists like Sarah Jama:

> People who were living in abject poverty, or who were scared to enter our horrendous Long Term Care institutions, or who were on waitlists for treatments, or who couldn't see a reason for living because of a lack of accessible, affordable housing, would use this expanded MAID as their only option.…You implied that the rights of people like Nicole Gladu, who testified that she wanted the choice to die with a champagne glass in her hand, was more important than the need to protect the folks I spoke about who were being systematically coerced into using MAID due to government failures.[174]

Whatever the differences in their conditions of living, Julia Lamb, Nicole Gladu and Jean Truchon were all disabled Canadians who strongly advocated for removal of the RFND requirement for MAID. In this respect, they were individual outliers from a largely united disability rights opposition to MAID expansion, reflecting a tension that has been described in feminist contexts as a tension between reformist and revolutionary politics.[175] The legal claims of Lamb, Gladu and Truchon reflected a "consciousness of assimilation and personal entitlement," rather than a consciousness of solidarity.[176] Their entry into the arena of debate, would, predictably, fuel efforts to discredit the disability rights position as not fairly representing a divided community.[177] This dynamic would add another layer of complexity to challenge disability rights defenders in mounting a defence to RFND that would respect the lives and struggles of all disabled people while holding firm to the principles of substantive equality in opposing a fundamentally eugenic law.

C. The Legal Outcome

Although the Lamb challenge in BC had been initiated one full year prior to Truchon and Gladu in Québec, it was the latter case that would proceed to trial first. At a case management conference on November 8, 2018, Justice Christine Baudouin, who was assigned to preside over the case of Truchon and Gladu at the Québec Superior Court, advised the parties that the case would be heard in January/February 2019, indicating that she herself was taken by surprise by the expedited trial dates, which required relocating to a courthouse outside of Montréal.[178]
Less than one year later, disability rights defenders would learn that not only would Truchon be litigated prior to Lamb, but its outcome would be determinative in the contest over RFND. Mere days before the official release of the Court's decision in Truchon, Julia Lamb's legal counsel at BCCLA filed a request to adjourn the proceedings indefinitely.[179] The reasons given by BCCLA for this abrupt abandonment of its flagship Charter challenge was that medical evidence provided by Dr. Madeline Li, a MAID expert retained by the Attorney General of Canada, indicated that according to the Reasonably Foreseeable Clinical Practice Guideline[180] issued by the Canadian Association of MAID Assessors and Providers [CAMAP], Julia Lamb would likely be "found to meet the threshold for having a reasonably foreseeable natural death",[181] thus rendering her claim moot. Finding this medical opinion evidence apparently irrefutable, Lamb's litigation champions would effectively withdraw the court challenge, spinning this change of strategy as a victory for BCCLA and Lamb herself. Given the timing of this call on the eve of the Truchon ruling and the rather uncharacteristic choice by BCCLA to stand down rather than attempting to reframe its argument against RFND, it was apparent that disability rights defenders had been out-

manoeuvred tactically. To be sure, they had been robbed of an opportunity to present a full-bodied defence of RFND in the BC court, and in the court of public opinion. Truchon was now the only forum in which we would be heard.

Although there was no formal organizational partner like BCCLA driving the litigation effort,[182] the plaintiffs Jean Truchon and Nicole Gladu were powerfully represented in the person of Jean-Pierre Ménard, a formidable presence in Québec legal circles and recipient of the 2018 Prix de la justice du Québec award "for his commitment to defending the rights of users of the health care system and the protection of vulnerable people."[183] A founding partner of a private law firm frequently at the heart of significant healthcare litigation, Ménard had chaired an influential panel of legal experts[184] whose 450-page report[185] in January 2013 paved the way for Québec to circumvent the Canadian Criminal Code in legalizing medically hastened death as part of its provincial health care regime.[186] Québec's Bill 52, An Act respecting end-of-life care,[187] had become law in June 2014[188] while the Carter case was still making its way to the Supreme Court of Canada. The law, which came into force in Québec on December 10, 2015,[189] authorized physicians in that province to end the lives of adult patients who were suffering unbearably at the end of life. A skilled litigator and well-connected in the spheres of legal and political power in Québec, Ménard was therefore well-positioned to champion an expansion of the legislation he had helped to usher in.

> By contrast, disability rights defenders would face more of an uphill battle in the Truchon and Gladu proceedings. Although CCD and CACL would be well represented by constitutional lawyer Nicolas Rouleau,[190] and granted intervenor status in the case, their request for party status[191] to advance evidence in support of their position was not supported by the Attorney General of Canada[192] and was ultimately rejected by the Court.

> The Court’s reasoning, detailed in its February 1, 2018 ruling, was that CCD and CACL, as organizations, were not directly affected by the issues in the litigation and therefore not entitled to party status and further that significant expert evidence would be brought forward by the Attorney General of Canada.[193]

Timing and circumstances in the Lamb case had made it possible to work collaboratively with counsel for the Attorney General to generate a significant number of detailed lay affidavits from disabled persons. Although testimony from lay witnesses about ableism, stigma and pervasive disadvantage would have assisted the Court in unpacking the claims made by Truchon and Gladu and perhaps approaching a deeper understanding of the sources of the suffering for which they sought relief[194], none of this proved possible in the Québec Superior Court: the case moved very quickly, proceedings were conducted primarily in French, and Justice Beaudoin, quite early in the process, had imposed strict limits reducing the number of witnesses who could provide evidence in the case[195].

As it was, the Attorney General of Canada did call upon three of the contributors to this volume – Michael Bach, Trudo Lemmens and Sonu Gaind – to provide evidence in support of the RFND requirement. As well, British scholar Tom Shakespeare was afforded the opportunity to bring “theoretical, sociological and bioethical” disability research before the Court.[196] While Shakespeare was able to introduce the Court to the “disability paradox,”[197] and to speak to the social harms and messaging that would flow from “allowing medical assistance in dying outside of the temporal sphere of end of life,”[198] his impact on the Court’s appreciation of the context and implication of its decision appears to have been limited. Without grounding in the Canadian disability experience or a nuanced understanding of substantive disability equality, Shakespeare on his own was unable to penetrate the Court's reflexive sympathies for what Justice Beaudoin perceived as Jean Truchon's "great suffering."[199]

With no first-person accounts from disabled persons who struggle – and suffer – in their efforts to survive in the absence of equal recognition and equitable supports, and little or no evidence on the prevalence and effects of ableist stereotypes and stigma, the Court was unable to overcome its predisposition to reduce Shakespeare's testimony, and that of Michael Bach, to an assertion that RFND vaguely protects disabled people "from themselves and from social bias."[200] Without a visceral encounter with other disabled bodies offering countervailing narratives and framings of disability suffering, disability discrimination and disability justice, the Court in Truchon defaulted to the conclusion that RFND was discriminatory in its effects upon "a category of persons," such as Jean Truchon and Nicole Gladu, seeking "the choice for themselves" about MAID.[201]

The Court's decision, rendered on September 12, 2019, was to strike down the RFND requirement in Canada's MAID law. Like the Carter court in 2012, the Truchon court found a violation of the right to *life, liberty and security of the person* under section 7 of the Charter.[202] Going beyond Carter, the Court also found a violation of the *equality rights* provisions in section 15 of the Charter.[203]

In keeping with established Charter jurisprudence, the Court had undertaken an analysis of the objectives of the law, and its RFND requirement in particular, as part of its ruling. Such an analysis is required under section 1 of the Charter, which recognizes the authority of government to reasonably limit individual freedoms in order to prevent harm to others. At the time of the Carter decision, there had been no explicit objectives for the prohibition on suicide assistance, and in this vacuum, the Court had declared that the legislative purpose of the prohibition was to prevent “vulnerable persons from being induced to commit suicide at a time of weakness.”[204] By the time of the Truchon claim, however, Canada had established a complex regulatory regime for MAID, and the objectives for the law’s provisions were now explicit in the *Preamble*[205] to the legislation. Thus, drawing directly from the Preamble, the Attorney General of Canada had argued in defending the law that the objectives for RFND were threefold:

1. That it is important to affirm the inherent and equal value of every person’s life and to avoid encouraging negative perceptions of the quality of life of persons who are elderly, ill or disabled;
2. That suicide is a significant public health issue that can have lasting and harmful effects on individuals, families and communities;
3. That vulnerable persons must be protected from being induced, in moments of weakness, to end their lives.[206]

Significantly, however, the Court in Truchon rejected the first two of these objectives. In the view of the Court, the affirmation of the inherent and equal value of every person’s life, and the importance of preventing suicide, were both too broad to constitute valid legislative objectives. Instead, they were deemed to be “vehicles used to affirm social values or stakes”[207] and as such, would not be taken into consideration in determining whether the limits on individual freedom imposed by the RFND requirement were justifiable. The Attorney General of Canada had argued that:

> If constitutional democracy is meant to ensure that due regard is given to the voices of those vulnerable to being overlooked by the majority, then this court has an obligation to consider respectfully Parliament’s attempt to respond to such voices.[208]

But the Court was not persuaded. Instead, Justice Baudoin declared the RFND objective to be a narrowed articulation of the Carter Court's formulation, rendered prior to the drafting of Canada's challenged MAID law:

> to protect vulnerable persons who might be induced to end their lives in a moment of weakness, by preventing errors when assessing requests for medical assistance in dying.[209]

Not surprisingly, this reasoning dovetailed with a conceptual framing core to the Carter ruling as well: an exclusively medical framing that left no room for the insights of a critical disability analysis. By asserting "vulnerability" as the relevant consideration in the balancing of rights required for a MAID regime, and by defining vulnerability as doctors do, as an impairment of decisional capacity, neither the Carter Court nor the Truchon Court would have to reckon with the messy business of deep-rooted socioeconomic and structural vulnerability, or the inequities that have demonstrated themselves throughout history to produce, perpetuate and selectively exploit human vulnerability. Instead, their rulings would accord with the clean and simple logic of medical authority. For the Court in Truchon, the knotty questions of whose lives should be candidates for state-administered death could properly be delegated to doctors:

> … [T]he Court finds that, for a doctor working in the area of medical assistance in dying, a vulnerable person should be defined as a person who is incapable of consenting, who depends on others to make decisions regarding his or her care, or who may be the victim of pressure or abuse.… Because physicians are able to assess an individual's decision-making ability, they can therefore determine whether they are dealing with a vulnerable person or not.[210]

The Truchon judgment dealt a crushing blow to all who had recognized in the end-of-life requirement for MAID the single expiatory feature of a legislative regime that was otherwise premised on a fundamentally discriminatory proposition: categorizing disability-related suffering as so fundamentally more egregious than all other forms of human suffering as to warrant state intervention to terminate life upon request. When the threshold for MAID was suffering from a medical condition at the end-of-life, the discriminatory effects of the regime had been neutralized, with eligibility contingent upon one's place along the trajectory of life, rather than one's medical or disability status. But when the Court in Truchon struck down the RFND requirement, it severed a pairing of conditions that had been calibrated to balance the right to autonomy with the right to equality – in other words, to be nondiscriminatory in essence.

As Elizabeth Sheehy, one of the contributors to this collection, would soon make clear in her 2021 entreaty before the Standing Senate Committee on Legal and Constitutional Affairs:

> By removing the one safeguard that was promised as protection for people with disabilities when medical assistance in dying was legislated—the reasonable foreseeability of death requirement—the bill singles out disability as *the* precipitating condition for assisted suicide. No other group of Canadians will be supported in their wish to end their lives due to their suffering. This amounts to discrimination on the basis of disability, contrary to s 15 of our *Charter*. It imposes a significant social burden by its message that disabled lives are not worth living or saving.[211]

If the Truchon decision was permitted to stand, the threshold for MAID would be suffering from an advanced and incurable medical condition – in other words, suffering from some form of disability. The MAID-able cohort in Québec would widen to include, effectively, all disabled persons who suffer intolerably in ways that are causally related to their disability. In the province of Québec, MAID would become a “treatment option” exclusively for disabled persons. Whether this constituted a benefit or a harm – a victory for individual liberty or an existential injury to human rights – would depend on one’s convictions about the meaning of equality for disabled persons.

D. The Immediate Aftermath

The response to the Truchon decision from disability rights defenders was swift and forceful, and predictably constellated around calls for its immediate appeal. Within days of the decision’s release, an open letter endorsed by over 70 disability and civil society organizations was dispatched to the Attorney General, the Prime Minister and the Minister of Disability Inclusion, urging immediate appeal of the decision.[212] Trudo Lemmens and Laverne Jacobs, scholars in health law and disability law respectively, published an opinion piece detailing the reasons why appealing the decision was essential.[213] In their view, “[t]he court’s ruling undermine[d] Parliament’s power to issue broad legislation aimed at protecting the rights and interests of people who are elderly, ill or disabled, and at preventing suicide.”[214]

But with a high-stakes federal election looming, it was difficult to garner attention from the media or the voting public; the Prime Minister had dissolved Parliament on the day before the decision was released. In accordance with standard legal conventions, the window of possibility for filing an appeal would close in 30 days, just days before a federal election in which securing the favour of voters in Québec would be of crucial importance for the governing Liberal party.[215] The government of Québec had announced on October 3, 2019 that they would not appeal the decision;[216] the announcement came in the wake of a powerful endorsement of the Truchon ruling and a formal urging **not** to file an appeal, made by five professional orders representing Québec’s doctors, nurses, pharmacists, notaries and social workers.[217]

With strong spheres of public influence aligning in support of the decision in Québec, it was clear that the federal government would pay a price politically were it to file for appeal.

While no doubt tactical discussions and political horse-trading unfolded behind the scenes, the Prime Minister gave no public indication of his intentions regarding appeal, until the French language leaders' debate on October 10, 2019. When asked by a disabled woman seemingly eager to end her life, if his government would respect the Truchon decision, he responded, "Yes, we are going to relax the law in the next six months."[218] Thus, despite the clear guidance of Canada's "Caretaker Convention"[219] that a government in power should restrain its actions following the dissolution of Parliament to those that are urgent, noncontroversial or reversible by a new government, the Trudeau government permitted the deadline for appealing the Truchon decision to pass.[220] As Elizabeth Sheehy would underscore in her 2021 testimony:

> … it is almost unheard-of for the federal government to fail to defend its own laws—and particularly a law developed so recently through compromise and careful consideration of its impacts—by invoking the appeal process.[221]

The government's irreversible 'decision by stealth' to refrain from appealing Truchon slipped by under the radar of a mainstream press preoccupied with its own curation of ballot box issues.[222] But the toxic fallout from this single decision would reverberate to the present day and well beyond, as disability rights defenders in Canada would be called to witness and resist a rapid normalization of eugenic policy and practice in its wake.

In the immediate aftermath of Truchon and following the lapse of the appeal deadline, came a period of relative calm on the surface of Canada's MAID maelstrom. Physicians and nurse practitioners continued to administer the procedure on patients they deemed to be eligible; MAID death rates continued to increase at exponential rates[223] as the practice became more and more normalized as a standard treatment option. Constitutional exemptions from the RFND requirement were routinely granted by Québec courts[224] during the months that Justice Beaudoin had set aside for the Québec and federal governments to consider a legislative response to her ruling.[225] Disability rights advocates found themselves effectively forced to wait to see what would come from the federal election and how a new or newly mandated government would respond, now that the RFND requirement had been struck down by a Québec court. During this hiatus, they worked to channel their fury into new legal and political strategies, withholding pro-forma praise for conciliatory gestures toward disability rights made on the campaign trail[226], and endeavouring to fill gaps in public awareness[227] left by inadequate media coverage during the critical days after the release of the Truchon decision.

Following the federal election, in which the incumbent Liberal party secured minority control over Parliament, and the customary holiday season recess, the government began, quietly, to show its hand on responding to the Truchon decision. An online two-week "consultation" questionnaire initiated on January 13, 2020[228] and a series of ten tightly curated, invitational roundtable meetings together purported to measure Canadians' readiness for a legislative overhaul of the MAID regime, thus preparing the ground for legislation that would codify the Truchon calamity in Canadian criminal law. Disability rights defenders, increasingly nimble in this campaign, would be quick to respond.

1. From Geneva: The Special Rapporteur

Not limiting their efforts to the domestic sphere, advocates would find the disability rights position on assisted suicide powerfully validated on the global stage when the UN Special Rapporteur on the rights of persons with disabilities delivered to the United Nations General Assembly the results of a thematic study on the impact of ableism in medical and scientific practice.[229] The report was forthright, thorough and authoritative, and made explicit the prejudicial and ideological foundations of ableism and eugenics, observing notably with respect to eugenic practices, that:

> Unlike the widespread moral revulsion and outrage against comparable atrocities of the twentieth century, the significance of the eugenics movement and its impact on how societies continue to dismiss the value of the lives of persons with disabilities has long remained confined to disability circles.[230]

Critiquing much of mainstream bioethics for its "ableist views, including the assumption that persons with disabilities are of lesser value than others, or that their lives are not worth living,"[231] the Special Rapporteur went on to conclude, based on the principles, rights and obligations of the Convention on the Rights of Persons with Disabilities [CRPD][232] that "eugenic aspirations persist in current debates related to medical and scientific practice concerning disability, such as… assisted dying.[233] Among the many specific measures proposed in her report, all of which bear serious attention, the Rapporteur's unequivocal assertion that "access to assisted dying should be restricted to those who are at the end of life"[234] would resonate powerfully in Canada's disability rights community.

In a separate report, issued simultaneously, the Special Rapporteur presented her findings and official recommendations for the Government of Canada, following her official visit to Canada in April 2019. Well apprised of developments in the Canadian MAID domain, she made direct reference to the Québec court decision in her December 2019 report,[235] expressing her concerns clearly and categorically:

> The Special Rapporteur is extremely concerned about the implementation of the legislation on medical assistance in dying from a disability perspective. She has learned

> that there is no protocol in place to demonstrate that persons with disabilities deemed eligible for assistive dying have been provided with viable alternatives. Moreover, she has received worrisome information about persons with disabilities in institutions being pressured to seek medical assistance in dying and of practitioners not formally reporting cases involving persons with disabilities. The recent judgment of the Superior Court of Quebec might put additional pressure on persons with disabilities who are in a vulnerable situation due to insufficient community support.[236]

The Special Rapporteur's carefully reasoned and strongly worded reports confirmed the eugenic aspirations in plain sight in the popular embrace of euthanasia and assisted suicide for disabled people. As such, she provided an authoritative and independent validation of the disability rights resistance to expansion. As much as this important validation would energize activists and allies engaged in defending the RFND requirement, the reports did not produce a response from the Canadian government or from the MAID expansionist lobby. Media coverage was therefore extremely muted and brief, and as a result, regrettably, her report provoked no significant shift in the narrative of disability suffering that had taken hold in the post-Truchon era.

2. The Dueling Questionnaires

Mindful that the government survey would be in no way statistically valid,[237] and wary that survey results would be skewed by an outpouring of expansionist zeal and overblown in their ultimate reporting, the Vulnerable Persons Standard community invited survey respondents across Canada to submit duplicate copies of their responses to the VPS for analysis. Text from open-ended responses were grouped thematically and excerpted in a public report[238] far more compelling and nuanced than their blanket dismissal in the government's official report as "Opposition to MAID." The government report made no distinction between responses that objected to MAID altogether and those that objected to its expansion beyond the end-of-life context, summarizing this generic opposition in terms that suggested a simplistic and fundamentalist reasoning: “Ultimately, responses in this cluster emphasize that life is precious, and that it is not the government or medical professionals who are able to determine when life should come to an end.”[239]

The VPS report, by contrast, highlighted themes of substantive equality, domestic and international human rights commitments, suicide prevention and the social determinants of health, discrimination, institutionalization, historic patterns of abuse and social neglect, ableism and ageism. A summary statement argued for careful attention to the minority views effectively erased by the government’s report:

> While those who resist the expansion of medical assistance in dying are a subset of the population, it is very important that we don't lose track of the perspectives of those who will be impacted most. It's about time that Canada responds to the voices from the margins.[240]

While the VPS initiative to collect survey data was ad hoc and impromptu, the results of its efforts were no less scientific than the government's charade of public consultation. The government survey methodology had been deeply flawed, its premise unfairly skewed and its reporting misleading and superficial. On the other hand, the VPS had been guided by the core principle of “Nothing about us without us” and had been fully transparent about its aims and purposes. Its qualitative capture of the reasoning behind disability rights opposition to MAID expansion provided an accurate snapshot of the considered and constructive viewpoints held by Canadians with arguably the greatest stake in the outcome of these debates. As with the entreaties chronicled in this volume, the substantive and detailed record that the VPS report preserves may prove invaluable in guarding against the forces of erasure while the forces of ableist supremacy prevail.

3. The Vancouver Roundtable: Staring down the Opposition

Obliged to participate in good faith in pre-legislative discussions that would be as skewed as the government questionnaire had been, disability rights defenders who found themselves on the invitation list for government-hosted roundtables worked to prepare proposals that would not amount to policies of appeasement. In the Discussion Paper distributed to invitees prior to these meetings, the government had clearly and explicitly declared its intentions of "responding to the Truchon decision before the March 11 deadline by expanding eligibility for MAID beyond persons nearing the end of life." [241]

As several advocates would later reflect in a collective submission to the Senate Standing Committee on Legal and Constitutional Affairs, this articulation of a predetermined outcome would challenge them – on very short notice, and during a time of urgent attention to pandemic emergency measures – to pivot away from legal and policy arguments for the preservation of the RFND threshold, and instead to focus on "how to contribute constructively to the development of a legislative response to a court ruling that we considered to be fundamentally in error."[242] Intuiting that the in-camera, tightly orchestrated agenda for roundtable sessions would not accommodate actual debate or discussion, a number of participants at the disability-focused roundtable in Vancouver on January 16, 2020 took the approach of an agreed-upon *collective* entreaty consisting of a constellation of safeguards that would honour and protect disabled lives, and "preserve what the court in Truchon & Gladu had dismissed in such a cavalier fashion."[243] Specifically, they formulated and proposed a set of commitments inspired by the precedent of

"Jordan's Principle,"[244] reimagined as "Archie's Principle," invoking the memory and the struggles of individuals like Archie Rolland[245] and countless other disabled citizens who have suffered similar fates. In particular, this proposed safeguard would consist of:

> A "duty to assist" by provincial/territorial and federal governments – meaning that the resources must be made available to address those causes of suffering – whether it is lack of adequate/affordable housing, fear about being confined to an institution, needed aids/devices, personal attendant/care services and other supports required to live in the community, consistent with Article 19 CRPD.[246,247]

Although the Vancouver roundtable was attended by Cabinet Ministers responsible for MAID[248] and their senior political and government staff, with a clear and consistent message presented by advocates in attendance, it was evident by the conclusion of the meeting that there was no movement in the government's position. The proposal for a duty to assist was rejected out of hand, without discussion. In his closing remarks, Justice Minister Lametti made vague assurances that both government and community representatives were somehow on the same page in their shared commitments to equality, convincing no one in attendance and leading some to wonder if he had been paying attention at all.[249]

4. The Ottawa Forum: Throwing Down the Gauntlet

The agenda for Canada's still-newly minted Minister of Justice had been made clear in Vancouver and was consistent with widely held expectations, perhaps best expressed in the Globe and Mail headline, "David Lametti's appointment as Justice Minister raises hope for less restrictive assisted-dying law".[250] In the face of this political reality, disability rights defenders would not rest their case on arguments made in an in-camera meeting or in the disappearing ink of a flawed public survey. Instead, they fashioned their own platforms and hustings to put clearly on the record a community-wide defence of RFND.

A keystone element in this effort was a national forum on MAID held in Ottawa on January 30, 2020.[251] Hosted jointly by CACL and CCD, this bilingual, fully accessible event was attended by a number of parliamentarians, including the Minister of Justice and the Minister for Disability Inclusion, and by hundreds of disability rights advocates and allies across the country. Seven presenters, each well-known and respected for their deep roots in disability movement activism and their expertise in ableism, disability discrimination, human rights and constitutional law, spoke on the theme of "End-Of-Life, Equality and Disability."[252] Taken together, their contributions expressed a powerful rebuke of the government's imminent abandonment of the rights and well-being of disabled citizens and made a compelling argument for the preservation of RFND in accordance with Canada's obligations under the Charter and the CRPD.

One of the presenters, Laverne Jacobs,[253] drew from her extensive studies of the CRPD and focused in particular on the UN's interpretive guidance on the meaning of "inclusive equality" for persons with disabilities.[254] Jacobs foregrounded the issue of stigma, arguing that "the stigma of people with disabilities is perpetuated through the MAID legislation."[255] She noted with concern about the normalization of inequality or "any system or any structure of systemic discrimination," that, "once ideas that are harmful to any minority group have been legislated into law, it becomes very difficult to convince the general public that they are … discriminatory."[256]

In her critique of the Truchon decision, which Jacobs described as premised upon "a formalistic vision of equality,"[257] and therefore "very narrow and problematic,"[258] she made particular reference to the Québec Court's failure "to inquire into the idea of whether the label of being MAID-able furthers the historical disadvantage of the disability community as a whole."[259] Jacobs' fundamental question, "How do we strip the structure of our legislation of ableist understandings of social existence?"[260] dovetailed strongly with the arguments advanced by Nicolas Rouleau, one of her fellow Forum panelists who had served as counsel in Los Angeles for CCD/CACL in the Truchon case. Rouleau laid out the case for preserving RFND with a clarity that must have shaken government representatives in attendance as much as it resonated with the convictions of assembled disability rights defenders:

> [B]y providing MAID on an end-of-life basis, the State treats the suffering of all people who are not at the end of their lives equally – i.e., as a situation worth addressing through means other than the termination of a life.… The refusal of the State to terminate their lives is not a denial of their suffering, but rather an affirmation of the worth of their lives. And by treating their suffering equally in a non-end-of-life context, the State also recognizes that if we treated the suffering of one group differently from the suffering of all the others (and we would make this distinction based on Charter-protected personal characteristics), it would have an impact on their dignity, their self-worth, the worth ascribed to them by others, and the likelihood that this group would be stereotyped. This would be true for any group, such as women; transgendered individuals; Indigenous people; individuals who are addicted to substances; persons with disabilities.
>
> Instead, we agree that the suffering of groups such as transgendered individuals, Indigenous people, individuals who are addicted to substances must be treated as a crisis situation, worthy of State mobilization and intervention, but not through the termination of their lives. **This is a good thing**. [Emphasis in original.][261]

In a very direct sense, the Ottawa Forum would stand as the closing argument from disability rights advocates on the issue of RFND.

V. Bill C-7: Crossing The Rubicon

The clarity, consistency and logic of the disability rights argument for preserving RFND would not, however, move the needle of political will on the question of MAID expansion. Any faint hope of even an incremental shift would vanish a mere three weeks after the Ottawa Forum at which Ministers had assured disability rights advocates that they were being heard, and that their perspectives would be "… considered, and in some ways, *most* considered, given the very real reality that every single person that accesses MAID has some form of disability."[262] Instead, on February 24, 2020, the Ministers of Justice, Health and Disability Inclusion jointly announced the introduction of Bill C-7,[263] a sweeping amendment to the MAID provisions of Canada's Criminal Code. Well beyond what many had feared would be a significant weakening of the RFND requirement, Bill C-7 outright removed the requirement, leaving in place a two-track system where persons approaching death would be protected by less stringent safeguards than had previously been the case, and non-dying persons would be accorded a pro-forma tweaking of safeguards that ought to have been self-evident for all MAID cases, specifically that "… in non-end-of-life cases, the request for MAID is fully informed and considered, and that individuals making the request have given serious consideration to reasonable and available treatment options."[264]

Touted as reflecting an "emerging social consensus,"[265] the amendments detailed in the Bill were described by the Minister of Justice as aiming "to reduce suffering, while also supporting individual autonomy and freedom of choice."[266] Absent from his framing was any reference to the balancing of rights that had figured so prominently in his predecessor's assurances when MAID was first introduced in Canadian law,[267] or, importantly, that had been explicitly acknowledged by the Supreme Court in Carter:

> … [P]hysician-assisted death involves complex issues of social policy and a number of competing societal values. Parliament faces a difficult task in addressing this issue; it must weigh and balance the perspective of those who might be at risk in a permissive regime against that of those who seek assistance in dying.[268]

As is customary in Canadian parliamentary processes, Bill C-7 completed first reading in the House of Commons on February 24, 2020 without discussion.[269] Its legislative progress, however, would be short-lived in the first session of Canada's 43rd Parliament. Within days of the Bill's first reading, the country was overtaken by the Covid-19 pandemic; during March 2020, every Canadian province and territory declared states of emergency, and the federal government invoked the first of what would be several parliamentary closures on March 13, 2020. A further extension of the Québec Court's timeline for activation of the Truchon decision was requested and granted,[270] and the attention of Canadian lawmakers would be effectively limited to emergency response measures until the Prime Minister called for Parliament to be prorogued on August 18, 2020.[271]

A. The Global Pandemic

In early 2020, disability rights campaigns across the country found themselves compelled to divert from a singular focus upon the existential threat of MAID expansion in order to respond collectively to the five-alarm fire that was the global pandemic. The betrayal felt by disability rights advocates in the government's legislative response to Truchon would increase exponentially as the precarity of disabled lives in times of social crisis became ever more self-evident. From the time the Public Health Agency of Canada activated its Emergency Operations Centre on January 15, 2020 and the World Health Organization [WHO] declared the outbreak to be a Public Health Emergency of International Concern on January 30, 2020,[272] Canadians with disabilities found themselves unheard, unsupported and endangered on a global scale. In Canada, the pandemic would be an accelerant to the forces of eugenic sorting upon which Track 2 MAID was predicated. Covid-19 would selectively distribute its heaviest burdens of stress, deprivation, isolation, contagion and death among those euphemistically described as having “pre-existing conditions.”[273] Hardest hit of all would be disabled people incarcerated in nursing homes,[274] long-term care[275] and correctional facilities[276], disabled people marked by race or Indigeneity, and mass numbers of disabled people whose endowments of social connection and material wealth were insufficient for human flourishing.

While disability activists, advocates and organizations in Canada mobilized in protest of explicitly eugenic triage policies[277] and widespread exclusion from financial relief[278] touted as “helping Canadians pay for essentials like housing and groceries,”[279] the timing for decisive federal government action on expanding access to MAID for non-dying persons nationally was a slap in the face for Canada’s disability rights movement.[280]

Disability rights defenders and their allies had responded on every front to the government’s pre-legislative public relations blitz, but the government-generated momentum for expansion would be difficult to overtake. Pushing through the extraordinary hardships and prohibitions of the early pandemic years, however, Canada’s disability rights movement would once again be called to action in October 2020, when a mostly virtual 43rd Parliament reconvened for its second session in the fall of 2020.[281] Just two weeks into the session, Bill C-

7,[282] in its original form, was returned for first reading on October 5, 2020, beginning a consequential sequence of debates, committee hearings, amendments and political wrangling that would extend until its ultimate passage, with amendments, on March 17, 2021. Canada's expanded MAID law, to which the entreaties collected in this volume are a collective response, would alter the trajectory of countless disabled lives for many years to come.

What happened in the six months between the emergence of Bill C-7 and its entrenchment in law must not be overlooked in the furor of all that the law unleashed. There were three notable ways in which the legislative proceedings and policy debates around Bill C-7 differed significantly from the 2016 proceedings around Bill C-14: the entry of formidable activist voices; the ascendancy of an emboldened Canadian Senate; and the acceleration and advance of expansionist ambitions.

B. Formidable Activist Resistance

While formally constituted disability rights organizations had been – and remain – demonstrably committed to the campaign against euthanasia and assisted suicide since the Rodriguez era, and while they had been an estimable presence in advocacy for RFND in 2016, having to a significant extent prevailed in the struggle to entrench an end-of-life requirement, it is arguable that they reached the apex of their influence on this issue in 2016. The same government that appeared to have yielded to disability persuasion in 2016 had not only faltered in its commitments by 2019 but the following year had downright reversed course with respect to RFND. Despite the best efforts of a coalition of disability rights organizations across Canada, the government had not blinked in its refusal to appeal Truchon, nor had it accorded any serious attention to carefully calibrated proposals presented behind closed doors or in public fora – proposals that were both rhetorically compelling and constitutionally sound. Not even the weightiest of global civil society institutions, the Office of the Special Rapporteur for the Rights of Persons with Disabilities, seemed to have any effect upon the course that the government had set for itself with respect the expansion of Canada's MAID regime.

Indeed, even the time-honoured holy grail for organizational advocacy – the proverbial "seat at the table" – had failed to protect the lives and equality of disabled citizens. Despite her assurances that her presence would matter, as one of the three Cabinet Ministers designated to lead the government's response to Truchon, Canada's Minister for Disability Inclusion had proved ineffectual at best, or insincere at worst. Ironically, the campaign's greatest impact may have been in helping to shape the government's talking points in support of Bill C-7. In introducing the Bill for second reading in the legislature, the Minister of Justice, Attorney General David Lametti, had carefully recited a core disability rights argument before returning to his predecessor's 2016 "balancing" metaphor and invoking commitments from the Bill's Preamble that would now be a mere vestige from MAID 1.0:

> … In the view of many disability groups, a MAID regime that does not limit eligibility to those whose death is already reasonably foreseeable enshrines in law the erroneous view that disability itself is a valid reason for ending life…
>
> I believe the fundamental principle that all lives have equal and intrinsic value can be balanced with other important interests and societal values, in particular, the importance of individual choice for Canadians. This balance is at the heart of the bill's objectives, which are to recognize the autonomy of individuals to choose MAID as a means for relieving intolerable suffering, regardless of the foreseeability of their natural death, while at the same time protecting vulnerable persons, recognizing that suicide is an

> important public health issue and affirming the inherent and equal value of every person's life.[283]

To be clear, Bill C-7 had removed the single most important measure for the protection of equality rights in Canada's MAID law – the neutral, non-discriminatory provision that only persons who were approaching natural death would be eligible for a hastening of that death by MAID. In its place, the Bill would substitute a waivable 90-day assessment period[284], and a requirement that patients be advised of and give serious consideration to whatever other means to relieve their suffering might be available to them (and known to their MAID provider). In addition to all dying persons, MAID would now be available to persons at any stage of life, provided they were disabled. In effect this rationale for Bill C-7 would amount to replacing a foundational pillar with a bit of window-dressing, propping up the illusion of robust autonomy while taking no account of the coercive realities of ableism, structural inequality[285] and disability stigma in shaping a patient's desire for death and/or a practitioner's ideological predisposition to collude with that desire. In the Attorney General's rendering, a minor tweaking of vague and unenforceable safeguards would render an exemption from the Criminal Code – for what would otherwise be homicide – as constitutionally compliant when reserved for disabled persons only. Yet the Minister's rhetorical strategy clearly prevailed as a talking point. The Minister's Cabinet colleagues from Health and Disability Inclusion, Ministers Hajdu and Qualtrough respectively, would deploy the same dissimulation the following month, when called upon to testify before the Standing Committee on Justice and Human Rights. Minister Hajdu would straightforwardly assure legislators that the amendments "… represent a balanced and compassionate approach, with respect for personal autonomy while ensuring that adequate safeguards are in place to protect vulnerable individuals."[286]

In a similar but more rhetorically ambitious manner, Minister Qualtrough would make lofty assertions about Bill C-7's place in the annals of disability rights:

> The proposed legislation recognizes the equality rights of personal autonomy as well as the inherent and equal value of every life, something that disability advocates have fought tirelessly for for decades. In doing so, it remains true to the Charter of Rights and Freedoms, the United Nations Convention on the Rights of Persons with Disabilities, and the principles of the Accessible Canada Act that everyone must be treated with dignity, that everyone must have meaningful options and be free to make their own choices, and that everyone must have the same opportunity to make for themselves the life that they are able and wish to have, regardless of their disabilities.[287]

In the face of such brash justificatory gaslighting, Canada's well-established and often government-funded disability advocacy sector lacked the tools of confrontation and calling out that the moment demanded. By their very nature, advocacy organizations in the disability sector were bound by complex checks and balances that require a certain decorum and careful stewardship of long-standing and productive relationships. They can, and did, develop and articulate a comprehensive policy critique of Bill C-,7[288] and a thorough constitutional analysis of its departure from the guarantees of the Charter.[289] But a candid, red-hot rebuke of the government's branding of this Bill was out of reach for the civil society players like Inclusion Canada[290] and the Council of Canadians with Disabilities.

It was in this breach that unaffiliated, grassroots disability activists rose as they had in the Latimer era to a state of peak engagement. Some came from the ranks of well-established activist groups like Toujours Vivant/Not Dead Yet, which had been active in this sphere since 2013, serving as prolific blogger, webcaster and disability rights watchdog from the front lines of the euthanasia frontier in Canada broadly and Québec in particular.[291] Other players, like the grassroots initiative Dignity Denied, had coalesced in direct response to Bill C-7, declaring themselves as "a defiant group of disabled people demanding the right to live in dignity" and offering a fulsome and persuasive critique of the Bill as rooted in ableist, racist, sexist, and class-driven ideologies[292]. Some were centres of radical mutual support and community capacity building in the spirit of disability justice, such as the Disability Justice Network of Ontario, active since 2018, whose leaders perceived in the messaging and formulation of Bill C-7 a threat to disabled lives that would dovetail with their ongoing work in antiracist, anti-ableist and abolitionist spheres.[293] Others constellated around a single-focus, single-message social media campaign like #WhyUs, a 2020 spinoff from the Project Value Facebook group,[294] aimed solely at generating ' portraits of protest, demanding an explanation that would justify singling out disabled lives for 'special' MAID eligibility.[295]

The influence of disability rights activists was felt everywhere in the months-long process of Bill C-7's legislative path. A powerful and rigorously substantiated online petition initiated by Dignity Denied quickly garnered over 12,000 signatures.[296] A webinar on the impacts of Bill C-7 on Black, Indigenous, Queer, Sick and Poor communities, titled "Death by Coercion", spearheaded by DJNO,[297] attracted over 400 registrants.[298] There were phone zaps,[299] journalistic[300] and editorial[301] contributions, innovative Twitter campaigns,[302] meetings with individual parliamentarians, photo collages,[303] vigils,[304] media appearances,[305] letter writing campaigns,[306] submissions to legislative committees[307] – many from seasoned activists and many more from disabled people who had never before engaged in political action. There were acts of civil disobedience: in the deep freeze of a February night, amidst severe pandemic restrictions, a team from DJNO and the Criminalization and Punishment Education Project [CPEP][308] marked the annual Disability Day of Mourning by staging a demonstration outside Canada's Parliament. Blocking street traffic with a huge banner reading "KILL BILL C-7", the demonstrators "read the names we could find of… disabled comrades who have died in institutions across Canada."[309]

As energetic as the Bill C-14 campaign for disability rights recognition had been, it had been confined to the strategies and discourses of mainstream policy debate and perhaps by definition, was one step removed from the lives and passions of disabled people most at risk from a slide toward eugenic culling. Grassroots activists would foreground hard truths, buried history and abuses of institutional and cultural power that would link MAID to the larger project of neoliberal capitalism. Their full-throated engagement in the Bill C-7 resistance brought an astute political sophistication, street cred and robust possibilities for solidarity across antiracist, anti-austerity and anti-colonial struggles, thus significantly diversifying the big tent approach that efforts like the VPS had pioneered with respect to MAID safeguards. Whereas the coalition in support of the RFND threshold had expanded in 2016 into palliative medicine and faith-based sectors, the anti-expansionist resistance to Bill C-7 began to feature support from partners in a broad swath of progressive social justice struggles.[310]

The entry of disability justice activists into the theatre of parliamentary committee hearings and debates infused the process with a gritty realism that would disrupt a pervasive narrative that had equated disability with suffering and framed adjustment to disability as a personal choice (and therefore refusable and/or avoidable by MAID). The participation of disabled citizens as letter writers, evidence chroniclers and testimonial witnesses had previously been the exclusive domain of a small cadre of Dying with Dignity subscribers. The dominant MAID narrative from lived experience that had therefore been inscribed in an uncritical public consciousness was one that disparaged and stigmatized aspects of disabled life intolerable to ableist sensibilities. As the prolific MAID provider, Dr. Ellen Wiebe[311], would explain matter-of-factly in her testimony before a joint Parliamentary committee in the fall of 2022:

> These are the kinds of conversations I have every day with my patients. They say, "If I can't take care of myself in my own home, I don't want to live any longer." They talk about independence—not just quality of care, but having strangers wipe their bum. That's such a common statement. People can say they have really good care in their home, but they still have somebody else changing the diapers.
>
> That is what people will talk about in terms of what is unacceptable, that there is no care level acceptable for that level of disability, because that level of disability is unacceptable.[312]

Disability activists have long understood the debilitating fiction of the *independent* human and how this mythology underpins the devaluation of disabled lives. Whether driven by stubborn ableist vanity or perhaps in some cases by deeper trauma associated with unwelcome intimacy,[313] the boundary line for acceptable life described by Dr. Wiebe is a well-recognized feature in MAID narratives, and one that, if unchallenged, powerfully validates and entrenches disability stigma. Its frequent recurrence in the expansionist lexicon makes clear that the intolerable suffering that expansionists sought to address was predominately not medical in nature but rooted in social and cultural norms and the absolutes of an ableist worldview. Giving free rein to unfettered individual autonomy among non-dying, socially privileged actors would expand the category of "intolerable suffering" to elevate the rigid protocols of nondisabled life to a threshold for acceptable life, and to entrench a profoundly discriminatory premise as a threshold for Track 2 MAID.[314]

Disability rights defenders would not dispute that the losses and lifestyle adjustments that accompany the onset of disability are considerable, but their counterpoint assertion was that much of the suffering occasioned by these losses was demonstrably remediable. MAID, they argued, was in no way a proportional response to the individual struggle for adjustment in the face of medical adversity, nor could death be construed as remedial in nature.

However, the framers of Canada's MAID law had designated that suffering would be subjectively determined. Death in the face of perceived subjugation to disablement had been normalized by expansionists as "a personal choice," and therefore protected by the guarantee of liberty. Disability rights defenders, and the activists among them in particular, balked at elevating the "personal choice" for MAID beyond RFND to a constitutional right, and further, a right that would confer wide discretionary privileges to state actors to administer the non-dying patient's desired death. This was a bridge much too far for those who understood the pervasive reach of ableism and medical ableism in particular in Canadian life, and had fought for formulations of disability equality that broke free of ableist design.

Activists speaking and writing from their lived experience and ethic of inclusion would disrupt and irrevocably complicate the ableist foundations of Bill C-7. In authentic accounts from their own lives, they would expose the hubris of independent toileting as the pinnacle of human dignity. In her testimony on Bill C-7 before the Senate Standing Committee on Legal and Constitutional Affairs, Gabrielle Peters, one of the contributors to this volume, speaking as co-founder of Dignity Denied, set a new bar for bold speech that paved the way for many of the activist truth-tellers who would present their entreaties in hearings yet to come. Confronting virtually every elephant in the room, she began:

> Having watched the Parliament and Senate proceedings on Bill C-7 and having lived in this country as a disabled, poor woman, particularly during this pandemic, I already know how little value is placed on my knowledge or my experiences or even my life. I don't arrive here expecting to say I suffer and have the Canadian state turn and ask, "How can we help?" because that is not my lived experience. … I thought I might have time to discuss the conflating of liberty with autonomy and the lethal consequence of policy that denies interdependence and flattens the "us" that is Canadian society to White, wealthy and non-disabled.
>
> I would have liked to discuss why a lethal injection of chemicals by a doctor has been branded dignified. Perhaps I would have asked whether you had given any thought to the manipulative, coercive effect of the branding.[315]

Speaking through her designate and colleague, Spring Hawes, Peters recounted her own variation on the independent-toileting-as-threshold-for-acceptable-life theme with a vivid recounting of the bureaucratic hoops presented for her to jump through in order to secure state funding for a replacement cover for a urine-soaked wheelchair cushion. Such deliberate bashing of the taboos and niceties of the privileged class proved to be part of a complex strategy of unsettling the gospel of dignity guiding the MAID brand. Exposing the lived reality of disabled poverty, and the overlays of trans and BIPOC disabled life, would indeed shape a bold new front of disability activist resistance to MAID expansion. In the two years that have followed the Bill C-7 debates, questions of class and privilege would be a persistent subtext, and one that would have the supporters of MAID expansion scrambling to justify a policy that caters to the desires and fantasies of those who have never had to concern themselves with hunger, homelessness, or dependence on state welfare.[316]

A high point in the activist resistance to Bill C-7 came in the final few days of the Bill's tumultuous legislative history. With Parliament conducting its lawmaking affairs for the most part virtually, Catherine Frazee and Gabrielle Peters joined forces to conceive and create the Disability Filibuster, described on its website as "a radical and irregular form of warfare, striking directly at the heart of the ableist logic that makes sense of our annihilation."[317] A unique form of protest tailored to the realities of pandemic lockdown, taking the form of a continuous series of live Zoom conversations, rants and cameos,

> [t]he Disability Filibuster was an audaciously ambitious grassroots online protest on a scale never before undertaken in Canadian disability history.… In the span of a mere three days, a nation-wide working group of disability rights and equality rights activists had come aboard, seed funding was secured, extensive disability accommodations were arranged, a suitable online platform was determined, publicity was generated and a round-the-clock, inclusive livestream protest of disabled artists, activists, scholars and allies was launched. The inaugural Filibuster broadcast began at 7 PM on March 8, 2021.[318]

After a disruption caused by racist/antisemitic/misogynist/ableist hackers disrupted its initial startup, organizers regrouped and the Disability Filibuster resumed at 7 PM on March 9 and continued late into the night.

> In total, the Disability Filibuster ran live, continuous broadcasts for almost 60 hours with only brief nightly breaks between 4 AM and 6 AM EST. Content ranged from lectures, interviews and panel presentations to artistic, comedic and dramatic performances and

> laid-back ‘coffeehouse’ late-night conversations. Each and every contribution was thematically tied to the Filibuster’s central mission of stopping the passage of a dangerous amendment to Canada’s assisted suicide laws, by exposing the injustice, ableism and inhumanity at its core.[319]

A “crip space”[320] in which participants were free to express their diverse embodiments and styles of being “without the contortions and performative rituals that make nondisabled power holders more comfortable in our presence,” the Disability Filibuster failed to register on the legislative radar, but offered a powerful antidote to expansionist gaslighting and left an indelible imprint upon the consciousness of an increasingly diverse, confident and radical disability resistance. At a critical time in Canadian disability history, the Disability Filibuster created a virtual space for the political and cultural work of building an inclusive and expansive solidarity “across generational and social justice vectors”[321] and repelling the erasure of disabled voices from a history of MAID in Canada that would otherwise be left to the exclusive authorship of its neoliberal[322] architects.

The core strategy for the Disability Filibuster had been to refuse surrender. Facing imminent defeat of their collective opposition to Bill C-7, the disability resistance had come together to mobilize, energize, build solidarity and practice mutual care. What might have in earlier eras been called a project of consciousness-raising, the Disability Filibuster shone a bright light upon the ableist forces at play in the historical moment of Bill C-7’s emergence and ultimate passage. Its participants took inspiration from each other and from rich histories and cultures of disability at the same time as they shared the pain of political betrayal and developed a critical analysis of eugenic creep cloaked in the language of benevolence. The seductions of a bourgeois autonomy promised by privileged access to MAID would not quell the thirst for justice and substantive equality of disability rights defenders.

As one Filibuster participant expressed the impact and significance of the Disability Filibuster:

> This was our (very impromptu) Crip Camp film, the Canadian reboot … without an actual physical encampment, broadcast to the whole world in real time: no gatekeepers, just crip power. I'm pretty sure it's the kind of stuff that people will be able to spend a lifetime studying. The presentations obviously, but all of it, including how we're learning … how to work together, the impacts it has had/is having, and where it will go. (And what the non-disableds can learn from our ways - which I dare say are far better than the status quo).
>
> We've never experienced anything like this as a disability community. The coming together, or the officiating of ableism in such a stark and boldly cruel way. It's such a bizarre polarization that reflects our exact experience of everyday life, which is rich and exciting, while simultaneously being cast aside as irrelevant and pitiful by the people who can't see us as ...people. [323]

C. An Emboldened Senate

Although the governing Liberal party as constituted after the October 2019 election did not hold majority control, with overwhelming support for MAID expansion in the Liberal party and the Bloc Québecois,[324] and political pressure on the NDP that would strongly disincline them from embracing a position that would align (albeit for very different reasons) with conservative ideologies about the sanctity of life, the passage of Bill C-7 in the House of Commons was all but inevitable. Not surprisingly, the Bill passed through second and third readings in the House of Commons with very little resistance; four short days of public hearings in November featured just over thirty witnesses in total, with representation skewed toward expansionist heavyweights, medical authorities and institutional representatives. Perhaps the only notable aspect of the House process was the audacious symbolism of the Bill's passage on December 10, 2020 – International Human Rights Day.[325]

The Canadian Senate, however, since 2015, had moved away from political party affiliations and constraints;[326] by 2019, when Bill C-7 was tabled, there were 59 independent Senators in a body of 105.[327] Moreover, two highly influential Senators, James Cowan and Serge Joyal, had retired from the Senate in January 2017 and January 2020 respectively; both had been extremely vocal in their opposition in 2016 to Bill C-14, arguing strongly at that time for a more expansive regime. Senator Joyal had authored a failed amendment in 2016 to remove the RFND requirement from Bill C-14,[328] and Senator Cowan had supported his colleague's proposal, and further, had advocated forcefully for inclusion of mental illness in the definition of "grievous and irremediable condition."[329] Their absence in the Senate would, at least theoretically, remove two champions for expansion from the legislative process.[330]

The Senate conducted a "pre-study" of Bill C-7 in December 2020 in the form of public hearings which were far more extensive and diverse than those the House had modelled. These pre-study hearings of the Standing Senate Committee on Legal and Constitutional Affairs, combined with an additional round of hearings in early February 2021, featured well over 100 witnesses, spanning eight full days of business. Senators with a diversity of professional and community expertise had ensured that the range of voices represented would embrace a wider disability sector, including grassroots activists, indigenous perspectives and multicultural faith perspectives as well as important human rights sector authorities and agency heads such as the Correctional Investigator of Canada.

Encouraged by these signals, disability rights defenders focused considerable time and attention in the winter of 2020/21 to speaking directly with independent Senators, making their objections to Bill C-7 clearly understood. In small delegations and individually, activists and civil society advocates requested and were granted private meetings with Senators believed to be sensitive to the social justice struggles of disabled people in Canada and receptive to reasoning founded in human rights principles. For the most part, thirty-minute meetings with Senators afforded a more fulsome opportunity to present a nuanced analysis that did not lend itself to simple soundbites and benefited from thoughtful exchange. The strategy, although time-consuming, was more satisfying than the tortured form of five-minute entreaties.

Senators for the most part kept their cards close to their chests during these meetings, and in retrospect there was a beguiling sense of reassurance for activists and advocates that their arguments were resonating with Senators who appeared hospitable, eager to listen and genuinely engaged in the unfolding dialogue. There were also promising indications externally that disability rights advocacy was having its desired effect. Canadian media were finally registering the disability rights opposition to the Bill as something distinct from religious moralizing and partisan grandstanding,[331] and pollsters were beginning to report that public support for MAID expansion "is hardly the consensus it is often made out to be."[332]

Most significantly, the wind in the sails of the disability rights resistance to Bill C-7 was boosted in January 2021 by the release of an authoritative statement from the UN Human Rights Council that expressed alarm "at a growing trend to enact legislation enabling access to medically assisted dying based largely on having a disability or disabling conditions."[333]

Expressed jointly by three independent experts – Gerard Quinn, Special Rapporteur on the rights of persons with disabilities; Olivier De Schutter, Special Rapporteur on extreme poverty and human rights; and Claudia Mahler, Independent Expert on the enjoyment of all human rights by older persons – the statement was unequivocal that "disability should never be a ground or justification to end someone's life directly or indirectly," arguing that "[i]t could never be a well-reasoned decision for a person belonging to any other protected group – be it a racial minority, gender or sexual minorities - to end their lives because they experience suffering on account of their status."[334]

Lending strong support to the class analysis advanced by disability activists, the UN experts continued:

> People with disabilities condemned to live in poverty due to the lack of adequate social protection can decide to end their lives as a gesture of despair. Set against the legacy of accumulated disadvantages, their 'architecture of choice' could hardly be said to be unproblematic.[335]

The framing of the Bill C-7 debates was noticeably changing as the Canadian Senate continued its deliberations and considered amendments to the Bill in February 2021. Even the word 'ableism' was beginning to appear in mainstream media accounts, albeit mediated by quotation marks that somehow seemed to diminish its serious application.[336] Momentum continued to build as the same three human rights experts issued a pointed seven-page communiqué to the Canadian government, laying out in detail their concerns about the discriminatory impacts flowing from a formulation of MAID beyond RFND and the ableist and ageist assumptions reinforced by the proposed expansion.[337] When Gerard Quinn, United Nations Special Rapporteur for persons with disabilities, testified before the Senate on February 1, 2021, he explained how Bill C-7 was inconsistent with Canada’s commitments to the CRPD. Significantly, he did not ground his objections in Article 10 [the right to life] but rather in Article 5 [the right to equality and nondiscrimination] and Article 8 [the obligation to “foster respect for the rights and dignity of persons with disabilities” and to “combat stereotypes, prejudices and harmful practices], thus helping to clarify a widely held misconception that the disability rights position on the Bill was ideologically or religiously motivated. His analysis was clear and unequivocal:

> [I]t’s hard to see how a legislative proposal that extends a right to medically assisted dying to persons with disabilities who are not themselves close to death could send a signal that is compatible with Article 8, the obligation to combat ableism, combined with Article 5, the obligation to secure equal respect of the CRPD.[338]

Addressing the expansionist argument that an expanded MAID regime would promote the autonomy rights of disabled persons, the Special Rapporteur emphasized the countervailing requirement of equality, reminding Senators that the pursuit of autonomy rights requires attention “to the kind of ecosystem within which people find themselves.” This contextualizing of the expansion debates within the larger sweep of eugenic history and structural ableism resonated strongly with the disability rights position that a tweaking of safeguards would not solve the fundamental problem of an erosion of disability equality embedded in Bill C-7. Urging Committee members to “listen closely” to the voices of those most “highly attuned to ableism” the Special Rapporteur explained:

> [E]ven if safeguards could be strengthened to ensure genuine consent, the damage is still done by portraying — not directly but effectively nonetheless — that the lives of persons with disabilities are somehow worth less. So the issue is not the adequacy of the

> safeguards but the subtle message sent by the legislation in the first place, regardless of the safeguards.

As human rights expert Senator Marilou MacPhedran would emphasize in the Senate debate at third reading of Bill C-7 "such a strong, clear, joint communication to a specific government on a specific bill from three independent UN special rapporteurs is indeed a rare occasion of considerable note."[339]

Senator McPhedran's forceful defence of the RFND requirement for MAID amplified the message that disability rights defenders had pressed in their Senate interventions:

> A worse stereotype could not be institutionalized in law; that disability-related suffering, often caused by inadequate health and social supports, and entrenched inequality, justifies the termination of a person's life.… To categorize death as an accommodation for living persons based on their personal characteristics transgresses every norm of human rights known to law. Colleagues, this bill dresses up discrimination and calls it a right, but that does not make it so. This bill is discrimination on the grounds of disability writ large.[340]

In addition to Senator McPhedran, three other highly respected independent Senators[341] spoke boldly in opposition to the Bill. Referring to earlier debates on the issue, Senator Mary Jane McCallum eloquently highlighted "consistent themes in the stories of First Nations and the disability community,"[342] including an absence of meaningful consultation, a failure to gather and consider data "to tell the stories of the inequalities and inequities that prevail" and importantly, an absence of opportunity for consideration of the "relevant issues for specific groups, for example, that assisted dying is not part of some cultures or that suicide is an epidemic in some communities."[343]

Senator Kim Pate, a social justice champion in the Senate, powerfully exposed the forces of unacknowledged class and ableist privilege at the heart of popular support for Bill C-7. Recognizing the limits of her perspective as a “privileged, white, able-bodied woman,” she declared, “when I examine Bill C-7 through the lens of the experiences of those who do not have our privilege, including those within my own circle and my own family, the troubling reality of far too many unanswered questions and discrepancies emerge.”[344]

Senator Pate articulated the ableist underpinnings of Bill C-7 and challenged the empty rhetoric of choice in the context of pervasive inequality, noting pointedly that:

> … it is assumed that if we have freedom of choice, we have equality. But this is backwards: equality is the prerequisite for choice, not the corollary… [C]hoice is not generally effective as a sword on behalf of equality claimants but is frequently employed as a shield against equality claims.
>
> By emphasizing the idea of individual choice without accounting for the fact that individuals will have unequal options to choose from, Bill C-7 stands to expand rights for some, at the expense of increasing inequality for others. As we debate Bill C-7, in whose name and in whose interests are we acting?[345]

Senator Julie Miville-Dechêne was lucid and forthright in her principled objection to Bill C-7, supporting her colleagues McPhedran and Pate while effectively anticipating and rebutting the talking points of the Bill’s defenders. She concluded at third reading that she considered MAID expansion to be “a social issue that goes beyond a series of individual choices made by patients who want to be free from suffering.…” Noting that the Bill had been “designed to respond to a court decision and has completely disregarded the profound inequality in our society,” she made clear the simple but critical fact that “some will be better equipped than others to exercise this right to choose.”[346]

But despite these exhilarating moments of validation, there were formidable challenges in the Canadian Senate. The government’s sponsor of the Bill in the Senate was Senator Chantal Petitclerc, a woman whose amiable personality and celebrity status as a multiple gold medalist in the Paralympic games made her a particularly effective promoter for Bill C-7. A gracious, fluently bilingual and admirable figure, Petitclerc was appointed to the Senate by Prime Minister Trudeau in March of 2016. Her first speech as a Senator in June of that year had been an impassioned and highly personal plea for the removal of the RFND threshold from the original Bill C-14. Her vivid recounting of excruciating pain and anxiety through the first nineteen indelibly traumatic days of her recovery from a spinal cord injury at the age of twelve made a lasting impression upon her Senate colleagues and established her credence among them as someone with direct experience of intolerable pain and suffering.

> I will never forget, while lying in my bed, the big white hospital clock on the wall in front of me. Every hour on the clock, the nurses came in and had to turn me from side to side to avoid pressure. I swear to you, I was staring non-stop at that clock and started to cry every time the hour was approaching, as I knew the pain that I was going to feel when they would turn me. That was followed by screaming when it would happen and begging my mom to help me, every hour for 19 days.[347,348]

Senators responded viscerally to Senator Petitclerc’s account,[349] in part because of its authenticity and haunting details, but also largely because of the ways in which it resonated with what disabled philosopher Joel Michael Reynolds has described as the “ableist conflation” of disability with pain and suffering. According to Reynolds, this prevalent conflation underlies much of human discourse, philosophy and politics: “Wherever operative, the ableist conflation flattens communication about disability to communication about pain, suffering, hardship, undesirable experiences, morbidity, and mortality.”[350]

The comfortable alignment of Senator Petitclerc’s childhood experience with what Reynolds describes as “a disturbingly resilient habit of ableist thinking,”[351] may best explain why a very different account of youthful spinal cord injury offered by David Shannon in his 2022 entreaty, by comparison, appeared to have little or no effect on Committee members who heard it first-hand. Shannon’s account disrupted the ableist conflation and unlike Senator Petitclerc’s account, failed to stoke the expansionist argument:

> For several weeks after my accident, I lay in bed close to death more times than I wish to contemplate. Whilst faced with that impending reality was an understanding that most of my body would not move again the way it had just a short while ago. I had lost mobility, liberty, sense of purpose and now bed ridden in a hospital, all autonomy. Emerging, and many of you may believe this to be paradoxical, was an eagerness to embrace life in its multiplicity of rigors and joy.”[352]

Extrapolating from the trauma of her childhood experience, Senator Petitclerc had articulated in 2016 the core conviction about suffering that would underpin her sponsorship of Bill C-7 five years later:

> I knew that my pain was temporary and that I would soon be back on my feet, or my wheels, but I can't help thinking of the people who live with intolerable suffering and have no hope of ever getting better. It is really for them, and them alone, that this law has to be the very best it can be.[353]

In her closing argument at third reading of Bill C-7, she would reiterate simply: “I remember saying in 2016, when I spoke on Bill C-14, that if I ever knew a pain that unbearable would be irremediable, I too would fight for the right to decide. I feel exactly the same today, maybe even more strongly.”[354]

There were interesting shifts, however in the Senator’s supplementary reasoning between the Bill C-14 debates in 2016 and the Bill C-7 debates in 2020-21. In 2016, again drawing from her own disability experience, she had advanced an autonomy argument rooted in the rhetoric of choice and control:

> I am also in a position to understand the importance of being free to choose.… there is nothing more frustrating, when you are a person with a disability and vulnerable, than to feel as if you have no control over your own life. When you have a disability, the worst part is feeling as if you have no control over your own life and your own body. It happens to all people with disabilities, I can promise you that… The more severe the disability, the more vulnerable you are, the bigger this betrayal feels.[355]

By 2020, however, Senator Petitclerc had dialled back such speculative generalizations. The argument of unfettered choice had been complicated for expansionists by extensive testimony[356] during the Senate pre-study hearings and subsequently prior to third reading, reminding Senators of social conditions which undermine the autonomy of disabled persons through the coercive effects of poverty[357], insecure housing, or inadequate care options[358]. In response to these realities, Senator Petitclerc had relied upon a rebuttal offered in testimony by Jocelyn Downie: “We must not hold individuals hostage to social failings.”[359] Like many of the arguments in the expansionist repertoire, the statement had the reasonance of an effective soundbite, but as MAID case reports in the months to follow would put human faces and stories[360] to the dire warnings of disability rights defenders, the “hostage-holding” soundbite would reveal itself to be little more than a shrug.

By the time of her interventions at third reading of Bill C-7, Senator Petitclerc asserted that the deliberations and debates on Bill C-7 had advanced her thinking “to a deeper, more comprehensive level”.[361] In fact, her personal convictions had been bolstered by testimony from law professors, legislators, medical regulators and professional associations that supported the Bill’s removal of the RFND requirement. The Bill, she concluded, was imperfect, and would remain “a work in progress,”[362] but as a matter of practical necessity, Senators must do their job, narrowly framed as the study of Bill C-7 “specifically from the criminal law perspective”. She would leave it for members of the medical profession to do their job and get on with the business of assessing eligibility for MAID in accordance with their professional judgement and understanding of legislative safeguards:

> While this bill is not the vehicle to guarantee that every Canadian has access to the care and supports they need to thrive, we can — and must — continue to push for real change when it comes to resources for persons living with disabilities, for our aging Canadians and for the vulnerable among us more generally. At the same time, I think we have to trust that the practitioners involved in MAID assessments are sensitive and have the competence to assess these realities. I firmly believe that we can protect and take care of each other without standing in the way of those who want to make the choice of MAID.[363, 364]

Much like the Court in Carter had stripped out of the judicial equation all questions, critiques and complexity arising from the messy business of social context, so too had Senator Petitclerc reduced the issue of MAID eligibility to one of medical competence and judgement. Absent the conundrums of protecting disability equality from ableist erosion, the way was cleared for lawmakers to take at face value the pleas from death-seeking individuals for a legal right to medical assistance. Reassured that such assistance would be provided by "competent and compassionate professionals"[365] whose "enlightening" testimony demonstrated that they "know what they are doing and know that the mechanisms in place are very solid,"[366] Senator Petitclerc could then conclude her defence of Bill C-7 with a return to where she had started, to the anchor of her own lived experience, this time with a notably strategic foregrounding of her working-class roots:

> This coming summer, it will be 38 years since the day I had my accident. The study of this bill keeps bringing me back to the little girl that I was, lying on the ground, unable to feel my legs and unable to get up. … It reminds me of my mom, just divorced a year before my accident, a low-wage worker with three kids, my little brother not even two years old, me in a wheelchair, and her having to carry me up and down to the second floor of our apartment building because we could not afford to move. I may be privileged to be here in the Senate of Canada, but I never forget where I came from, and I know exactly what it is to be in a situation of extreme vulnerability.[367]

In the end, the compelling personal stories that prevailed in the reasoning of a majority of senators were stories that happened to conform with the script of the ableist conflation. Senator Mary Coyle, categorizing the submissions of disability rights activists, civil society advocates, and international experts as expressions of "fear," demonstrated the power of personal stories of suffering in her intervention following that of Senator Petitclerc:

> [W]e must listen and hear the well-founded fear of these voices — people who fear losing ground in the hard struggle for recognition of their common humanity and right to a dignified life.
>
> But again, is the right answer to this harsh and unjust reality to throw the baby out with the bath water and just scrap this bill? How can we do this, colleagues, when we know there are people like Jean Truchon, Nicole Gladu, and the many silent citizens of Canada, whose irremediable pain and suffering is so extreme and so intolerable that they are asking for and demanding the right to choose a release from that pain by dying in peace and dignity?[368]

Similarly, Senator Paula Simons in her final intervention, affirmed the importance of social justice and human rights reform, but in the end embraced Senator Petitclerc's analysis, summoning in detail the lives and legacies of "Canadian heroines" Sue Rodriguez, Kay Carter and Gloria Taylor, along with Nicole Gladu and Jean Truchon, then concluding without explicit analysis, "What, after all, could be more ableist than forcing people to live in hopeless agony and fear because we think we better know what health care they need and how they should spend their final days?"[369] Her colleague, Senator Lucie Moncion similarly drew from a graphic account of disability featured in a profile of Paulette Sylvestre Marisi, who died in 2016 in a Swiss Dignitas clinic.[370]

But it was Senator Munson, a long-standing champion for the rights of people with disabilities, who most strikingly demonstrated the potency of the ableist conflation and its hold upon Canadian lawmakers. Beginning with an acknowledgement of the "heartfelt testimony" presented in Parliamentary hearings on Bill C-7, he laid bare his personal angst, even as he subtly diminished the evidence presented by disability rights defenders to the realm of "belief".

"My heart aches every time I hear of someone making a decision to die with dignity. … My heart also aches for those in the disability community who believe this bill makes it easier for those who are disabled to choose death over life."[371]

Visibly wrestling between commitments to human rights and disability equality, on the one hand, and on the other hand, the reflexive gut feelings that the ableist conflation imbues, Senator Munson tumbled toward the inexorable force of individual narratives carefully framed to accord with the logic of death as deliverance from disabled suffering:

> [A]s I fight for those with disabilities, I have to respect those whose actions brought the bill to this stage in the first place. The names of Nicole Gladu and Jean Truchon cannot be forgotten in this debate, nor can the name Sue Rodriguez. They are very brave. They had great courage.
>
> For some, Bill C-7 is a road too far; for others, Bill C-7 is a road to liberation from the intolerable pain of living.… I listened closely to the words of Senator Chantal Petitclerc and the suffering she endured as a child. It was a very emotional moment here today.
>
> …While I have my worries about the Bill, I must, at the end of the day, listen carefully to the voices of Nicole Gladu and Jean Truchon.[372]

Bill C-7 would pass by a significant majority in the Senate on February 17, 2021. The requirement for reasonably foreseeable natural death would be the first bulwark to fall, from the hard-fought protections in Canada's original legislative framework for MAID. But it would not be the only bulwark to fall under the pressure of an emboldened expansionist lobby. Bill C-7 had radically expanded the class of MAID-able disabled persons. This, as Jonas Beaudry later wrote, would open a normative space for consideration of "lives not worth living", heralding an emergent category of "human beings whose lives can be legally and morally disposed of."[373]

VI. Further Expansionist Ambitions

A. MAID for Non-Consenting Persons

By the time Bill C-7 received Royal Assent on March 17, 2021, thus amending the Criminal Code of Canada to permit MAID for non-dying persons, there would be other significant breaches to the protections that had seemed to be firmly in place in Canada's 2016 post-Carter MAID regime. Indeed, while much of the focus of disability rights advocacy had aimed to preserve RFND as an eligibility criterion, another provision in the Bill had introduced the possibility of MAID for non-consenting disabled persons.[374]

Described as the "final consent waiver," this provision of the Bill introduced an exemption to the requirement for an individual to give their consent at the actual time of MAID provision.[375] The waiver would apply in a limited number of Track 1 cases (specifically, where a person's natural death was reasonably foreseeable and their application for MAID had been approved), provided that consent had been formalized in advance, in writing, in circumstances where the individual was at risk of losing their capacity to give capable consent to MAID by the time of their scheduled death.

The exemption to the absolute requirement of contemporaneous consent to MAID came to be known informally as "Audrey's amendment,"[376] in recognition of the advocacy of Audrey Parker, a white, vivacious Halifax woman who died by MAID at the age of fifty-seven in 2018. Very much in the mold of Rodriguez, Taylor, Lamb and Gladu, Parker was poised and well-spoken, accustomed to living life "on her own terms"[377] and a skilled and effective advocate. University educated, with a diploma in public relations and a successful career as a fashion, makeup and image consultant and ballroom dance instructor, Audrey Parker expressed her "deeply held wish to 'die in style'"[378] by mobilizing her extensive social and media connections to encourage others to make the most of their lives and their cancer journeys.[379] Diagnosed with metastatic cancer in 2016, she had taken charge of her death as she had her life, planning every detail of her end-of-life experience (including her MAID death and funeral celebrations), and embracing every day of the 2 ½ years of her remaining life, celebrating elaborately staged parties and balls with friends and travelling to bucket list locations like Cancún and Paris.[380]

When Parker learned that cancer had spread to the lining of her brain, she teamed up with Dying with Dignity Canada to advocate fiercely for changes to the law’s strict consent requirements. She reported retrospectively in a self-authored obituary:

> I became distraught because my candidacy for MAID was put in jeopardy. If my cognitive functioning became compromised, I wouldn’t have been able to give the required late-stage consent even with a legal directive. That’s why I chose to speak out and why I chose to leave this life early because I couldn’t take the risk of losing access to MAID and thus dying a very cruel, painful death.[381]

In a final Facebook post before her death on November 1, 2018, Parker powerfully evoked the narrative of feeling compelled to die before the time of one’s choosing:

> I wanted to make it to Christmas and New Year's Eve ... my favourite time of the year but I lost that opportunity because of a poorly thought-out federal law. I just can't gamble with my end of life and the pain I endure.…Had late-stage consent been abolished, I simply would have taken my life one day at a time.[382]

This narrative of being forced to die before one’s chosen time as the result a law that trammelled the right to life had proved decisive in the Supreme Court of Canada’s section 7 Charter analysis in Carter, and it was no doubt for this reason, at least in part, that decisions were made in the drafting of Bill C-7 to legislate a narrow exemption to the MAID consent requirements. But this hairline fracture in the previously solid foundation of a MAID regime premised upon the requirement for informed, capable and fully voluntary consent would open the door to vigorous advocacy for further expansions into the previously forbidden territory of non-consensual MAID. In the Canadian Senate, advocates for allowing a full range of "advance directives" [AR] for MAID beyond RFND found their champion in Senator Pamela Wallin.

Senator Wallin had made clear her desire for an easing of the final consent requirements for MAID as early as 2016, during the Parliamentary debates around Bill C-14. She had supported an amendment proposed by her colleague, Senator James Cowan, that would have permitted persons "diagnosed with competence-eroding conditions like dementia to make advance requests"[383] for MAID. Indeed, she had gone further than Senator Cowan, proposing a sub-amendment that would have extended the availability of advanced directives to any consenting adult, regardless of if or when they had been diagnosed with a grievous and irremediable medical condition.

Although both the amendments proposed by Senators Cowan and Wallin in 2016 failed to win majority support in the Senate, in its final form, Bill C-14 had included a provision[384] assuring a mandatory "independent review" of issues relating to advance requests and requiring the Ministers of Justice and Health to report to Parliament within two years, any findings or recommendations resulting from such study. This review, and others mandated in Bill C-14, was assigned to the Council of Canadian Academies [CCA] in December 2016.[385]

The CCA report setting out the "state of knowledge" on advance requests for MAID was issued in December 2018.[386] Over 200 pages long, the report represented an interdisciplinary synthesis of the Council's findings from academic and policy literature as well as from an open call for stakeholder input. In accordance with its mandate, the CCA did not provide recommendations or evaluate options, instead providing a thorough review of the variables and uncertainties arising from advance directives in the context of MAID. Early in the report, the complexities of the topic came sharply into focus with the acknowledgement of an inherent dissonance between advance directives for MAID and the patient autonomy that the practice purportedly sought to preserve:

> [Advance requests] for MAID may create uncertainty for those responsible for following through with the request. While uncertainty is inherent to most decision-making processes, for ARs for MAID, the onus on a third party would be unique: to sanction or take positive actions whose purpose is to cause the death of a patient. In the absence of a requirement for consent at the time of the procedure, the healthcare practitioner, substitute decision maker (SDM), and family members could not be certain that the patient is suffering intolerably and wishes for MAID. This understandably complicates the presumption that ARs for MAID could fit readily into the context of current end-of-life decision-making and healthcare in Canada.[387]

As Jonas-Sébastien Beaudry would explain with vivid examples in his 2022 entreaty:

> [I]dentity, desires, and needs change over time. So, while it may well be the case that respecting past instructions is a way to respect autonomy in many contexts, it is not obvious that it is always the case, especially when people undergo important cognitive changes. When that happens, the person may have experiences and desires that are different from those that they had in the past — for instance, if they never experienced what it is to live a life with less cognitive capacities.… [G]iving the last word to the former self of a patient — sometimes a cognitively and experientially distant self— is not

> necessarily and always respectful and beneficent towards the patient, in their current state.[388]

In the context of advance directives, the actual timing of a MAID death requires some precise determination of another's intolerable suffering along the continuum of time, supporting an inference of contemporaneous consent. Given the extent to which its use would be restricted to RFND circumstances where a MAID request had already been approved, the final consent waiver in Bill C-7 was arguably of less concern than the risks presented by pressure for its expanded application. Such risks would be all but inevitable in the absence of any clear and authoritative articulation from legislators and opinion leaders about what is forfeited when third party actors are authorized to administered death.

Even a basic understanding of disability history and the politics of ableism give rise to alarm about what would essentially amount to third party "quality of life" judgements that would trigger MAID deaths. Critical disability scholars working in the field of bioethics, such as Joel Michael Reynolds, have made clear how the construct of 'quality-of-life' and the benchmarks it invokes sit uncomfortably close to discourses of ableist prejudice and eugenic practice.

> [T]here is evidence to suggest that the metric of acceptable life according to "reasonable people" is prejudicially slanted against people with disabilities in empirically problematic, if not indefensible ways. … [T]he epistemic disadvantages people with disabilities face have played a role in the generation and justification of horrifying injustices across history, from social ostracization and institutionalization to wide-spread abuse and forced sterilization, among other eugenic practices. … [T]his epistemic disadvantage can lead stakeholders to withdraw [life-saving treatment] when… they otherwise might not. When that decision is made… ableism and the widespread epistemic

> disadvantage people with disabilities experience are determining factors in a death… and, insofar as that disadvantage is unjust, an unjust death.[389]

Not surprisingly, this epistemic disadvantage and its catastrophic implications in the context of MAID have given rise to vigorous objections to the erosion of MAID consent requirements from experts and advocates in the intellectual disability sector. In her entreaty on behalf of the Québec Intellectual Disability Society, Amélie Duranleau urged a clear-eyed rethinking of the premise for any waiver of final consent:

> Asking a third party to consent to a procedure that leads to death through a substituted decision-making process is different from making advance requests to refuse certain procedures that may lead to natural death. In this light, opening the door to substituted consent, even for people who had previously consented, seems to us to be potentially dangerous and to fail to respect the spirit of the Carter decision which put the issue of consent at the heart of access to MAID.[390]

Her argument was amplified in Trudo Lemmens' entreaty, which drew expressly from the Court's reasoning in Carter, when taken in its totality. Lemmens argued, "If one combines the emphasis on the exceptional nature of active ending of life, the need for stringent safeguards, and the emphasis on 'clear consent', ARs for MAID appear to run counter to the Supreme Court's parameters in Carter."[391]

All of these complexities, however, were absent from the campaign that Senator Wallin would resume in the Senate debates on Bill C-7. The ableist and stigmatizing language with which she invoked an urgent imperative for much broader application of the final consent waiver, signalled a growing constituency of support – a constituency that was by and large heedless of the implications:

> One in four Canadians over the age of 85 suffers from dementia, and their death may not be reasonably foreseeable. But these numbers alone — the so-called "silver tsunami" — reinforces that the demand for advance requests in this country will only grow. Even the government's own consultation, with more than 300,000 Canadians, found that almost 80% indicated support for advance requests. Even more supported advance requests in the case of dementia.[392]

Her characterization of the demographic at the heart of the campaign for advance directives would contrast with Michael Bach's framing of an epidemic of stigma and devaluation, in his entreaty one year later. Bach reflected on the implications of permitting advance requests for MAID: "In the decades to come, more and more people who don't know what is happening to them are caused to die. Most of them are women with cognitive disabilities.…" His entreaty countered Wallin's reliance on the government's survey data, citing the 2017 Leger poll conducted for the Alzheimer Society of Canada, showing that:

> … a majority of Canadians believe that people living with dementia are likely to experience discrimination – that they are ignored, dismissed, taken advantage of, are feared, or met with distrust, etc. … Is it any wonder that a majority might advocate for advance requests to cause the death of the cognitive strangers we project in our midst and into our own futures?[393]

Senator Wallin was successful in persuading a majority of her Senate colleagues to support an amendment to Bill C-7 that would make the final consent waiver available for persons who had not yet been diagnosed with a grievous and irremediable medical condition, as well as Track 2 patients (whose natural death was not reasonably foreseeable).[394] But the amendment was rejected by the government in the final few days of intense political horse-trading that transpired before the passage of Bill C-7. The government's motion claimed that the Senate amendment went “beyond the scope of the bill” and required "significant consultation and study,” including a “careful examination of safeguards.”[395]

That study, the Justice Minister assured those chafing for AR expansion, would come at the time of the mandated five-year parliamentary review of Canada's assisted dying law, a process that would commence in the fall of 2022, giving rise to the entreaties in this volume. By February 2023, further expansion of the final consent waiver would come to seem almost inevitable, as the concluding report from the Special Joint Committee on Medical Assistance in Dying – a Committee of which Senator Wallin was a prominent member – included in its final report a recommendation that “the Government of Canada amend the Criminal Code to allow for advance requests following a diagnosis of a serious and incurable medical condition, disease, or disorder leading to incapacity.”[396]

However, the government's official response to the Special Joint Committee recommendation fell far short of a full endorsement, no doubt because of the complex federal/provincial/territorial jurisdictional considerations that such requests raise:

> The Government recognizes that the issue is complex and that significant work, including further consultation and study, would be needed before any further expansion could be considered, particularly given provinces and territories would be implicated in any implementation of advance request regimes.[397]

But Senator Wallin in the meantime had continued to press the question, authoring her own standalone amendment, Bill S-248, in June 2022[398] to keep the issue squarely on the legislative radar. Indeed, as with much advocacy for MAID expansion, there is an inexorable quality to the persistent demand to effectively remove the final consent requirement in cases of cognitive incapacity.

Private member Bills such as Bill S-248 generally have weak prospects for success, but legislative developments in Québec are certain to place immense pressure on the federal government to further ease the rules around final consent waivers. Bill 11, passed by the Québec legislature and assented to on June 7, 2023[399] , authorized advance directives for medical aid in dying for any patient in Québec with a "serious and incurable illness leading to incapacity to give consent to care."[400]

Although the beguiling logic of a simple "my body, my choice" approach to the subject of advance directives for MAID appears to have overtaken every restraint apart from jurisdictional roadblocks, disability scholars and advocates, including many of the contributors to this volume, continue to work to hold the line against MAID for non-consenting persons. Given the dangerously eugenic overtones of much of the discourse around this subject[401] and the prevalence of highly stigmatized accounts of cognitive disability that both drive demand for the practice and shape its potential delivery, it is of critical necessity to continue to articulate the nuanced risks of privileging the voices of distant cognitive strangers in matters of life and death.

B. MAID for Physically Healthy Persons

In the public imaginary, euthanasia and assisted suicide took root in narratives of extreme physical incapacity; plaintiffs who mounted highly visible legal campaigns from Rodriguez to Truchon were individuals with recognizable physical impairments whose accounts of suffering were tied directly (or, in the case of Jean Truchon, indirectly) to those impairments. Deeming these individuals to be precluded from taking their own lives by conventional means, a compassionate court had rendered such persons MAID-able, ruling that under strict guidelines, doctors could assist such patients with suicide without risking criminal prosecution. Consistent with this reality, in its ruling in the Carter case, the Supreme Court of Canada had made clear that medically hastened death for "persons with psychiatric disorders" would not fall within the parameters of its judgment.[402]

Canada's original MAID legislation did not differentiate between physical and mental health disabilities in its designation of MAID-able persons; all persons whose natural death was reasonably foreseeable would be MAID-able. In effect, this would be the case whether their primary "illness, disease or disability" was physical or mental in nature. In 2016, all non-dying persons with intolerable suffering were excluded from MAID. This applied equally to disabled and nondisabled persons. For any non-dying person, suffering arising from a physical disability, a mental health condition, or any medical or non-medical condition or circumstance – even if intolerable – would not be addressed by MAID. As the then Minister of Justice, Jody Wilson Raybould, explained in presenting Bill C-14 to the House of Commons in April 2016,

> Bearing in mind that medical assistance in dying can pose real risks and equally that we do not wish to promote premature death as a solution to all medical suffering, these criteria may not allow eligibility for some circumstances, such as a person with a major physical disability who is otherwise in good health, or a person who solely suffers from mental illness. These conditions, in absence of additional medical circumstances, may not be associated with a reasonably foreseeable death.[403]

Bill C-7 had radically changed this reality, authorizing MAID for non-dying persons with disabilities, while explicitly excluding physically healthy persons with mental health disabilities. The impetus for expansion of the category of MAID-able persons to include physically healthy persons for whom a mental health condition gives rise to intolerable suffering, differed in fundamental ways from the push toward authorizing advance requests for MAID. Advance requests, despite their irrefutable complexity and risks, had become a pressing legislative priority as a result of immense political pressure fuelled by widespread public fears and prejudice with respect to cognitive decline and disability. Leading figures in policymaking spheres, like Senator Wallin, had witnessed the cognitive decline of loved ones and were often quite explicit about what they perceived as the unmitigated losses and indignities of such states.[404] Importantly, they also spoke candidly about deeply held fears regarding their own possible future cognitive losses.[405] In this respect, ableist stigma turned inward – albeit speculatively, in projections toward an uncertain future – had proved a formidable silent partner in the expansionist project of reducing MAID to the homely logic of respecting autonomy in the absolute present, plainly and simply.

By contrast, arguments for the inclusion of mental illness did not draw in the same overt manner from internalized stigma and aversion and did not generate a groundswell of public support to compel political attention. Instead, the prejudice, presumptions and social resentments of ableism and sanism would operate in more complex and deeply embedded ways and shape the MAID expansion debates differently when mental illness became the central focus. As Alexandre Baril has theorized, contempt for and abuse of persons marked by "mental illness" are deeply embedded within neoliberal consciousness, operating in unique ways to tilt the scales away from recognition of MAID-able status. As Baril explains this dynamic, the broad social injunction against suicide:

> … makes suicidal people's desire/need for death abnormal, inconceivable, and unintelligible, except for those cast as unproductive, undesirable, and unsalvageable subjects, such as disabled/sick/ill/old people. In their cases, the desire/need for death is

> considered normal and rebranded as medical assistance in dying or physician-assisted death. However, suicidal people's desire for death is cast as "irrational," "crazy," "mad," "insane," or "alienated," and they are stripped of their fundamental rights in a process of prevention and cure aimed at producing their capacitation and abledment and their reintegration into a neoliberal economy.[406]

As was the case with the introduction of MAID itself, and with expansions beyond RFND and beyond informed and capable consent, debates and decisions about this new threshold of *MAID beyond Carter* would proceed in the absence of critical attention to the larger forces of biomedical authority and neoliberal capitalism that formed their backdrop. As will be discussed below, MAID for persons whose sole underlying medical condition is a mental health diagnosis would be branded as a logical, straightforward and purportedly equitable progression in the law's application and reach.

At least originally, arguments about the MAID-able status of persons with mental illness were simply folded in to larger debates about RFND. In the Bill C-14 debates, the claim by Senator James Cowan that the Bill "discriminates against people with mental illness seeking medically-assisted death"[407] was nested in a formal equality claim that supported his larger argument against RFND:

> I don't think that we should discriminate against people because they happen to have a mental illness rather than a physical illness.…I think there will be challenges to the bill, to the constitutionality of the bill that it excludes those who are suffering if they are not terminally ill.[408]

In 2016, Justice Minister Wilson-Raybould had held fast to Bill C-14's proposed formulation of what would constitute a grievous and irremediable medical condition. The passage of the Bill brought what would turn out to be temporary closure to the question of whether standalone conditions of mental illness would confer MAID-able status. As it had with advance requests, the government would commit in Bill C-14 to an independent review of “requests where mental illness is the sole underlying medical condition”. That independent review would unfold under the auspices of the Council of Canadian Academies [CCA], leading to the release in 2018 of a 250-page report titled “The State of Knowledge on Medical Assistance in Dying Where a Mental Disorder is the Sole Underlying Medical Condition.”[409, 410]

The CCA report authors would agree on a number of findings that underscored the complex social, clinical, policy and ethical context for MAID expansion in this area. These included “a long history of stigma, discrimination and paternalism against people with mental disorders in Canada and elsewhere;”[411] strong correlations between mental illness and “social, economic and environmental inequalities, such as poverty, unemployment, homelessness, social isolation, stigma and discrimination;”[412] and the appreciable “impediments to accessing appropriate mental health care in Canada.”[413]

Readers of this volume will recognize how these contextual elements are amplified in many of the entreaties in this collection. Speaking from personal experience of living with “a severe and persistent mental disorder”, and from professional experience as a practising psychologist and professor, Georgia Vrakas expressed in her entreaty the pervasive patterns of discrimination against persons with mental illness that would be the backdrop for every debate on this issue:

> Mental illness is still taboo, access to mental health services is very difficult, psychiatric research is underfunded, and funding for promotion and prevention programs continues to decline.… We are told that we cannot exclude mental illness as the sole reason for

> MAID to avoid discriminating against people living with mental illness. Yet in life we face discrimination daily, whether it is access to housing, work, a decent income or disability insurance.[414]

Sonu Gaind's entreaty would reinforce her point. Emphasizing the need for an evidence-based approach, he reminded Committee members that data from jurisdictions that permit assisted suicide on the basis of mental illness point to a more marginalized population sector, with "unresolved psychosocial suffering like loneliness and isolation." Further, he cautioned that "a terrifying gender gap emerges, of twice as many women as men receiving death to avoid life suffering."[415]

Building from these realities, the entreaty of Sean Krausert, Executive Director of the Canadian Association for Suicide Prevention [CASP], would give voice to a truth the CCA dared not speak: "Ending the life of someone with complex mental health problems is simpler and likely much less expensive than offering outstanding ongoing care. This creates a perverse incentive for the health system to encourage the use of MAID at the expense of providing adequate resources to patients… ."[416] As John Maher would assert starkly, "Death is not an acceptable substitute for good treatment, food, housing, and compassion."[417]

Apart from their agreed-upon findings, most significant in the CCA report were the immense and irreconcilable obstacles to consensus on whether and how MAID eligibility criteria would apply where a "mental disorder is the sole underlying medical condition" [MD-SUMC].[418] The CCA report laid bare numerous disagreements on fundamental issues about MAID even among the 14 subject-area experts assembled for the working group.[419] Such polarities are perhaps not surprising, given the extent to which MD-SUMC would crystallize questions about the nature of suicide, the implication of suicide prevention policies[420] and whether distinctions can be made between "well-considered" versus "pathological" decisions to end one's own life – where the former can somehow be designated as autonomous and MAID-able and the latter are deemed to be "symptoms of a mental disorder."[421] Indeed, the controversies in the MD-SUMC debates that were illuminated in the report extended to virtually every element in Canada's regulatory framework for MAID, including core requirements of capacity to consent and irremediability that were at the heart of the Carter decision.[422] This latter issue of irremediability figures prominently in the entreaties in this volume, for example in Krausert's assertion that "[t]here is NO EVIDENCE that concludes mental illness is irremediable"[423], and in Gaind's rebuke that "[i]n bypassing the primary safeguard against premature death, of getting MAID only when we can predict irremediability, any other so-called safeguards can be no more than false reassurances and lip service."[424]

With respect to decisional capacity, although the report acknowledged that "the vast majority of people with mental disorders are deemed to have capacity to make treatment decisions"[425], the working group's review of "the impact of mental disorders on decision-making capacity" raised a number of red flags about the consistency, reliability and accuracy of patient capacity assessments in clinical practice. As John Mayer would later observe in his entreaty, "Research shows that if 100 psychiatrists assess a person with uncertain decisional capacity, 35 will have one opinion, and 65 will have another. Different psychiatrists have different skill sets and levels of experience. They also have biases like everyone else."[426]

Although the Court in Carter had expressed unequivocal confidence in the tools and skills that Canadian practitioners brought to bear on these assessments, the CCA report reviewed an abundance of conflicting evidence, and concluded by highlighting the need for "better evidence on the validity of capacity assessment for people with mental disorders, particularly but not exclusively for people who request MAID MD-SUMC."[427] Given the high threshold of capacity required for life and death decisions, the fact that high-stakes assessments will often be made in situations of involuntary hospitalization, and the often unacknowledged reality that the notion of capacity itself "relies on both empirical and normative considerations"[428] and is therefore highly vulnerable to ableist and sanist deployment, there would be much in the CCA report to fuel debate when MAID for MD-SUMC would surface again on the expansionist agenda.

This resurfacing of the MD-SUMC debate would prove inevitable when Bill C-7 was tabled in 2020, since removing the RFND requirement would effectively force the question of whether standalone conditions of mental illness should be MAID-able. Yielding at least in part to the cautionary undercurrents of the CCA report, the government elected to include a clause in the Bill that added a new section 241.2(2.1), stating that "a mental illness is not considered to be an illness, disease or disability"[429] in determining whether a person has a grievous and irremediable medical condition. As he introduced the Bill to the House of Commons, then Justice Minister David Lametti explained his reasoning in the following terms:

> Our consultations and the report of the Council of Canadian Academies that studied this issue indicated that the trajectory of mental illness is more difficult to predict than that of most physical illnesses, that spontaneous improvement is possible, and that a desire to die and an impaired perception of one's circumstances are symptoms, themselves, of some mental illnesses. This means that it would be very difficult to determine when, if ever, it is appropriate to grant someone's request that their life be ended solely on the basis of mental illness.[430]

This mental illness exclusion, however, would prove to be a bridge too far for the emboldened Senate, where the MAID expansionist agenda found its champion in Senator Stan Kutcher, a psychiatrist specializing in adolescent mental health who had been appointed to the Senate late in 2018. Deeming the exclusion to be “stigmatizing, discriminatory, and thus likely unconstitutional,”[431] Senator Kutcher signalled both professional and personal reasons in arguing for its removal:

> I did not decide to challenge this clause lightly. I have spent over 30 years taking care of people with severe and persistent mental illnesses, and teaching hundreds of others to do the same. I have spent many sleepless nights because I was worried about my patients and their families. I have competently assessed the decisional capacity and suicide risk of thousands of people. I have also fought countless battles with administrators, physicians, governments, funding bodies and others to champion the rights of those with a mental illness to be respected, not discriminated against, and treated similarly to those with any other illness. I also have my own personal story, with all its joys and tragedies. The fact that I am private about it does not mean I do not have it.[432]

Wielding the easy authority conferred by medical and academic credentials, senatorial rank and gender privilege, Senator Kutcher quickly gained the support of well-respected senators with legal expertise, notably Senators Claude Carignan and Pierre Dalphond. His amendment to Bill C-7, a “sunset clause” that would automatically remove the mental illness exclusion 18 months after the Bill’s passage, was carried easily in the Senate at third reading. Not even the Bill’s sponsor, Senator Petitclerc, actively opposed the amendment, speaking vaguely in response to the proposal that she was “thinking about” the CCA report and mindful that:

> [t]here are differences of opinions, convictions and strong arguments as to whether MAID is ever appropriate or when it is appropriate where the only medical condition is mental illness, and if so, what kind of safeguards would be sufficient or adequate to make sure that a person's life is never prematurely ended when their quality of life could have been improved.[433]

Visibly distraught by this development, Senator Denise Batters addressed Senator Petitclerc directly, pleading with her colleague to say more: "Please take a little more of your time. You are the sponsor of this bill. This is an important part of your bill. Please take a little more time to stand up for those with mental illness and for this part of your bill."[434] But Senator Petitclerc replied simply, "I said what I wanted to say in that regard and I stand by it"[435], entering an abstention in the Senate vote on Senator Kutcher's sunset clause motion.

Senator Petitclerc's ambivalence about the sunset clause mirrored the government's response when the amended Bill C-7 returned from the Senate to the House of Commons on February 23, 2021. Justice Minister David Lametti reiterated his commitment to exclude MD-SUMC from MAID eligibility:

> It is my opinion as Minister of Justice and Attorney General of Canada that the mental illness exclusion is constitutional because it serves a protective purpose and is narrowly crafted.
>
> I have spoken before about the inherent complexities and risks with MAID on the basis of mental illness as the sole criterion, such as suicidality being a symptom of some mental illnesses, the impossibility of predicting whether in any given case symptoms will improve or not and the increased difficulty of capacity assessments. These are the

> concerns that led the government to exclude mental illness as the sole condition for MAID eligibility, given the proposal to broaden it beyond the end of life context.[436]

Minister Lametti, however, then went on to accept Senator Kutcher’s amendment to Bill C-7, proposing a minor timeline tweak from 18 months to two years before the mental illness exclusion would be repealed:

> While I do think the exclusion is constitutional, and I do not believe that we are fully prepared to safely proceed with the provision of MAID on the ground of mental illness alone, I also hear the concern expressed by Canadians that this exclusion fails to address the issue of whether and when the provision of MAID will be permitted to alleviate intolerable suffering due to mental illness. That is why I propose that we support the sunset clause, but with an amendment so that it would repeal the mental illness exclusion after 24 months instead of after 18 months, after Bill C-7 comes into force.[437]

Gesturing toward “the inherent complexities and risks” that had prevailed in the government’s earlier and more cautious approach to MD-SUMC, Minister Lametti committed to establish “an expert panel” for guidance around the conundrums that the CCA’s state of knowledge report had failed to circumvent. Clause 3.1 of Bill C-7 required that within one year of the passage of the Bill, an independent review be conducted “by experts respecting recommended protocols, guidance and safeguards to apply to requests made for medical assistance in dying by persons who have a mental illness.”[438]

With the passage of Bill C-7 in March 2021,[439] the dismantling of the mental illness bulwark in Canada’s MAID regime would proceed, inexorably but in slow motion. The shocking irregularity of this *cart-before-horse* approach would be decried by Sonu Gaind in his 2022 entreaty:

> No drug company is told their sleeping pill *will* be approved in two years, without evidence of effectiveness or safety, while being asked to develop instructions on *how* to use the pill in the meantime. The sunset clause and the federal panel's mandate is based on less evidence than required for introducing any sleeping pill.[440]

The Expert Panel on MAID and Mental Illness was convened in August 2021 and would conclude its deliberations with a final report in May 2022. Unlike the final report of the CCA working group on MD-SUMC, the Expert Panel reported its conclusions in a unified voice, but only after the resignation of two of the Panel's original 12 members. One of these, an ethicist, made his reasons public in a detailed critique that cited serious issues with the Panel's governance and explained his substantive objections to "the soft guidance-type recommendations that are contained in the expert panel's final report."[441] Another member, Ellen Cohen, a well-respected advocate and coordinator of the National Network for Mental Health, resigned from the Panel in December 2021, after her attempts to contribute constructively were dismissed and her requests for disability accommodation were routinely denied.[442] In her 2022 entreaty, she acknowledged that "mental health consumer/survivors are divided on the issues of MAID"[443] but described a panel process that was not conducive to addressing any such division:

> There was no space made for meaningful discussion on the seriously complicated issues concerning decision making, consent and capacity, accountability and monitoring, privilege and vulnerability … in the context of people suffering from mental disorders. When discussion of mental illness came up the discussion was shut down or we moved on. When suggestions were brought forward panel members were discouraged due to

> time constraints. When I did suggest something, I was shamed by the only other peer on the panel, stating that having specific safeguards for those suffering from a mental disorder was discrimination.[444]

The Expert Panel's nineteen concluding recommendations called for no additional safeguards in the MD-SUMC context, instead proposing a modest agenda for deployment and in some cases refinement of established clinical practice standards.[445]

> [T]he Panel found that the existing MAID eligibility criteria and safeguards buttressed by existing laws, standards, and practices in related areas of healthcare can provide an adequate structure for MAID MD-SUMC so long as those are interpreted appropriately to take into consideration the specificity of mental disorders.[446]

Grappling with the vexing concerns of "incurability, irreversibility, capacity, suicidality, and/or the impact of structural vulnerabilities,"[447] the Expert Panel embraced a kind of circular logic that sought and then relied upon comparators in other MAID-able diagnostic groups (for example, persons with chronic conditions) not yet flagged as problematic by the regime's architects, agents and supporters. Early in the report, the authors made clear that they would not rock the boat of normalized MAID practice, instead affirming their conviction that "[p]roposals for new measures for persons with MD-SUMC must consider who has access to MAID now, what measures apply to their requests and what issues or problems need to be resolved through additional measures."[448]

In this way, the Expert Panel positioned itself to evade the controversies that had divided the CCA working group and move forward into the more comfortable, if blinkered, tasks of tweaking guidelines for clinical practice, repeating the mantras of "assessment on a case-by-case basis" and "case-based quality assurance", and issuing bland calls for consultations with indigenous populations and “adequate funding of health and social resources”. Only one recommendation (#16) appeared to break from the status quo by calling for “prospective oversight of all or some Track 2 cases”[449], but the intervention described was highly speculative and in substance more of an administrative support, far removed from any common understanding of the word ‘oversight’. Perhaps taking a page from the court in Carter, the Expert Panel seemed to be saying, in technocratic language unlikely to provoke media scrutiny, “We’re medical professionals. We’ve got this. Leave it to us.”

Nothing more would be heard from the Minister of Justice about his convictions that the exclusion of MD-SUMC was constitutionally sound and required for the protection of persons whom the Court in Carter had categorized as ‘vulnerable’. Instead, the government had effectively embraced a policy of outsourcing the problem of “vulnerable persons” to the medical profession. This strategy would effectively exploit consistently high levels of public trust in doctors[450] and provide government representatives with a ready deflection of any critiques arising from MD-SUMC, where there were no court judgments to justify expansion.[451]

Early in 2023, weeks before the activation of Bill C-7’s sunset clause, a one-year extension shifted the starting date for this new category of MAID-able lives to March 17, 2024. In introducing the Bill that would extend the timeline for the sunset clause, Bill C-39,[452] Minister Lametti spoke reassuringly about “ensuring the healthcare system’s readiness… to ensure the safe assessment and provision of MAID in circumstances where a mental illness forms the sole basis of a request for MAID.”[453] Senator Kutcher, who had established his status as one of the country’s foremost MD-SUMC authorities, threw his support equally behind the extension. His speech in the Senate[454] as sponsor of Bill C-39 was a 5200-word tour-de-force of confident assertions of progress, praise for the medical profession and disparagements of dissenting views:

> Honourable colleagues, ongoing misinformation about MAID MD-SUMC continues to spread, misleadingly suggesting that persons with mental disorders requesting MAID will be treated in a haphazard, irresponsible and unregulated manner. However, as evidenced by a careful look at the law itself and the regulatory and practice context within which the law sits, this is not the case. In fact, the opposite is true. MAID MD-SUMC will be provided under perhaps the most comprehensive and robust federally facilitated health regulatory and training interventions ever created in this country.[455]

Indeed, Senator Kutcher's only critique of the federal government's role in the rollout of the mental illness expansion was that they "must do a much better job of communicating with Canadians about the complex and nuanced aspects of MAID"[456] – an exhortation that in context, translated to a call for more effective PR to 'sell' the project of expansion to a dubious Canadian public.

In the months that followed the passage of Bill C-7, the process of normalizing MAID for MD-SUMC shifted into high gear as medical practice standards[457] and training modules[458] were developed and regulatory and biomedical bureaucracies readied themselves for March 17, 2024. MAID for MD-SUMC became a foregone conclusion within a closed system of medical authority. Deputized by federal lawmakers and countenanced by a tight circle of influential jurists in the Senate and academia, doctors and psychiatrists had effectively taken the helm on expansion of MAID beyond RFND, and in particular expansion into the realm of MAID on the basis of "mental disorder."[459] Although lobby groups like DWDC were squarely behind this expansion, they added little if anything to the debates from a lay perspective, focusing instead on amplifying the voices of expansionist psychiatrists.[460] With public opinion on expansion for MD-SUMC hovering at levels much lower than for advance directives and removal of RFND,[461] it had fallen to the psychiatric profession to press for and operationalize MD-SUMC as a MAID-able category. Their expansionist task would not be easy, with many members within the profession resisting what was to them an indefensible abdication of scientific reasoning and professional ethics.[462] But the unequivocal support of major establishment players like CAMAP and FMRAC and public sector bureaucracies in federal and provincial Ministries of Justice and Health, would assure slow and seemingly steady progress toward expansion through 2022 and 2023.

A legislative challenge to mental health expansion was mounted by the opposition Conservative party in 2023: the private members Bill, Bill C-314[463] was defeated at second reading in the House of Commons, but by a strikingly narrow margin of 150 in favour and 167 against.[464] The failure of this motion would leave just one hurdle before the rollout of MAID for MD-SUMC: the Special Joint Committee on Medical Assistance in Dying had chosen to "remain seized" of the issue[465] and to reconvene in November 2023 in order to ensure "preparedness… for a safe and adequate application" of MAID for MD-SUMC.[466] A pro-forma invitation for written submissions[467] generated a flurry of intense activity as disability rights defenders scrambled to meet a one-week deadline, and to compress their entreaties into documents of no more than 1000 words, with the further stipulation that footnotes and citations would be included in the word limit.

This arbitrary and begrudging Committee gesture toward democratic participation seemed to elicit a barrage of 'straight talk' from civil society actors and activists who had fought for years to defend against the eugenic perils of Canada's MAID regime. A submission from the VPS coalition challenged the Committee to look beyond the "narrow focus" of "system readiness" and overturn the sunset clause, arguing that MD-SUMC "would perpetuate the long-standing history of discrimination in Canada against people with disabilities, contrary to the Charter."[468] Many of this volume's contributors rose to the challenge with strong rebukes of the government's relentless march toward expansion. Bach and Frazee called for a rethinking of the MAID paradigm as our first order response to human suffering, arguing that "MAID has become a policy solution still in search of a considered policy question."[469] Breaking through the stultifying fog of "euphemism and misnomer" in MAID discourse, Gabrielle Peters launched a direct assault on the eugenic logic at the heart of the Committee's deliberative project. Framing her submission around the question "What does a state do to prepare for an expanded exemption to murder?", she challenged the entire Track 2 paradigm:

> … [W]hile some believe rationality and science support the state creating legalized homicide of someone with osteoarthritis whereas no such science exists to support killing someone whose condition is mental-health related, I disagree. They are both given science-sounding language to rationalize a belief system that is discriminatory. Much like science has been used to provide cover for racism and sexism.[470]

Compared to the disability rights defence of RFND, resistance to MAID for MD-SUMC would be, with the exception of the VPS, most often expressed by individual scholars, activists or family members rather than by "big tent" collectives. The imminent reality of MAID for physically healthy persons with a diagnosed "mental disorder" factored prominently in broader advocacy and activism for restoration of the RFND threshold but there were no major national campaigns focusing exclusively on MD-SUMC and no national champions of resistance emerging from civil society networks outside the medical sphere. The reasons for this were no doubt multifactorial: the category of "mental disorder" is a sweeping and fluid one that captures a full spectrum of disabled/mad/marginalized/pathologized identities and experiences, many of which have distinct and deep-rooted histories in their relationship to psychiatry, to healthcare, to normalcy, to autonomy, to suicide, to suffering and to social legitimacy. For persons who have experienced mental health crises and whose encounters with medicine and psychiatry have been coercive, punitive and stigmatizing, a resistance rhetoric evoking “suicide prevention at all costs” pushed too far into the territory of sanctioned state violence against mad and suicidal persons. Absent a carefully nuanced calibration of the anti-expansionist message – sometimes hard to achieve in the frenzy of media scrums and Twitter wars – the disability rights defence against MAID expansion risked an implicit endorsement of the carceral logics of arbitrary apprehension, forced treatment and pervasive shaming embedded in the history of suicide and psychiatry. Working toward solidarity across the spectrum of disability experience would require a further kind of balancing: not one emerging from the Court or the Legislature, but rather from crucibles of critical activist and scholarly deliberation.

Not surprisingly, critiques of MAID for MD-SUMC took many different forms. Some were expressed in testimonial accounts[471] that highlighted the fragile ecology of hope and recovery that MD-SUMC would catastrophically disrupt. Describing her own years-long struggle with suicidal desire and intent, Georgia Vrakas explained in her entreaty,

> … [G]iving people like me the green light to get medical assistance in dying is a clear signal of disengagement from mental illness. It sends the message that there is no hope and that we are disposable. … Many of us go down this bumpy road. Rather than stopping us halfway along our journey, give us a chance and help us move forward in our recovery process and live with dignity.[472]

In a similar vein, Sean Krausert had evoked the inducements of MD-SUMC in drawing from personal experience of rescue and recovery in his entreaty:

> I likely wouldn't be here today had the option of MAID been available to me in my darkest days. I experienced multiple deep depressions and extreme anxiety throughout my twenties and thirties. During my worst depression in my late thirties the pain was often unbearable. While I experienced suicidal ideation, I later realized that I actually didn't want to die but rather end the pain. …. To think that, if in my darkest most painful time I had been given the option of MAID, I might have given up on a future that was better than I could have asked or even imagined. [473]

While absent from the Legislative Committee hearings, mad activists have in other fora explicitly acknowledged certain 'elephants in the room' through these deliberations. Marnie Wedlake, founding publisher of *Mad in Canada*, named one such elephant as the dominant biomedical framework through which psychiatry asserts its legitimacy. Challenging the assertion underpinning the MD-SUMC debates "that mental illnesses are biologically based medical conditions," Wedlake queried, "Should there not be more disturbance at the thought of vulnerable people basing their decision to access MAID on a heavily biased, and scientifically unproven biomedical narrative?"[474]

Other important activist voices may not naturally comport with a disability rights position that for the most part has embraced an unspoken "injunction to stay alive."[475] Theorizing from a new and distinct fusion of queer/crip/mad/abolitionist theory, Alexandre Baril argues that by failing to accord equal recognition to the epistemic authority of "suicidal persons," disability rights resistance to MAID expansion implicitly, and at times explicitly, condones the "discursive and material violence enacted because of someone's presumed suicidal ideation."[476] Baril very clearly denounces "…the ableist/sanist/ageist/suicidist foundations of assisted suicide ", highlighting the complex overlay of "other systems of oppression, such as racism, colonialism, classism, heterosexism, or cisgenderism."[477] Importantly, while Baril expressly calls for "the abolition of the current violent laws and regulations that govern assisted suicide," he simultaneously endorses "a positive right to die for all suicidal people, be they disabled/sick/ill/Mad/old **or not**" [emphasis added].[478]

Although strategically and perhaps ideologically challenging, Baril's profoundly humane work points with an expansive clarity toward a core problem with MAID, i.e., the neoliberal conundrum that doctors should facilitate the deaths of all consenting persons who meet the legislative criteria, ***provided that they are not suicidal***. Baril's critique in a 2017 commentary on Canada's original MAID law remains especially relevant to current debates about MAID for MD-SUMC:

> This law's ableist, ageist, capitalist, neoliberal perspective rationalises assisted suicide for subjects with 'no future' who are considered 'unproductive'.[479] It seems 'normal' that older, ill and physically disabled people would want to die and receive assistance to do so. However, this sanist law also casts suicidal people as mentally ill/disabled and delegitimises their wish to die by judging them irrational and incapable of consenting.[480]

Baril's contributions to critical disability discourse in the MAID sphere are a reminder that in the days ahead, critical attention must be focused on the deeper carceral logics underpinning the existence of MAID writ large, as well as MAID beyond RFND and in particular, MAID for MD-SUMC. Without such attention we risk leaving unanswered and unacknowledged, questions central to the project of solidarity with all marginalized peoples.

In the final few months of countdown to the automatic legislative activation of MD-SUMC on March 17, 2024, there were many developments that would ultimately tilt the scale toward further delay. Procedural, political and practical forces converged to break the expansionist momentum and clear an off-ramp for a government facing its own existential challenges in what could be the final year of its mandate.[481] A major cabinet shuffle in July 2020 had put in place new Ministers of Justice and Health,[482] allowing for subtle distancing from earlier positions on MAID expansion. Canada's new Minister of Health, Mark Holland, would bring to his role the hard-earned insights of a personal history marked by severe childhood trauma and the indelible insights of his own suicide attempt as an adult.[483] The new Justice Minister, Arif Virani, appeared to adopt a more moderate approach than his immediate predecessor when in late December he "expressed openness to adding more time to the sunset clause delaying the expansion in eligibility," signalling that the government was "weighing its options" with regard to MD-SUMC.[484]

Increasingly, public opinion around MAID for MD-SUMC was shifting. An Angus Reid poll released in February 2023 had indicated that just 3 in 10 Canadians supported offering MAID for "irremediable mental illness". The same poll reported that more than half of Canadians (55%) "worry about MAID taking the place of improvements in social service."[485] Supplementary polling in September 2023 indicated that "a plurality" of Canadians continued to oppose the MD-SUMC expansion, and further that "half of Canadians (52%) worry that treating mental health will not be a priority [if] MAID eligibility is expanded to include individuals whose sole condition is mental illness."[486] Editorial boards from across the political spectrum called for the government to "take a step back" and withdraw altogether from MD-SUMC expansion.[487] The broad consensus among the professional class that had propelled earlier phases of MAID expansion was also beginning to waver[488], with psychiatrists in particular increasingly expressing discomfort and/or alarm about the imminent expansion to MD-SUMC.[489]

Québec had explicitly prohibited MAID requests based on any “mental disorder**,** other than a neurocognitive disorder”, in its 2023 legislative amendments.[490] Proceeding with MAID for MD-SUMC in March 2024 would risk provoking an unwelcome constitutional confrontation with Québec. To further complicate the jurisdictional landscape, in January 2024, Ministers of Health and related portfolios from Nova Scotia, Alberta, Ontario, Saskatchewan, New Brunswick, Prince Edward Island, British Columbia, Yukon, Northwest Territories and Nunavut wrote to urge the federal Ministers of Justice and Health "to indefinitely pause the implementation of the expanded MAID eligibility criteria to enable further collaboration between provinces, territories and the provincial government".[491]

Cumulatively, these were significant headwinds for the government to navigate. The Special Joint Committee on Medical Assistance in Dying, despite its best efforts to limit the conditions for public engagement, had been overwhelmed with almost 900 written submissions, each of which required translation to be accessible in both official languages in order to be considered by the Committee. Facing a hard deadline for their final report of January 31, 2024, and inadequately resourced to translate and review these submissions to meet this deadline[492], decisions were made in-camera to proceed without considering this evidence. The Committee’s formal report, released on schedule in January 2024, drew exclusively from the testimony presented by 21 invited experts, making only passing reference to “all who shared their views and experiences”, noting that their submissions would "undoubtably be invaluable to future parliamentary communities studying this topic.”[493]

Citing “ongoing concerns” and “conflicting testimony” around the assessment of irremediability, detection of suicidality, and protection of “the vulnerable”, as well as a limited availability of suitably trained practitioners and the lack of consensus among both psychiatrists and legal experts, the Joint Committee concluded its third report with a recommendation to further postpone MAID for MD-SUMC. Although the Committee had failed to reach consensus, prompting four dissenting and/or supplementary reports[494], the concluding majority recommendation was 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
> [that the Special Joint Committee be reestablished one year prior to an anticipated start date] in order to verify the degree of preparedness attained for a safe and adequate application of MAID MD-SUMC.[495]

What is perhaps most notable about the Joint Committee's approach to the evidence before them is that the very same "ongoing concerns" with respect to suicidality and vulnerability had figured prominently in the entreaties that the contributors to this volume had brought to the Committee's attention in the spring of 2022. As discussed earlier in this chapter, similar testimony had also been very evident in the parliamentary hearings that preceded the passage of Bill C-7 in 2021. But never before in the Committee's prior reports had testimony that conflicted with the expansionist argument held any sway in shaping the Committee's final recommendations or slowing the advance of MAID expansion. Absent any other explanation, it is at least plausible that the Committee was demonstrably more attentive to the politics of the moment than to the reasoned arguments and evidence that citizen witnesses had laboured to express.

In the end, the Committee's recommendations gave satisfactory cover to a government ready to step back from mental illness as a MAID-able category. With very little fanfare, the Ministers of

Health and Justice announced on January 29 that MAID for MD-SUMC would be further deferred.[496] In doing so, they predictably invoked the "system readiness" rationale, thus sidestepping any question of what feminist legal scholars Grant and Sheehy characterize as "the real problem" of MAID for MD-SUMC, and indeed of T2 MAID altogether, i.e., that "[i]t is not the job of the state to offer death where it is unwilling to provide the necessities of a dignified life."[497]

Bill C-62 was tabled in the House of Commons on February 1, 2024, calling for a three-year extension of the implementation date for MAID MD-SUMC.[498] Interestingly, the Bill's corresponding Charter Statement reaffirmed the foundational principles that had been so carelessly discounted in the Truchon decision, specifically that "the interests and values that Bill C-62 seeks to balance … include the autonomy of individuals eligible to receive MAID, the protection of vulnerable persons from being induced to end their lives, and the need to address suicide as a public health issue."[499]

Deferral until March 17, 2027 would effectively ensure that the issue of MAID expansion would not come up again for debate until after the next federal election, notwithstanding the Justice Minister's assertion that the government's decision was "categorically not" politically motivated.[500] No doubt anticipating pushback from the expansionist lobby, Minister for Mental Health and Addictions Ya'ara Saks chose her words carefully when she spoke for the Minister of Health at second reading, describing the Bill's objective as a "temporary exclusion of eligibility". As the Minister reiterated later in her testimony, "this is not a matter of "if". We are debating "when".[501]

Indeed, those pressing for expansion did not take kindly to this setback. An indignant Senator Kutcher gave voice to their collective fury in a fiercely worded rebuke from the floor of the Senate in which he alleged that his colleagues had been “snowed with canards and erroneous, inflammatory language”, and urged them not to be “overwhelmed” by the “cacophony… [that has] fed us fear and falsehoods” [502, 503] Characterizing many of the contributors to this volume as “a well-organized, persistent lobby”, he decried the inconsistency of eligibility for T2 MAID, seemingly indifferent to how his own arguments validated the position of disability rights defenders seeking to roll back the expansions of Bill C-7: “[O]ur physical health care system is broken. Over 6 million Canadians have no family doctor, yet we allow MAID access for physical illness despite a broken health care system.”[504]

Bill C-62 passed easily in the House of Commons and passed on division in the Senate[505], receiving royal assent on February 29, 2024. At the brink of granting medical practitioners the right to euthanize patients with mental illness upon request, Canada had come to a screeching pause. Whether the three years set aside for that pause would also, and temporarily, protect the boundaries of consent (discussed earlier) and maturity (discussed next) would be a matter of political speculation that goes beyond the scope of this volume. Of more direct concern to disability scholars and defenders of disability rights, are questions of how the MAID narrative will continue to evolve in the coming years and whether the forces that have normalized MAID beyond RFND will be shaken or reinforced in the wake of the MD-SUMC debates.

Will the dissonance that Senator Kutcher had so righteously invoked in support of his argument that a “broken health care system” was no reason to limit MAID expansion, instead sensitize

Canadians to the corrosive effects of T2 MAID in a context of pervasive ableist ascendancy? Will a healthy scepticism about practitioner fallibility and unchecked authority extend to question the role of medicine in “curing” socially rooted suffering by lethal injection? Will the logic of formal equality (we must have MAID for non-dying people with mental illness because we already have it for non-dying people with every other disability) give way to insights from substantive equality (we must attend carefully to history and context and respond to the suffering of disabled people without perpetuating further harm or inequality)? Perhaps most fundamentally, will abhorrence and discomfort about MAID for MD-SUMC generalize to a distaste for authorizing medical practitioners to end livable lives when there are countless other policy tools that lawmakers have yet to deploy in service of citizens who suffer?

In the face of these immense challenges of narrative shift, the simple phrase “time will tell” is wholly inadequate. Mindful of all that is at stake, disability rights defenders in academic, legal, cultural and activist spheres will be hard at work through the brief reprieve afforded by the passage of Bill C-62.

B. MAID for Non-Adult Persons

At the present time in Canada, only persons 18 years of age and older are MAID-able. However, as events in the eight years since the Supreme Court ruling in Carter have demonstrated, every bulwark constructed to guard against the eugenic advance of MAID has proved precarious and, in the case of RFND, short-lived. Limits to MAID-able status have been systematically challenged and dismantled, one by one. Indeed, the only limit that has thus far proved impervious to opposition is the now-thoroughly-entrenched principle that MAID is a medical matter reserved for circumstances of abject disablement. Non-disabled persons need not apply.

In this context, discourse around the merits of MAID for non-adult persons foreshadows a familiar trajectory. Beginning with the passage of Bill C-14 in 2016, a commitment to “independent review” of the issue of “requests by mature minors for medical assistance in dying” was included in section 9.1 of the Bill.[506] As with advance requests for MAID and MAID for

MD-SUMC, this review was assigned by the Ministers of Justice and Health in 2016 to the Council of Canadian Academies [CCA]. The Council assembled an “expert panel working group” heavily dominated by jurists and medical professionals, who would release in 2018 a “State of Knowledge” report.[507] Bloodless and empirical to a fault, the report addressed basic legal questions regarding the meaning of “mature minor”[508] and reviewed clinical research in neuropsychology and brain anatomy, but did not venture to explore the social or cultural meanings and dimensions of adolescence and adolescent experience.

Consistent with a medical/legal framing which has dominated MAID from the outset, the CCA working group examined the complex interplay of relevant federal, provincial and territorial legal schemes regulating healthcare decisions, consent and capacity determinations, disclosure and privacy protocols and child welfare and protection regimes that form the legislative and policy backdrop for this issue. Their final report was severely constrained by a dearth of relevant case law and international data to draw from, with only two jurisdictions (Belgium and the Netherlands)[509] permitting assisted suicide for minors and only 16 reported cases worldwide.[510]

The CCA report on MAID for mature minors, on balance, may be more significant for what it does not address than for its 220 pages of state-of-knowledge review. For example, the report by and large sidestepped consideration of disability, poverty, social neglect, gender identity, sexuality, sexual orientation, race, adverse childhood experience, and a host of other “significant knowledge gaps” in the MAID/mature minors matrix. In the report’s extensive attention to issues of adolescent decisional capacity and consent, teasing out the nuances of psychosocial, cultural and socioeconomic pressures and how these might weigh in the choices and preferences of potentially MAID-able minors proved to be beyond the reach of a narrowly focused, law- and science-driven inquiry. With no reported cases or controlled studies exploring how stigma, cultural norms and proscriptions, peer influence, social alienation, family dysfunction, involvement in corrections or social welfare systems factor in the maturing consciousness of a terminally ill, chronically ill or disabled teenager, the report was unable to deliver a satisfying account of what MAID for "mature minors" might yield. Instead, the report could only point broadly where established law and research permitted. The report's concluding observation about some (but by no means all) of the pressure that might complicate or compromise the judgements of MAID-able minors therefore offered only a very thin analysis, and one that seemed to resolve itself for the authors in a false equivalency between the pressure to choose death and the struggle to be heard:

> Allowing mature minors, as recognized under common law, to access MAID would provide them with an increased range of end-of-life choices and a certain degree of control over their death. However, one unintended consequence might be that some terminally ill minors feel pressure to request MAID as a means of protecting their families from continued financial and/or emotional distress. The implications might be even more pronounced for minors with added vulnerabilities, including those who are disabled and/or living in the child welfare system. While there is no information directly related to MAID requests by minors in these categories, evidence shows that they struggle more routinely to have their voices heard in healthcare decision-making.[511]

Perhaps even more astonishingly, although the authors noted that suicide is the second leading cause of death among 15 to 19-year-olds in Canada[512] the working group did not consider or report on any research illuminating adolescent suicide in general, or suicide among Indigenous and disabled minors[513] in particular. Instead, the working group focused its inquiry narrowly upon adolescent end-of-life care and MAID for adolescent persons. The CCA's implicit positioning on suicide in this and its other MAID reports thus appears to accord with the expansionist precept that suicide is distinct and distinguishable from MAID and further, that doctors are fully capable of differentiating between MAID requests and requests expressive of suicidal intent – both of which remain highly disputable claims anchored in our blind trust of medical authority. Although the report's concluding section does flag a "concern" about normalizing youth suicide, the authors dispense with this concern as tied to the "social construct" of vulnerability, asserting the paramountcy of autonomy as our overarching social responsibility:

> Another concern is that allowing mature minors to request MAID might also normalize suicide among young people, especially those who struggle with mental disorders and may be considered vulnerable. However, rather than focusing on the inabilities of certain groups, it is important to recognize vulnerability as a social construct generated by society's treatment of these groups. Thus, there is a social responsibility to support those who may be perceived as vulnerable by facilitating their ability to make informed, autonomous decisions, rather than diminishing their rights and limiting their options.[514]

Absent critical sociopolitical insights and deep policy analysis, the CCA report, owing in large measure to the frame of biomedical empiricism in which MAID expansion finds its authoritative voice, would do little to deepen lawmakers' understanding of the issues at play in contemplating MAID for non-adult persons. These would be the policy missteps, legal errors and knowledge gaps left for disability rights defenders, and the contributors to this volume in particular, to flag in their entreaties to the Special Joint Committee in 2022, when the issue of MAID for mature minors was first opened for public input.

During the Committee hearings, leaders from Indigenous disability spoke forcefully of the betrayal and danger that such an expansion would present. Neil Belanger, speaking for Indigenous Disability Canada, charged that “the slippery slope of MAID remains unfettered.”[515] Invoking the federal government’s professed commitment to meaningful engagement with indigenous populations on all matters of consequential public policy, he called out the colonial posture of the government’s expansionist approach, and utterly rejected the reassurances that MAID for minors would be limited to end-of-life situations,

> The considered expansion of MAID to include “mature minors,” mental health as a sole condition and other proposed changes to MAID without comprehensive consultation with the Indigenous peoples of Canada flies in the face of reconciliation and is a further marginalization of Indigenous peoples, and the continuation of the destructive colonial systems and their paternalistic mindset of “Trust us, we know what’s best.”
>
> …I am certain that if the eligibility of State assisted death is expanded to include “mature minors” at end of life, rather than providing adequately funded and comprehensive palliative care, this will result in the expansion of MAID to include “mature minors” not at end of life, who live with disabilities, or have mental illness as a sole condition. This is not a might happen, this is a fact, and this is the slippery slope of MAID.[516]

Conrad Saulis, speaking on behalf of the Wabanaki Council on Disability and the Mawita’mk Society, spoke with passion and conviction of the generational trauma of harm to Indigenous youth, exhorting Committee members to contemplate this country’s history of misplaced medical and legal authority in relation to Indigenous people:

> Our families lost far too many children and youth during the Residential and Day Schools era which lasted for over 125 years. We have lost too many children and youth to Child

> Welfare agencies – what we want is to find ways to keep individuals, families and communities strong and to be embraced in our languages, in our cultures and in our traditional ancestral knowledge.
>
> We want to establish the programs, services and supports that our youth and persons with disabilities need. They do not need to find a way to die. They need to find the ways to re-establish their self-worth – to combat mental illness – we want them to be well – they want to be well.…
>
> … We don't need or want to establish more ways for Indigenous youth to die. There is enough death in our communities and families already and there are already enough existing threats.[517]

A new generation of leaders engaged in disability and social justice activism were similarly unequivocal in their rejection of this new frontier for MAID expansion. Sarah Jama spoke in solidarity with Indigenous and other marginalized groups when she asserted that "mental illness and suicidality are at an all-time high for youth across Canada," enumerating the many social pressures and material factors that disproportionately stress Indigenous and disabled youth. In so doing, she demanded a broadening of the conversation to address questions of adjustment time and to consider the coercive impacts of bullying, childhood poverty and inadequate access to resources.[518]

Jama's resolute opposition was amplified by Ahona Mehdi, a 19-year-old member of the Youth Action Council of the Disability Justice Network of Ontario. Mehdi came equipped with an analysis of power and context to refute the simple expansionist logic of choice: "If this process is truly informed by disability rights and autonomous decision-making, why is it being undertaken during a global pandemic when health care professionals are more overworked than ever?"[519]

She also came prepared with research: reports from Canadian pediatricians amounting to direct evidence of the rapid and dangerous spread of a eugenic embrace of MAID for mature minors. Citing a 2016 study in which 11% of pediatricians surveyed reported "having had exploratory discussions about MAID with parents, on behalf of 419 never-competent patients"[520], Medhi condemned a regime already – and prematurely – normalized, "when the government consistently and intentionally refuses to make home care, palliative care, assistive devices, gender affirming and culturally competent care, counselling and other resources accessible to disabled youth."[521]

One of only a handful of youth representatives who were granted an audience with the Committee, Mehdi made clear that her opposition was grounded both in personal experience and in political analysis:

> I fear for disabled youth like me and those who have it worse than I do, who could be offered MAID in place of treatment or care. In the same way institutions continue to use prescription drugs as bandaid solutions for complex concerns, expanding MAID would be truly reckless. Placing the onus to choose between life and death on individual disabled children while neglecting the realities of systemic ableism in this country is truly egregious.[522]

Reminding the Committee that in contemplating MAID for minors they were well outside of the mandate issued to legislators by the Supreme Court of Canada in Carter, Trudo Lemmens cited the Court's express assurance that these discussions "would not fall within the parameters"[523] of the Carter judgement. Echoing this message that in contemplating MAID for mature minors, Parliament would be venturing far beyond the Court's prescription for an equality-respecting exemption to the Criminal Code, Elizabeth Sheehy gave full voice to the anguish and horror that gripped disabled people and our loved ones, allies and supporters at the very thought of MAID expansion for non-adult persons with disabling conditions, whether at the end of their natural lives or not:

> We must put a firewall around the MAID bonfire, to at the least keep children and teenagers away. We know that young people's brains do not fully mature until their twenties, making it impossible for even "mature" youth to imagine either the possibility of a life of purpose or joy when they are stuck in the muck of alienation or adjustment to disability or their sexuality, or to comprehend the finality of death, and the utter devastation their lost lives will wreak upon their families, friends and communities. Extending MAID to mature minors is reckless. To trust that doctors can predict which young people cannot be healed or helped, or whether they have the maturity to make such irrevocable decisions, flies in the face of our not so distant eugenics past. To pass a law that would require communities and parents do nothing when their young people throw themselves on the bonfire, is to force us watch our futures burn.[524]

Perhaps not surprisingly, none of the passion or substance of these powerful entreaties found their way into the official report of the Special Joint Committee hearings, presented to Parliament in February 2023.[525] A brief passing reference is made to Sheehy, Mehdi and Saulis in a single paragraph that strips away any discussion of the social drivers of youth suicide and gives the last word to a blanket assertion that such "uncertainties" would not apply in end-of-life scenarios:

> Others held firm convictions that track two MAID and MAID MD-SUMC are unacceptable for minors, and feared these would inevitably follow any expansion to track one. Elizabeth Sheehy was particularly concerned about the discriminatory impacts of allowing MAID for minors with disabilities, who often face mental health challenges and may struggle to imagine a positive future for themselves. Ahona Mehdi worried that minors with disabilities may feel like a burden due to the costs associated with their care, including parental time off work. Conrad Saulis relayed the fears of Indigenous youth regarding MAID, given the mental health and youth suicide challenges in their communities. Kathryn Morrison, however, opined that the uncertainties raised by track two MAID and MAID MD-SUMC "should not undermine the case for a mature minor to access MAID under track one."[526]

Regrettably, the Special Joint Committee's report is a clear indication of the direction in which MAID for non-adult persons, including but not limited to the legal category of "mature minors," is very likely to proceed.

The Committee concluded its review of MAID for "mature minors" with a diplomatic gesture: two recommendations that would be widely endorsed, among the proponents of expansion and critics alike. Noting that the voices of youth had not had a full hearing, the Committee called upon government to:

> undertake consultations with minors on the topic of MAID, including minors with terminal illnesses, minors with disabilities, minors in the child welfare system and Indigenous minors, within five years of the tabling of this report.[527]

Further, the Committee called for government funding for "research into the views and experiences of minors with respect to MAID, including minors with terminal illnesses, minors with disabilities, minors in the child welfare system and Indigenous minors."[528] While this would not be controversial per se, much would depend upon whether such research contracts would require a clear commitment to anti-ableist methodology and design, or whether they would instead be selectively awarded in service of the expansionist echo chamber. There is indeed room for concern on this latter point, since nothing is known publicly or within Canada's disability rights sector, about federal funding apparently designated in 2021 "to support research in areas that focus on MAID and the experiences of marginalized and/or racialized individuals, which could include persons with disabilities and mature minors"[529] as referenced in the government's response to the Committee's report.

Although the Joint Committee report paid lip service to ensuring "that MAID policy decisions are properly evidenced-based,"[530] hearing the voices of diverse youth and considering research on their perspectives and experiences would not be determinative of the Committee's conclusions on the question of MAID expansion for minors. Simultaneously with its two non-controversial recommendations, the Committee called upon the Government of Canada, without reservation, to expand the eligibility criteria for MAID "to include minors deemed to have the requisite decision-making capacity upon assessment,"[531] calling for such eligibility to "restrict MAID for mature minors to those whose natural death is reasonably foreseeable."[532]

The official government response to the Special Joint Committee report[533] amounted to a gentle pumping of the brakes with respect to the mature minors expansion. Acknowledging that "the MAID regime has evolved rapidly", and that the government's current priority focus was "on preparing for MAID MI-SUMC,"[534] the government response stated:

> While the Government of Canada recognizes the importance of the issues [that the specific recommendations for expansion] seek to address, these proposals would require

> further consideration, consultation and study. Any specific law reform would also be contingent on government decisions on policy direction and would require a significant amount of work with provinces and territories to implement.[535]

While the slowing of momentum in the government's response was hopeful, it remains to be seen whether this note of caution will prove to be any more durable than the government's initial position on MD-SUMC in Bill C-7. In time, it seems likely that with the critical pieces in place, tried-and-true progressions in the expansionist playbook will unfold. A focus on capacity assessment would establish the issue of MAID for minors squarely within the domain of medical expertise and would sequester future consideration of the issue from the messy business of suicide and its contributing factors of system, family, or social dysfunction and inequity. As had been the case with MAID for MD-SUMC, infrastructure would be established in order to firmly cement this new practice within a web of normalizing bureaucratic practices and procedures: recommendation #18 would set in motion arrangements at provincial, territorial and First Nations levels to "establish standards for assessing the capacity of mature minors seeking MAID."[536]

Most significantly, following the pattern of incrementalism and adjustment that made way first for a limited practice of adult-only, fully consensual, medically hastened death in RFND situations, then next for removal of the RFND threshold but with protections remaining in place for persons with MD-SUMC, then next for a gradual easing of consent requirements in RFND situations, then next for lifting the RFND requirement for persons with MD-SUMC, and now for lifting the adult-only requirement in end-of-life situations. This repeating pattern of steady, stepwise expansion recalled the assurances of Justice Minister Lametti at the time when Bill C-7 removed the RFND requirement, four years after MAID became a legal practice. The

Minister noted on more than one occasion that with the passage of time, "practitioners were now quite comfortable"[537] with the practice and that:

> We now have four years of experience. We now have a better, I think it's fair to say, a greater degree of acceptance across Canada of the practice of medical assistance in dying.[538]

In similar fashion, carving out an exemption to the requirement for final consent was made possible by the measure of practitioner "comfort" in administering MAID to a patient no longer capable of expressing their consent.[539] As thresholds of MAID-able status became routine and normalized, new frontiers could be advanced with confidence.

Making no secret of this strategy, MAID practitioner and CAMAP ambassador, Dr. Gordon Gubitz, had provided testimony to the Special Joint Committee that was cited with approval in their final report:

> I think that when MAID came about back in 2016, only track one existed. We learned over a period of time what that looked like. Through that and through gauging the Canadian response to this, we were eventually able to lead to track two and to Audrey's amendment and all of those sorts of things—the low-hanging fruit first, and then working and getting a sense of what makes sense and what our experience teaches us. I think to go immediately to track one and track two for mature minors might be more than the Canadian public is willing to handle. I think we need to approach this thoughtfully, cautiously, and in a stepped approach.[540]

To be sure, Gubitz's phrasing was impolitic. For one thing, it stood as a confident assertion of a larger strategy that for the most part had remained unspoken, except by disability rights defenders dismissed as alarmist and hyperbolic. Its endorsement without qualification in the Special Joint Committee's final report signaled not only an agreed-upon inevitability of continuous MAID expansion, but also the effective alignment of the DWDC lobby with CAMAP, its national medical confederate, and the progressively branded Canadian government. RFND was merely a stepping stone, a way to blunt opposition by MAID critics and abolitionists and to mollify an anxious public. Once the equilibrium of a "doctor knows best" ethos was restored, the stepping stone could – and would – be removed. Gubitz had said the quiet part out loud, and there were no objections or equivocations from official quarters for his having done so. For critical disability and mad scholars, MAID abolitionists and anti-eugenic activists, the Gubitz disclosure has of course more ominous resonance, beyond the compass of our immediate political and legal advocacy. To characterize minors – or any persons – at the end of their lives as "low hanging fruit" displays a chilling indifference to human dignity. For a MAID practitioner and educator to speak so casually of more than 44,000 Track 1 deaths,[541] and for legislators to hear such a characterization uncritically, and indeed approvingly, is profoundly disquieting. Such unconscious expressions of administrative banality have signaled eras of unspeakable harm in global disability history.

At the end of the day, it is those banal eugenic resonances that must continue to animate our critiques and our witnessing of the MAID juggernaut in Canada.

VII. Since MAID: Counting Our Dead

Since June 17, 2016, practices of euthanasia and assisted suicide for dying and disabled persons have been fully funded, freely accessible, lawful practices in Canada, performed by medical practitioners who are specifically exempt from the Criminal Code prohibitions against culpable homicide. As chronicled in this volume, the cohort of MAID-able persons has expanded and appears likely to continue to expand as the practice becomes increasingly normalized, as the regime that administers it becomes increasingly influential and as the practitioners who deliver it become increasingly emboldened.[542] As the president of the independent body that monitors MAID practice in Québec, Dir. Michel Bureau, observed in a 2023 interview, MAID is "no longer being seen as a last resort" or considered to be an "exceptional procedure", but rather has become "a treatment that is very frequent."[543]

The Regulations for the Monitoring of Medical Assistance in Dying[544] require that the Minister of Health "must cause to be published, at least once a year, on the website of the Government of Canada, a report" detailing MAID requests and deaths.[545] Reporting typically lags by 8 to 20 months, so as a result, the most current data available to us at time of publication is from MAID deaths reported in 2022[546]; what happened in 2023 and thus far in 2024 remains a matter of uncertainty and speculation.

What available data does tell us is that just short of 45,000 Canadians died by MAID between June 2016 and December 2022. MAID death rates in Canada have increased "at a speed that outpaces every other nation in the world", having quadrupled in just five years according to a report prepared by the Investigative Journalism Bureau.[547] Official Health Canada reports, acknowledging an average rate of increase of 31% annually, describe the yearly growth rate as merely "steady"[548], prompting the editorial board of the Globe and Mail to remark that "[t]he department needs a remedial course in mathematics."[549] A graph reproduced from the *Toronto Star* shows the steep rise of MAID as a percentage of total deaths in Canada and other permissive jurisdictions globally – between 2016 and 2022 MAID deaths as a percentage of all deaths per year rose from 1% to 4% in Canada, outpacing other countries such as the Netherlands, Belgium, Luxembourg, Spain, Switzerland, and Australia.[550]

Losses of life on such a massive scale are numbing to the human mind, and for this reason, bystanders and naive observers instinctively reach for exculpatory narratives. These were readily available from a trove of press reports generated in the early years of Canada's MAID regime. A distinct journalistic genre of MAID stories featured detailed accounts of admirable persons who lived well and fully, their life trajectories interrupted well into their adult lives by catastrophic diagnoses, their final years diminished by the progression of terminal disease.[551] Stories from coast to coast built a consistent profile of MAID as an antidote to human suffering in the final stages of life and the ultimate expression of courage, love, deep reflection and self-determination. Notably, the law's 2021 amendments expanding MAID-able status to non-dying disabled persons did not appear to alter this powerful narrative,[552] which has remained strongly imprinted in the public consciousness.

The message reinforced by these early narratives was that the regime was working as promised, offering deliverance from unbearable suffering for those for whom an otherwise excruciating death was imminent and inevitable. The details varied slightly – a final meal, a musical selection, the scene outside a favourite window, the individual rituals of bidding farewell – but always at the centre was a stoic and beloved human being who freely chose to schedule their own death at home in the embrace of family.

But these were not, and have not been, the only stories to emerge from the steep curve of MAID death in Canada. Surfacing slowly at first and without national attention, were outlier stories that would confound and complicate the *'nothing-to-see-here'*, official account of a running total of 44,282 RFND deaths. Many of these outlier stories would figure in the 2022 entreaties captured in this volume, calling into question the integrity of the MAID assessment process and the legitimacy of the law's touted safeguards.

Raising disquieting questions along both of these axes was the testimony of Trish and Gary Nichols, whose brother Alan was deemed MAID-able just weeks after being admitted to hospital involuntarily “for his own safety and protection”[553]. Alan died in hospital by MAID in July 2019, months before Bill C-7 removed the absolute requirement of RFND. He had intermittent and recurring “mental health crises”, and significant hearing loss which was functionally corrected by cochlear implants, but no other diagnoses, and certainly none that would meet the RFND criterion. Questions about the integrity of the MAID assessment process in Alan’s case would remain unanswered, shielded from scrutiny by strict rules that prioritize patient privacy. But questions about how Alan Nichols could have possibly met the RFND threshold for MAID in 2019 do perhaps expose one of the core deficiencies in the law’s professed safeguards.

Canada’s MAID regime is founded on an ill-conceived law that invites medical improvisation. Where key definitions of non-medical terms such as “reasonably foreseeable” are absent from the legislation, individual physicians,[554] medical authorities and advocacy groups like CAMAP have been quick to fashion their own. For this reason, well below the radar of public scrutiny, in the CAMAP guidelines on RFND, the meaning of “natural death” was proving remarkably elastic. Persons demonstrating “a clear and serious intent to take steps to make their natural death happen soon or to cause their death to be predictable”[555] would be considered to meet the RFND threshold. Forming a plan or expressing the intent to self-destruct by starvation or some other act would thus, in the era of MAID, constitute a “*natural”* death. Persons approved for MAID pursuant to this Kafkaesque policy guidance would have their deaths counted as natural, and attributed causally to their underlying medical condition. According to the Nichols’ entreaty, “hearing loss” had been specified as the reason for Alan’s

MAID application. This framing would have carried over as the cause of death in official MAID and coroner's records[556], straining credulity and defying every principle of transparency and accountability in public health and reporting.

Other entreaties would go further in deconstructing the mythologies of effective safeguards and careful assessment that had been foundational to the Carter court ruling. Alicia and Christie Duncan, whose mother Donna died by MAID in October 2021, only "hours after being released from a psychiatric unit for a suicide attempt 72 hours earlier"[557], pointed in their entreaty to systemic failures of regulation and oversight that would account at least in part for the regime's runaway death count.

The story that they shared was harrowing. Donna Duncan had languished for more than a year on the waiting list for treatment for post-concussion syndrome at a complex chronic disease clinic. As her symptoms worsened, in desperation she had requested MAID, but her family physician, who had cared for her for more than 20 years, did not consider her MAID-able. Days later however, after her suicide attempt and psychiatric treatment, two practitioners "who had just met her and in essence simply ticked off boxes in a MAID assessment form" approved her request. Although the legislation calls for "90 clear days"[558] between the beginning of the assessment process and a MAID death in non-RFND cases[559], this safeguard proved meaningless in upholding the core promise of the Carter judgement, i.e., to prevent persons in Donna Duncan's situation from "being induced to commit suicide at a time of weakness"[560].

The Nichols and Duncan entreaties would shatter the illusion perpetuated in early pro-MAID narratives of supportive family members bearing witness to the deaths of those they hold dear. To be sure, it was sometimes the case that family members were on board with the MAID death of an aging parent or spouse. But there were a growing number of documented accounts of profound trauma suffered by loved ones cruelly shut out from assessment processes which were at least in these cases[561], arbitrary and superficial. When the law's intended safeguards are easily circumvented, when 'doctor shopping' practices override the expertise of family physicians and others who know an applicant's actual life circumstances over time, and when even the courts are helpless to intervene, Canada's MAID regime has become what one journalist described as "an unholy mess."[562]

The seeming haste with which MAID requests were converted to MAID deaths in the Nichols and Duncan cases represented another significant departure from romanticized MAID narratives in which death came as a culmination of extensive deliberation, soulful reflection, and dialogue with physicians and loved ones. Increasingly, these outlier narratives of fast-tracked death call into question whether western medicine, with its deeply reductionist orientation and predispositions[563], merits the authority it commands over the lives and deaths of persons whose suffering is complex and multifactorial.

Offering troubling glimpses inside hospital walls, Dr. Ramona Coelho demonstrated with vivid case examples how flawed assessments, malleable safeguards and seemingly wilful indifference to patient circumstances and vulnerability lay beneath the surface of the rapidly growing numbers of MAID deaths in Canada.[564] Taking care to respect patient confidentiality, and respecting the boundaries of professional discipline, she nevertheless evoked a narrative of cavalier MAID assessments stripped of every nuance of a person's history, present circumstance and prognosis. Her testimony in this regard would be effectively validated in 2023 in a commentary by Dr. Madeline Li, a leading Canadian MAID researcher and provider. Describing MAID assessment as a mere "checklist of legal requirements", typically involving practitioners who “parachute into a patient’s life”, Dr. Li expressed her distress that “the current law has no place for clinical judgement, and no stipulation for meaningful conversation.”[565]

Before the advent of MAID, humility in the face of death had at least modestly tempered the inclination toward medical hubris. With death now framed as a beneficial, medically-administered treatment, and with practitioners now choosing to engage or even specialize in MAID as a form of care, is a shift in the culture of medicine inevitable and indeed well underway? The Court in Carter had expressed unqualified confidence in medical practitioners, vesting the power of criminal immunity to a powerful, self-selecting and self-regulating professional class. Had the Court failed to take into account the vulnerability of any self-regulating professional body to ethical drift? Had they failed to anticipate the vulnerability of medicine to err on the side of efficiency, particularly in a resource-strapped economy? Should the Court have taken judicial notice of the critical state of Canada's health care infrastructure, and the ways in which its systemic deficiencies disproportionately imperil the lives of disabled people?[566]

The work of eugenic resistance calls upon us to honour the humanity of every life we can recall in its particularity. The entreaties of Heidi Janz[567] and Michelle Hewitt[568] are in this regard exemplary, memorializing the indignities endured by Chris Gladders, the life and death struggles of the woman known as “Sophia”, the Hobson’s choice that drove both Sathya Dhara Kovak and Sean Tagert into the arms of MAID, the precarity of life for Madeline. Janz’s conclusion was clear and stark: “Canada’s current MAID regime is, in fact, eugenics disguised as autonomy”.[569] Hewitt’s urging in the face of this human calamity was similarly direct: “MAID eligibility must be restricted to those who are approaching the end of their life, whose suffering is intolerable from their medical condition, not from the societal conditions they are forced to live under.”[570]

Through our collective remembering, and our conscientious documenting[571], we accord these individuals their rightful place in disability history and repel the forces of erasure that mobilize ableist and eugenic extremes. We also, through this process of naming the fallen, give form and meaning to narrative threads that confound and complicate the reassuring fiction of deathbed extremity that has propped up Canada's MAID regime since its inception.

Gloria Taylor, whose story of disabled life was the impetus for the sea change[572] in Canada's laws regarding euthanasia and assisted suicide, did not figure among Canada's official MAID deaths. Taylor, who had successfully secured her MAID-able status from the Supreme Court of British Columbia in June 2012, did not choose a hastened death, but instead died of natural causes on October 4, 2012.[573] Similarly, Nicole Gladu, whose legal campaign along with Jean Truchon in 2019 had effectively toppled the RFND requirement for MAID, died of natural causes on March 27, 2022, two and one-half years subsequent to the court victory that granted her MAID-able authorization.[574]

Julia Lamb, who had withdrawn her national legal challenge to the RFND threshold in 2019 when medical evidence filed in court suggested that she was already MAID-able, remains very much alive and well, with "no intention of seeking MAID in the near future".[575] Hinting, perhaps unconsciously, at the enrichments of human connection, service and purpose that are woven into the fabric of disabled life along with the deficits of disablement, she reported in September 2019 that although she had continued to deteriorate physically, she had also since first filing her claim, "got married, travelled, volunteered and made art 'surrounded by supportive family and friends that fill my world with light.'"[576] She currently serves her community as Chair of the Board of Disability Alliance BC[577].

Among all those who championed MAID and MAID expansion by submitting their disabled lives for judicial scrutiny, only Jean Truchon actually proceeded with a MAID death, seven months after the court ruling that rendered him MAID-able. His death on April 7, 2020, however, bore little resemblance to the loving and celebratory departures of idealized MAID narratives. In the end, it was not disability-related suffering that precipitated Jean Truchon's death by MAID, but rather the unbearable isolation and fear that took hold in long-term care institutions hit hardest in the early months of the coronavirus pandemic. There were confirmed cases of infection in his Québec facility, and all visits had been suspended. In Truchon's own final public communication, he wrote that:

> "[t]he Coronavirus has literally stolen my time with those I love. Seeing what is coming frightens me the most. Therefore I made the decision to leave now…Given the current context of the health crisis, I decided to take the train and leave my friends and all those who believed in me and my cause at the station.[578]

In a commentary published in 2023, Bill Gardner observed that:

> MAID is inexpensive, completely effective, and easily delivered. If we do not resist it, the system will, as if pulled by gravity, increasingly provide suicide and euthanasia instead of healing for the poor, elderly, and severely ill.[579]

As our outlier MAID narratives continue to surface, and as a growing number of comprehensive critiques from experts in medicine[580], law,[581] and bioethics[582] report on the regime's deficiencies, disability rights defenders are right to demand that the Court reconsider whether Canada's MAID law meets the standard of the Carter edict, and lives up to the promise of Charter equality.

* * * * *

The history of Canadian disability rights resistance to the approach and advance of MAID does not resolve itself into a tidy conclusion, any more than 45,000 MAID deaths resolve the complex human histories that they erase. For disability scholars and activists, there are immense questions of ethics, policy and law, as we seek to subdue the colonial impulses of medical authority and to recalibrate how disability autonomy can interact expansively, rather than reductively, with equality rights and disability justice. For those of us skilled in public policy and political theory, questions of reparation and remediation loom large, for the damage to our social fabric already wrought in the era of MAID will not spontaneously self-heal, even if the pendulum swings in equality's favour, rolling back the law and staunching its losses of life. For those of us grounded in the humanities, there are ableist narratives to be deconstructed and emancipatory chronicles of disabled life and death to be rendered, a new rhetoric of disabled livability to be infused between the rigid polarities of intolerable suffering and death. Our inquiries into human suffering, its complex roots, manifestations, and remediation will be of critical importance to advancing holistic measures and regimes more imaginative than extinction as a first-order principle.

For disability rights defenders, there are fierce battles still ahead, as expansionists and adherents of formal equality[583] argue for every person affected by some incurable medical condition, regardless of age, capacity or circumstance, to “benefit” from the possibility of state-administered euthanasia. There are difficult conversations to be had, as we embody our core principles of solidarity and inclusion in community dialogues about anti-ableist frameworks for suicide assistance, if such formulations can indeed be conceived. There are also tough lessons to be learned, for although nondisabled interests and antipathies have irrefutably propelled the MAID juggernaut, its embrace by our disabled kinfolk like Jean Truchon, demands a transformational, movement-wide reckoning. Prioritizing the suffering of disabled people consigned to institutions at any stage in life, and addressing the pernicious effects of states of social abandonment such as poverty, violence and toxic isolation, can no longer be sub-specialty interests in the disability sector. When we witness our own people taking the bait that MAID proffers, we have a five-alarm fire in our midst and must prioritize accordingly.

Situating ourselves in the fulcrum moments of a turbulent history, as these entreaties do, is an act of faith, a conviction that injustice can be remedied. Taken together, they form at the macro level, a further entreaty, singular in its call for vigilance, clarity and perseverance. They are an essential record of what we have seen and what we know to be true. As such, they support the enduring collective memory that sustains our culture and fuels the generational work of disability resistance and survival. In that spirit, the contributors to this volume offer our words and passion for the public record. As Bill Adair wrote in his entreaty, "It's tiring fighting for existence, but here we are."[584]

Endnotes

---

[1] On the Writing Of Contemporary History by Arthur Schlesinger Junior, published in The Atlantic, 1967. https://www.theatlantic.com/magazine/archive/1967/03/on-the-writing-of-contemporary-history/305731/

[2] Ibid.

[3] We will typically use the phrase "mental illness" because that is what appears in the law itself. However, many activists prefer to use the designation of "madness", as do many in the field of disability studies.

[4] Section 10 (1) of the 2016 law [Bill C-14] Bill C-14, An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying), 1st Session, 42nd Parliament, 2016.

[5] See meeting schedule at https://parl.ca/Committees/en/AMAD/Meetings

[6] The scope for this review was detailed in Section 5 (1) of the 2021 amendments to Canada's MAID law [Bill C-7], which received royal assent on March 17, 2021. The amended law gave the government just 30 days to initiate its review. Bill C-7, An Act to amend the Criminal Code (medical assistance in dying), 2nd Session, 43rd Parliament, 2021.

[7] https://parlvu.parl.gc.ca/Harmony/en/View

[8] https://www.parl.ca/Committees/en/AMAD

[9] For an example of one such Committee interrogation, see the Wallin/Linton exchanges of November 25, 2022 at https://parlvu.parl.gc.ca/Harmony/en/PowerBrowser/PowerBrowserV2/20221119/-1/38155?mediaStartTime=20221125094944&mediaEndTime=20221125095323&viewMode=3&globalStreamId=14. Linton's assertion that disabled people were dying "en masse" struck a nerve with Senator Wallin, who declared that the Committee “cannot have on the record that disabled persons are dying en masse because of Track 2 MAID”. Linton attempted to clarify and defend her statement but was cut off by the Committee Chair. Her fellow panelists subsequently defended Linton's accuracy and word choice; see for example correspondence from Catherine Frazee to Wassim Bouanani, Joint Clerk of the Special Committee, dated November 25, 2022.

[10] My own testimony, for example, was 760 words long, thus measuring at the low end of the continuum of word counts for witness statements. However, because of respiratory weakness that limits the speed with which I can speak, an advance recording of my testimony was 8 minutes long. The Committee approved my request for accommodation but chose a sped-up version of the recording that played in just over 6 minutes, featuring a "chipmunk-like" version of my real speaking voice. I agreed to this "compromise", albeit reluctantly. https://parlvu.parl.gc.ca/Harmony/en/PowerBrowser/PowerBrowserV2/20221125/-1/38155?mediaStartTime=20221125085439&mediaEndTime=20221125090133&viewMode=3&globalStreamId=14

[11] Byzek, Josie, 2017. 2016 People of the Year: The Resisters. In New Mobility, January 1, 2017. https://newmobility.com/2016-people-year-resisters/

[12] See for example CBC broadcast The Fifth Estate, January 19, 2023, titled "The Mess That Is MAID". When challenged by host Gillian Findlay about MAID deaths involving people who did not wish to die but could not afford to live, Justice Minister Lametti asserted that he had faith in the medical profession and further, that “This is a regime that the courts have held… the Supreme Court of Canada has held as a right that all Canadians have.”

[13] Carolyn Strange and Jennifer Stephen, Eugenics in Canada: A Checkered History, 1850s – 1990s. Chapter 31 from The Oxford Hasbrouck of the History of Eugenics, Oxford University Press, 2010. P. 523.

[14] Ibid, page 524.

[15] Inside the walls of Alberta’s institutions, for example, sterilizations of disabled, poor, Indigenous and racialized inmates continued into the 1960s under a Sexual Sterilization Act that was not repealed until 1972.

[16] Bashford, Alison. Epilogue: Where Did Eugenics Go? In supra, note 13, page 552.

[17] Often these disparagements are subtle and seemingly benign, as when justifications for MAID uncritically encode various states of undesirable physical dependency. See for example the generic “practitioner report” cited in Health Canada’s Third Annual Report on Medical Assistance in Dying in Canada 2021 at page 29. Available: https://www.canada.ca/en/health-canada/services/publications/health-system-services/annual-report-medical-assistance-dying-2021.html A patient named Jerry, the report explains, “did not want to be dependent on his wife or the care of strangers”. Increasingly explicit narratives of dependency invoke the trope of disability as intolerably burdensome. For an excellent critique of this practice, see the analysis by bioethicist Shelley Tremain in *Picard, Propaganda, and How the Mainstream Media Helps Bioethicists Help Shape the Eugenic Agenda in Canada*, published in Biopolitical Philosophy on February 8, 2024. Available: https://biopoliticalphilosophy.com/2024/02/08/picard-propaganda-and-how-the-mainstream-media-helps-bioethicists-help-shape-the-eugenic-agenda-in-canada/

Media profiles of disabled people who have died by MAID frequently conflate diminishing physical capacities with abhorrent indignity. See for example *Unassisted Death*, CBC News, https://newsinteractives.cbc.ca/longform/unassisted-death/ in which the daughter of Doreen Nowicki describes her mother’s need for care as an undoing of her personhood: "She needed someone to do all her care for her — to dress her, to toilet her, to feed her. And that loss of dignity, for her, was too much."

For some of the most graphic and derisive descriptions of disabled states, we need look no further than statements made in parliamentary committee hearings by the fiercest of MAID expansionist influencers. See for example Senator Stan Kutcher’s statement before the Special Joint Committee on Medical Assistance in Dying on May 9, 2022, in which he described a

---

fictional character with ‘stage 7’ dementia: “They are unable to self-toilet. They smear their feces on the wall or eat them. They do not recognize their family. They fall unless they're tied on to a chair.…”.

[18] Miriam Brousseau, letter to the editor, Sudbury Star, July 30, 2022 https://www.thesudburystar.com/opinion/letters/sudbury-letter-support-for-medical-assistance-in-dying. For another example of public opinion positioning MAID as a response to the "downward spiral" of Canada's health care system, see Ariano, Robert, 2024. Reasons for the increase in MAID. Letter to the Toronto Star, February 10, 2024. https://www.thestar.com/opinion/letters-to-the-editor/i-do-not-want-to-plan-a-suicide-i-simply-want-to-end-my-tragic/article_f38aa9c2-c5fa-11ee-9db5-8398a7251643.html

[19] For a more fulsome discussion of how this prohibition plays out, see Frazee, C., Assisted Dying and the Lessons of History. Policy Options, June 6, 2017 https://policyoptions.irpp.org/magazines/june-2017/assisted-dying-lessons-history/

[20] Peters, Gabrielle. This issue.

[21] Linton, Megan. This issue.

[22] Mills, C. J. (2007). Biopolitics, liberal eugenics, and nihilism. In M. Calarco, & S. DeCaroli (Eds.), Giorgio Agamben: Sovereignty and Life (pp. 180 - 202). Stanford University Press.

[23] Margaret Lock, “Genomics, Laissez-Faire Eugenics, and Disability,” in Disability in Local and Global Worlds, eds. Benedicte Ingstad and Susan Reynolds Whyte (Berkeley, CA: University of California Press, 2007), 190.

[24] Grant, Isabel. This issue.

[25] Michael Rembis, "Disability and the History of Eugenics". Chapter 5 in The Oxford Handbook of Disability History (Oxford Handbooks). Oxford University Press. 2010, p. 87.

[26] Ibid., p. 96

[27] Carr, Krista. This issue.

[28] Saulis, Conrad. This issue.

[29] Rodriguez v. British Columbia (Attorney General), [1993] 3 S.C.R. 519 – https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1054/index.do

[30] R. v. Latimer, [2001] 1 S.C.R. 3, 2001 SCC 1 – https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1836/index.do

[31] This was the phrase used to describe Robert Latimer by the Chief Justice of the Saskatchewan Court of Appeal, Edward Bayda, in a dissenting opinion in Robert Latimer's 1995 appeal from his conviction and sentencing for second-degree murder. The appeal was denied, with Bayda dissenting. Bayda, himself from a Saskatchewan farming family, would have awarded a more lenient sentence for Latimer, granting a constitutional exemption from the mandatory minimum for second-degree murder. https://ca.vlex.com/vid/r-v-latimer-r-681196861

On the occasion of Bayda's retirement in 2006, he told CBC that "he still feels Latimer was motivated by love" and that "he should have been given some sort of credit for that". https://www.cbc.ca/news/canada/saskatchewan/saskatchewan-s-chief-justice-stepping-down-1.592038

[32] As described in Uncommon Will: the death and life of Sue Rodriguez" by Lisa Hobbs Birnie with Sue Rodriguez. CDG Books Canada, 1994.

[33] Woodward, Joe. "Trial by Popularity" Alberta Report, November 24, 1997. United Western Communications. Edmonton.

[34] Enns, Ruth. A Voice Uneard: The Latimer Case and People with Disabilities. Fernwood Publishing, 1998.

[35] For more information about the Right to Die Society of Canada, see the "about us" section of their website at https://www.righttodie.ca/

[36] Hofsess, John. "By the time you read this, I'll be dead", Toronto Life, February 29, 2016. https://torontolife.com/life/john-hofsess-assisted-suicide/

[37] Bereza, Eugene. The Private and Public Deaths of Sue Rodriguez (1994) 39 McGill L.J. 719

[38] According to Rodriguez's friend and supporter, Svend Robinson, high levels of interest in the case account for its being one of the first in Supreme Court of Canada history to be televised. https://www.cbc.ca/news/canada/british-columbia/svend-robinson-remembers-assisted-suicide-trailblazer-sue-rodriguez-1.2948174

[39] Robinson, Svend. *Revisiting Rodriguez*. CMAJ. 2014 Nov 4; 186(16): 1264. https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4216270/

[40] Sobsey, Dick. “The Media and Robert Latimer.” Arch Type 13:3 (August, 1995): 8-22 [Newsletter of the Advocacy Resource Centre for the Handicapped (now ARCH Disability Law), Toronto]. Available: https://15285public.rmwebopac.com/item/faZ5CPdfmECrNHvh6fSQCQ_i_X_H_SUvEW9QyfkLS9JyQ

[41] Janz, Heidi. Disabling Images and the Dangers of Public Perception (1998) 9:3 Constitutional Forum https://journals.library.ualberta.ca/constitutional_forum/index.php/constitutional_forum/article/view/12074/917 3

[42] *R*. v. *Latimer*, [1995] S.J. No. 402, para. 155.

[43] Peters, Gabrielle. This issue.

[44] Supra, note 30, paragraph 41.

[45] Stainton, Timothy. This issue.

[46] Coalition of Provincial Organizations of the Handicapped (now the Council of Canadians with Disabilities) 1993. “Rodriquez Case Factum, Court File No. 23476 in the Supreme Court of Canada.” http://www.ccdonline.ca/en/humanrights/endoflife/euthanasia/rodriguez

[47] Wiebe, Rhonda, and Jim Derksen. 2010. “Canadians with Disabilities – We Are Not Dead Yet.” Submission to Parliamentary Committee on Palliative and Compassionate Care, June 16. http://www.ccdonline.ca/en/humanrights/endoflife/euthanasia/Canadians-with-disabilities-we-are-not-dead-yet

[48] Established in 1980 as Dying with Dignity. Currently known by its later expanded name, Dying with Dignity Canada.

---

[49] Martin, Sandra. A Good Death (p. 344). HarperCollins Canada. 2016

[50] The Court in Carter reviewed evidence of existing assisted dying regimes in the US (states of Oregon, Washington and Montana), European regimes in Belgium, Netherlands, Switzerland and Luxembourg, and the South American nation of Colombia.

[51] Supra, note 49, p. 265.

[52] Supra, note 49, p 271.

[53] Carter v. Canada (Attorney General), 2012 BCSC 886. Paragraphs 114, 160.

[54] Supra, note 49, p. 270.

[55] Supra, note 53, para 23-24.

[56] Todd, Douglas. "*The story at the heart of Friday's Supreme Court ruling on assisted suicide*". Vancouver Sun. February 4, 2015. https://vancouversun.com/news/staff-blogs/b-c-woman-chooses-a-dignified-death-in-switzerland

[57] CBC. The Fifth Estate. *The Life and Death of Gloria Taylor.* October 12, 2012. https://www.youtube.com/watch?v=7blnXINYTOM

[58] Ibid. At 34:15.

[59] Criminal Code, R.S.C., 1985, c. C-46, s. 241.

[60] Supra, note 49, para 1158.

[61] Canadian Charter of Rights and Freedoms, s 7, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11.

[62] Carter v. Canada (Attorney General), 2015 SCC 5, [2015] 1 S.C.R. 331, para 66.

[63] Supra, note 53, para 1322.

[64] Eastwood, Kevin, for the BC Civil Liberties Association, 2015. "This Ruling Changes Everything: The Story of Carter v. Canada". 16.53 minutes. At 1:50 through 4:32. Available at https://www.youtube.com/watch?v=HBQtHDsncEU&t=3s

[65] Ibid.

[66] Note however, later in this chapter, how the narrative of an early death forced by circumstances upon a person wishing to continue living, makes a resurgence in advocacy for MAID advanced directives, beginning with the Audrey Parker campaign in 2018.

[67] Fidelman, Charlie, 2016. *Life in long-term hospital "unbearable": Montréal man with ALS.* Montréal Gazette, June 27, 2016. Available at https://montrealgazette.com/news/local-news/life-in-long-term-hospital-unbearable-montreal-man-with-als

[68] Daflos, Penny, 2019. *'We need a public outcry': BC father with ALS ends life after struggle to stay at home.* CTV News, August 9, 2019. Available at https://bc.ctvnews.ca/we-need-a-public-outcry-b-c-father-with-als-ends-life-after-struggle-to-stay-at-home-1.4543983

[69] Hoye, Bruce, for CBC News. "Winnipeg woman who chose to die with medical assistance said struggle for home care led to decision". October 4, 2022. Available at https://www.cbc.ca/news/canada/manitoba/sathya-dharma-kovac-als-medical-assistance-in-death-1.6605754

[70] Grant, Isabel. This issue.

[71] Maher, John. This issue.

[72] Pastine, Grace. February 6, 2015. "The death with dignity decision explained". British Columbia Civil Liberties Association. Available at https://bccla.org/2015/02/the-death-with-dignity-decision-explained/

[73] Addressing a different but related question of whether opting out of MAID provision on ethical or conscientious grounds is a defensible practice, Brian Bird has observed that "… euthanasia provided by the health-care system cannot be seen as a freestanding right under the Charter of Rights and Freedoms, because the court has elsewhere ruled that there is no freestanding constitutional right to health care. It would be logically inconsistent to suggest that there is a positive Charter right to euthanasia when there is no correlating right to dialysis, chemotherapy or any other life-saving health service. In fact, offering death as a "solution" when those services may not be readily accessible raises significant Charter concerns." Bird, Brian, 2024. Sanctuaries from euthanasia must be protected. National Post, February 19, 2024. https://nationalpost.com/opinion/brian-bird-sanctuaries-from-euthanasia-must-be-protected

[74] Supra, note 53, para 1283.

[75] Supra, note 53, para 342.

[76] Lemmens, Trudo. This issue.

[77] Supra, note 72.

[78] World Federation of Right to Die Societies, 2015. "Dying with Dignity Canada celebrates BC (sic) Supreme Court victory" February 7, 2015. Available at https://wfrtds.org/dying-with-dignity-canada-celebrates-bc-supreme-court-victory/

[79] Ibid.

[80] Grant, Kelly 2015. "Canada Revenue Agency annuls Dying with Dignity's charitable tax status". Globe and Mail January 20, 2015. Available at https://www.theglobeandmail.com/news/politics/cras-political-activity-audit-strips-dying-with-dignity-of-charitable-tax-status/article22534463/The NGO did not regain its status as a national charity until November 2018. See Dying with Dignity Canada Annual Report, 2018 at https://dyingwithdignity.ca/wp-content/uploads/2022/03/DWDC_2018_AnnualReport.pdf

[81] Orsini, Michael and Kelly, Christine. 2015 "Assisted suicide and the erasure of disability" February 10, 2015. Winnipeg Free Press. Available at https://www.winnipegfreepress.com/opinion/analysis/2015/02/10/assisted-suicide-and-the-erasure-of-disability

---

[82] Council of Canadians with Disabilities and Canadian Association for Community Living, 2015. "Assisted Suicide Decision Changes Landscape, Makes Disability a Defining Issue". February 6, 2015. Available at http://www.ccdonline.ca/en/humanrights/endoflife/media-release-6Feb2015

[83] Supra, note 62, para 107.

[84] Supra, note 53, para 109.

[85] Supra, note 53, paras 114-115.

[86] Supra, note 62, para 115.

[87] As detailed in the affidavit of Michael Bach in the Carter case at the Supreme Court of Canada in November 2013. See http://www.ccdonline.ca/en/humanrights/endoflife/bach-affidavit-carter-case

[88] A person or organization that is not a party to a legal proceeding but can demonstrate that they have an interest and/or will be affected by the case outcome can make a request with the Court for Intervenor status. At the Court's discretion, if their submissions will be substantially different from those of the parties and are likely to be of assistance to the Court, such persons or organizations can be approved as Intervenors and permitted to make submissions in accordance with guidelines specified by the Court.

[89] Supra, note 53. The following groups had applied for and been approved as intervenors in the Carter trial by the BC Supreme Court: Farewell Foundation for the Right to Die; Euthanasia Prevention Coalition; Christian Legal Fellowship; Canadian Unitarian Council; and Ad Hoc Coalition of People with Disabilities Who Are Supportive of Physician-Assisted Dying.

[90] Canada's two leading national disability rights organizations, the Council of Canadians with Disabilities and the Canadian Association for Community Living (now Inclusion Canada) became heavily involved as intervenors when Carter was appealed to the BC Court of Appeal and ultimately the Supreme Court of Canada. What may now be seen as a critical absence at trial level may be explained by internal calculations of timelines, resourcing and litigation capacity. It is likely that both organizations considered it somewhat unlikely at the time that BCCLA would achieve a complete reversal of established Supreme Court precedent and mobilize a sweeping and unprecedented new authority for medical practitioners in Canada.

[91] Supra, note 53, paragraph 160.

[92] Frazee, Catherine. Affidavit for the Attorney General of Canada at the BC Supreme Court in the Carter case. October 11, 2011. My expert opinion affidavit was prepared hastily and under difficult personal circumstances. At the request of counsel for the Attorney General, it addressed in very broad terms the question of "potential impact of legalized assisted suicide for people with disabilities in Canada, taking into account the broader social context of disability disadvantage and the particular dynamics of medical care in relation to disability".
In addition, lay affidavit evidence was provided to the BC Court by two highly respected disability rights advocates, Rhonda Wiebe and David Martin. Their evidence was regrettably given little weight in the Court's judgement.

[93] Supra, note 62, para 1.

[94] See supra, note 62, para 84: "The object of the prohibition on physician-assisted dying is to protect the vulnerable from ending their life in times of weakness."

[95] Supra, note 62, para 86.

[96] Supra, note 62, para 115.

[97] See for example Fineman, Martha Albertson, Vulnerability and Social Justice (March 14, 2019). 53 Valparaiso University Law Review, 2019, Available at http://dx.doi.org/10.2139/ssrn.3352825. Also Frazee, Catherine, 2016. "The Vulnerable": Who Are They?" Canadian Virtual Hospice 2016. Available at https://www.virtualhospice.ca/en_US/Main+Site+Navigation/Home/For+Professionals/For+Professionals/The+Exchange/Current/%e2%80%9cThe+Vulnerable%e2%80%9d_+Who+Are+They_.aspx

[98] For a personal reflection on the uneasy strategic choices about investing efforts toward the project of safeguarding "vulnerable persons" from harm in Canada's new regime, see Frazee, Catherine with Kelly, Christine and Orsini, Michael, eds., *The Interview*, in Dispatches from Disabled Country. 2023. University of British Columbia Press. pp. 226-230.

[99] For example, "Denise", a woman with multiple chemical sensitivities who has applied for MAID said, "when people are backed into a corner, living in poverty for years on end it doesn't feel like a choice anymore." Favaro, Avis , 2022. "Woman with disabilities nears medically assisted death after futile bid for affordable housing". CTV News, May 4, 2022. Available at https://www.ctvnews.ca/health/woman-with-disabilities-nears-medically-assisted-death-after-futile-bid-for-affordable-housing-1.5882202#:~:text=Why%20this%20Toronto%20woman%20is%20seeking%20MAID&text=A%2031%2Dyear%2Dold%20Toronto,t%20worsen%20her%20chronic%20illnesses.

[100] Joffe, Kerri. This issue.

[101] Maher, John. This issue.

[102] Mishara, Brian. This issue.

[103] Nichols, Trish and Gary. This issue.

[104] Supra, note 62, para 125.

[105] Supra, note 62, para 147.

[106] Vulnerable Persons Standard. 2016. Available at http://www.vps-npv.ca/

[107] These pillars of the VPS benchmark were articulated at its launch in the parliamentary press gallery on March 1, 2016. See https://www.ctvnews.ca/video?clipId=819672

[108] Vulnerable Persons Standard, 2016. *2. End-of-Life Condition*. See http://www.vps-npv.ca/read-the-standard-20

---

[109] Bill C-14, An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying), 1st Session, 42nd Parliament, 2016. For more detailed legislative history of Bill C-14, see parliamentary records at https://www.parl.ca/LegisInfo/en/bill/42-1/C-14 and legislative summary at https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/LegislativeSummaries/421C14E#a10

[110] Ibid. "Preamble".

[111] Patterson, Josh, 2016. "Press Release: Assisted Dying – Plaintiffs in court challenge criticize legislation". British Columbia Civil Liberties Association, April 14, 2016. Available at http://bccivillibertiesassociation.cmail20.com/t/ViewEmail/j/7874553B627EE5E0/2B238B4BC1708D39FCACEB58A033025D

[112] Gokool, Shanaaz, 2016. Statement at Press Conference hosted by Dying with Dignity Canada and reported by CTV News with the heading *Dying with Dignity Slams Bill*, April 14, 2016. Available at https://www.ctvnews.ca/video?clipId=849696&jwsource=em

[113] Picard, Andre, 2016. "Risk-averse assisted-death law fails Canadians who are suffering" Globe and Mail, April 14, 2016. Available at https://www.theglobeandmail.com/news/national/risk-averse-assisted-death-law-shows-contempt-for-committees-advice/article29632838/

[114] Supra, note 109, section 241.2(2)(d)

[115] Supra, note 109, Preamble.

[116] Wilson-Raybould Hon. Jody, 2016. Testimony before the Standing Senate Committee on Legal and Constitutional Affairs. 42nd Parliament, 1st Session, Issue No. 8, *Evidence* May 4, 2016. Available at https://sencanada.ca/en/Content/Sen/Committee/421/LCJC/08EV-52539-E

[117] Ibid.

[118] For an early articulation of the conundrum that Bill C-14 presented to disability rights advocates, see Frazee, Catherine, 2016. Supreme Court now permits some Canadians to approach death on their own terms: who should those Canadians be? The Hill Times, June 6, 2016. https://www.hilltimes.com/story/2016/06/06/a-supreme-court-judgment-now-permits-some-canadians-to-approach-death-on-their-own-terms-who-should-those-canadians-be/279038/

[119] See for example, Pothier, Dianne, 2016. Post D-Day. Legal memorandum, April 21, 2016. Available at https://static1.squarespace.com/static/56bb84cb01dbae77f988b71a/t/571a26aC-746fb922e0acdb17/1461331628302/Pothier+memo+--+Post+June+6.pdf

[120] The Senate conducted a pre-study of Bill C-14 in five days of hearings before the Standing Senate Committee on Legal and Constitutional Affairs. Following 2nd reading of the Bill in the House of Commons, the Standing Committee on Justice and Human Rights held multiple days of hearings. Full proceedings of these hearings as well as parliamentary debates on the Bill are available at https://www.parl.ca/LegisInfo/en/bill/42-1/C-14?view=progress.

[121] Four of the contributors to this issue were invited to testify at these hearings: Michael Bach, Sonu Gaind, Trudo Lemmens and Catherine Frazee.

[122] Gaind, Sonu, 2016. Testimony before the Standing Committee on Legal and Constitutional Affairs. 42nd Parliament, 1st Session, May 11, 2016. Available: https://sencanada.ca/en/Content/Sen/Committee/421/LCJC/09EV-52581-E

[123] Gaind, Sonu. This issue.

[124] For an early example of how these deep cultural ruptures operated to vilify impartial voices and to punish those who sought to encourage fairness and balance in policy discussions subsequent to the Carter decision, see Galloway, Gloria, 2016. CARP exec says she was fired over neutral approach to assisted dying. Globe and Mail, January 27, 2016. https://www.theglobeandmail.com/news/politics/carp-canada-exec-says-she-was-dismissed-over-assisted-dying-approach/article28417242/

[125] Bach, Michael, 2016. Testimony before the Standing Committee on Legal and Constitutional Affairs. 42nd Parliament, 1st Session, May 10, 2016. Available: https://sencanada.ca/en/committees/LCJC/noticeofmeeting/426807/42-1

[126] Ibid.

[127] Acronym for the Federation of Medical Regulatory Authorities of Canada, the national body of 13 provincial and territorial Colleges of Physicians and Surgeons and similar professional authorities across Canada. For more information, see https://fmrac.ca/

[128] Supra, note 125.

[129] MacCharles, Tonda, 2016. "Senate amends assisted dying Bill to bar some from helping in process". Toronto Star, June 10, 2016. Available at https://www.thestar.com/news/canada/2016/06/10/senate-amends like-assisted-dying-bill-to-bar-some-from-helping-in-process.html

[130] The coalition that came together to organize this event included the Council of Canadians with Disabilities, the Canadian Association for Community Living, the National Mental Health Inclusion Network, Disabled Women's Network of Canada, People First of Canada and the Canadian Down Syndrome Society. For a more fulsome articulation of their collective position on Bill C-14, see "A Call to Parliamentarians from the National Disability Rights Community", May 31, 2016. Available at https://static1.squarespace.com/static/56bb84cb01dbae77f988b71a/t/57603e714c2f859a20472fb5/1465925235046/-+30+-+Press+Release+-+Open+Letter+to+Parliamentarians+-+May+31+-+FINAL.pdf

---

[131] National Disability Rights Community Forum for Robust Safeguards in Bill C-14, Ottawa, June 16, 2016. Archival video recording available at http://video.isilive.ca/drc/2016-06-16/english.html

[132] Nicol, Julia and the Tiedemann, Marlisa 2016. Legislative Summary of Bill C-14: An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying). Library of Parliament. 42nd Parliament, 1st Session. April 21, 2016. Revised September 27, 2018. Available at https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/LegislativeSummaries/421C14E#a20

[133] Bryden, Joan, 2019. "David Lametti's appointment as Justice Minister raises hope for less restrictive assisted-dying law". The Globe and Mail, January 16, 2019. Available at https://www.theglobeandmail.com/canada/article-david-lamettis-appointment-as-justice-minister-raises-hope-for-less/. Although Lametti and others had been vocal in their interpretation of the constitutionality of the RFND requirements, other constitutional law experts in Canada had reasoned to the contrary, that Bill C-14 was consistent with the requirements of the Charter as applied in the Carter case. See for example, Pothier, Dianne , 2016. Doctor-assisted death bill falls well within top court's ruling. Policy Options, April 29, 2016. Available at https://policyoptions.irpp.org/2016/04/doctor-assisted-death-bill-falls-well-within-top-courts-ruling and Lemmens, Trudo and Kim, Heesoo and Kurz, Elizabeth, Why Canada's Medical Assistance in Dying Legislation Should Be C(h)arter Compliant and What It May Help to Avoid (March 19, 2018). (2018) 11(1) McGill Journal of Law and Health 61-148, Available at https://ssrn.com/abstract=3143935

[134] Tunney, Catharine, 2016. "Liberals' assisted-dying Bill is now clearing final hurdles". CBC, June 17, 2016. Available at https://www.cbc.ca/news/politics/assisted-dying-bill-senate-approval-1.3640195

[135] An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying). Statutes of Canada 2016, Chapter 3, Section 241.2(2). Available at https://www.parl.ca/Content/Bills/421/Government/C-14/C-14_4/C-14_4.PDF

[136] The crowdfunding campaign for this challenge raised its first $25,000 in 6 hours, and in just one week met its goal of $75,000. https://bccla.org/2016/07/we-did-it/

[137] Lamb v Canada (Attorney General). Notice of Civil Claim in the Supreme Court of British Columbia, paragraph 10, filed June 27, 2016. Available at http://eol.law.dal.ca/wp-content/uploads/2016/07/Lamb-v-Canada.pdf According to the Statement of Claim, persons with SMA Type 2 typically "live through their 40s and 50s". As a personal note, the author also has a confirmed genetic diagnosis of SMA Type 2 and recalls a clinical profile in her young adult years that is eerily similar to that described in the details of the plaintiff's statement of claim. At the time of writing this article, the author is 70 years old.

[138] Lamb, J. Second affidavit of Julia Lamb. Filed in the Supreme Court of British Columbia on December 13, 2018. Para 45.

[139] For a more extensive critique of the myths and distortions that appeared to underpin Lamb's mental suffering and media depictions of her anguish, see *Lamb Affidavit* in Frazee, C. 2023. Dispatches from Disabled Country. UBC Press, 2023.

[140] Stone, L. and Fine, S. 2016. *BC woman, rights group file legal challenge against assisted-dying law* The Globe and Mail, June 27, 2016. Available at: https://www.theglobeandmail.com/news/politics/rights-group-launches-legal-challenge-of-assisted-dying-law/article30623211/

[141] Globe and Mail, 2016. Legal challenge to assisted-death law could expose Ottawa's gamble as flawed. Editorial. June 16, 2016. https://www.theglobeandmail.com/opinion/editorials/new-challenge-to-assisted-death-law-could-expose-ottawas-gamble-as-flawed/article30653265/

[142] For example, respiratory capacity for people with SMA2 and similar neuromuscular conditions is boosted by intermittent, non-invasive ventilation and simple practices of lung volume recruitment, or LVR. As well, a wide range of assistive technologies from simple bluetooth switches to sophisticated eye tracking systems provide full control of computers, telephones and other communication devices for people with limited strength, vocal capacity or manual dexterity.

[143] "MAIDism" is a term coined by Dr. Harvey Schipper to describe "a disease where the prospect of arranging one's suicide leads to an increase in suffering for both the patient and those surrounding them." See Schipper, Harvey, 2020. Understanding the new epidemic disease of MAIDism. Inside Policy, November 12, 2020. McDonald Laurier Institute. https://macdonaldlaurier.ca/new-epidemic-disease-MAID

[144] Dr. Madeline Li has used the concept of iatrogenicity to describe situations where raising the subject of MAID to persons suffering some form of distress is harmful to that person's well-being. See for example, NPR, 2022. *Canada is expanding categories for medically assisted death* Michael Martin interviews Dr. Madeline Li for All Things Considered, December 11, 2022. https://www.npr.org/2022/12/11/1142141146/canada-is-expanding-categories-for-medically-assisted-death

[145] British Columbia Civil Liberties Association, 2016. Notice of Civil Claim filed in the Supreme Court of British Columbia on June 27, 2016 in the matter of Julia Lamb and British Columbia Civil Liberties Association and Attorney General of Canada. Paragraph 20b. Available: http://eol.law.dal.ca/wp-content/uploads/2016/07/Lamb-v-Canada.pdf

[146] Supra, note 138.

[147] Mishara, Brian. This issue.

[148] Grant, Isabel. This issue.

[149] ARCH Disability Law, 2022. Request for Thematic Hearing during the 184 Period of Sessions of the Inter-American Commission on Human Rights. August 15, 2022. Available: https://archdisabilitylaw.ca/request-to-inter-american-commission-on-human-rights-for-hearing-on-MAID/

[150] For a fuller description of the project, see Broverman, A., 2016. *Project Value Asserts Disability Is Not Worse Than Death*. New Mobility. August 10, 2016. Available: https://newmobility.com/project-value-asserts-disability-is-not-worse-than-death/

[151] Between July 2016 and April 2017, Project Value published 27 short videos and essays from a diversity of disabled contributors. These are available at https://www.facebook.com/whyuscanada/videos

---

[152] Included in the evidence prepared for the trial were more than a dozen detailed lay affidavits prepared by disabled persons, detailing the effects of medical ableism and disability stereotypes affecting their well-being, and reflecting on how removing the RFND requirement for MAID would put them in harm's way and undermine their equality and "peace of mind". For examples see Affidavit of Ian Parker at https://sencanada.ca/Content/Sen/Committee/432/LCJC/briefs/Brief_IanParker_e.pdf and Excerpt from Affidavit of Catherine Frazee at supra, note 139.

[153] Supra, note 32.

[154] McIlvride, David, 2014. Gloria and Me. Documentary film. https://fremantlecorp.com/categories/documentaries/gloria-and-me.aspx

[155] Lamb, Julia, 2020. Submission to the Standing Committee on Legal and Constitutional Affairs. November 26, 2020. Available: https://bccla.org/wp-content/uploads/2020/12/2020-11-25-Julia-Lamb-Written-Statement-Bill-C-7_final.pdf

[156] Application for a Declaratory Judgement, Superior Court of Québec. [English translation.] Jean Truchon and Nicole Gladu v. Attorneys General of Canada and Québec. June 13, 2017.

[157] Truchon [2019] QCCS 3792, para. 21. Available at: https://www.canlii.org/en/qc/qccs/doc/2019/2019qccs3792/2019qccs3792.html

158 Supra, note 156, para 10. Cited in supra, note 157, para 19.

[159] Supra, Note 156, paragraphs 25-26.

[160] Peters, Gabrielle. This issue.

[161] Supra, note 157, paras 24-26.

[162] Supra, note 156, at para. 38.

[163] Stevenson, Verity, 2017. 2 Montrealers with degenerative diseases challenge medically assisted dying law. CBC News, June 14, 2017. https://www.cbc.ca/news/canada/montreal/assisted-dying-quebec-canada-legal-challenged-1.4160016

[164] Martin, Stephanie, for The Canadian Press. "*I Died in 2012": Plaintiffs challenging assisted-death laws seek an end to suffering.* National Post. January 8, 2019. Available: https://nationalpost.com/news/canada/plaintiff-in-assisted-death-case-says-he-wants-an-end-to-suffering

[165] Linton, Megan. This issue.

[166] See Linton, Megan, 2022. Invisible Disabilities Podcast, episode 7: *Life and Death In Canada's Institutions.* https://invisibleinstitutions.com/invisible-institutions-podcast-episode-7; and Martens, Kathleen, 2023. *MAID in prison: nine inmates have used Canada's assisted-death program.* APTN News, April 20, 2023. https://www.aptnnews.ca/national-news/MAID-in-prison-nine-inmates-have-used-canadas-assisted-death-program/. Also Favaro, Avis, 2023. *The number of medically-assisted deaths in Canada's prisons a concern for some experts.* CTV News, May 3, 2023. https://www.ctvnews.ca/health/the-number-of-medically-assisted-deaths-in-canada-s-prisons-a-concern-for-some-experts-1.6380440. Another case example of MAID in the context of deplorable conditions of long-term care include the story of Dav Langstroth, who died by MAID in 2023 after experiencing "dehumanizing treatment" in institutional care. See McGrath-Goudie, Greg, 2023. *'Circle is broken': Long-term care resident to undergo MAID Oct. 23.* Orillia Matters, October 12, 2023. https://www.orilliamatters.com/local-news/circle-is-broken-long-term-care-resident-to-undergo-MAID-oct-23-7674637

[167] Supra, note 156 at paragraph 88.

[168] Supra, note 156 at paragraph 90.

[169] Supra, note 156 at paragraph 100.

[170] Bryden, Joan. 2020. *MAID litigant says disability doesn't make her vulnerable to pressure to end her life* Toronto Star, December 16, 2020. The Canadian Press. Available: https://www.thestar.com/politics/2020/12/16/MAID-litigant-says-disability-doesnt-make-her-vulnerable-to-pressure-to-end-her-life.html

[171] Lowrie, Morgan. 2017. *Montrealers file legal action contesting restrictions on medical aid in dying* Hamilton Spectator. June 14, 2017. The Canadian Press. Available: https://www.thespec.com/news/canada/montrealers-file-legal-action-contesting-restrictions-on-medical-aid-in-dying/article_b9779a0b-eC-7c-5e34-9cb0-5fa60c18589a.html

[172] See, for example, Smith, Derryck, 2022. Testimony before the Special Joint Committee on Medical Assistance in Dying. 44th Parliament, First Session. May 25, 2022. Available: https://parl.ca/DocumentViewer/en/44-1/AMAD/meeting-8/evidence

[173] Pellus, Johannna. 2022. *Nicole Gladu, Québec advocate of medical aid in dying, dies of natural causes.* The Toronto Star. April 1, 2022. The Canadian Press. Available: https://www.thestar.com/news/canada/2022/04/01/nicole-gladu-quebec-advocate-of-medical-aid-in-dying-dies-of-natural-causes.html

[174] Jama, Sarah. This issue.

[175] See bell hooks, Feminism Is for Everybody: Passionate Politics, 2nd ed (New York: Routledge, 2015) at 5.

[176] Grant, Isabel; Benedet, Janine; Sheehy, Elizabeth; and Frazee, Catherine, 2024. A Conversation on Feminism, Ableism, and Medical Assistance in Dying. Canadian Journal of Women and the Law, forthcoming. At pp. 38-39.

[177] See for example the testimony of Mausumi Banerjee, Director of the federal government's Office for Disability Issues, who testified before the Special Joint Committee on Medical Assistance in Dying on April 13, 2022. When asked about "different perspectives… within the disability community", Banerjee replied that "there are many different views… It's quite divided throughout the community". https://www.parl.ca/DocumentViewer/en/44-1/AMAD/meeting-2/evidence For a more acrimonious illustration, see Thurley, Peter, 2022. Disabled People As Pawns in the Medical Aid in Dying Debate. Blog post, May 29, 2022. https://pfthurley.substack.com/p/disabled-people-as-pawns-in-the-medical-8d1

[178] Private correspondence from Nicolas Rouleau, counsel representing CCD and CACL, November 9, 2018.

[179] Arvay, Joseph. Correspondence addressed to the Supreme Court of British Columbia, September 6, 2019. Available at: https://bccla.org/wp-content/uploads/2019/09/2019-09-06B-LT-Court_adjournment-of-triaL.pdf

---

[180] Canadian Association of MAID Assessors and Providers, 2017. The Clinical Interpretation of "Reasonably Foreseeable": Clinical Practice Guideline. June 2017. Available at https://camapcanada.ca/wp-content/uploads/2022/02/Clinical-Interpretation-of-Reasonably-Foreseeable.pdf This Clinical Practice Guideline was updated by CAMAP to apply more expansively in February 2022. See Canadian Association of MAID Assessors and Providers, 2022. The Interpretation and Role of “Reasonably Foreseeable” in MAID Practice, February 2022. https://camapcanada.ca/wp-content/uploads/2022/03/The-Interpretation-and-Role-of-22Reasonably-Foreseeable22-in-MAID-Practice-Feb-2022.pdf

[181] As cited in supra, note 179.

[182] Although AQDMD (the Québec Association for the Right to Die with Dignity) boasts of its "involvement" in the case, the nature and extent of that involvement is unspecified. See AQDMD website at https://aqdmd.org/en/our-actions/#the-aqdmds-six-major-actions

[183] Website of Ménard, Martin Avocats law firm. Available: https://menardmartinavocats.com/en/news/prix-de-la-justice-du-quebec

[184] Radio-Canada. Dying with Dignity: Québec creates a committee of expert jurists. June 14, 2012. Available at: https://www.huffpost.com/archive/qc/entry/mourir-dans-la-dignite-quebec-cree-un-comite-de-juristes-expert_n_1598068

[185] Ménard, Jean-Pierre, Giroux, Michelle and Hébert, Jean-Claude. Report of the Committee of Legal Experts on the Implementation of the Recommendations of the Special Committee of the National Assembly on the Question of Dying with Dignity January, 2013. Available in French only at https://www.msss.gouv.qc.ca/inc/documents/ministere/salle-de-presse/rapport_comite_juristes_experts.pdf

[186] CBC News. Québec to proceed with 'dying with dignity' legislation. January 15, 2013. Available at https://www.cbc.ca/news/canada/montreal/quebec-to-proceed-with-dying-with-dignity-legislation-1.1307518

[187] For a full record of the parliamentary proceedings for Bill 52, see https://www.assnat.qc.ca/en/travaux-parlementaires/projets-loi/projet-loi-52-40-1.html

[188] Dyer, Owen, 2014. Québec passes right-to-die law. Canadian Medical Association Journal, 186 (10)). July 8, 2014. Available at: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4081232/ Also, CBC News, 2014. Québec passes landmark end-of-life-care bill. CBC News, June 5, 2014. Available: https://www.cbc.ca/news/canada/montreal/quebec-passes-landmark-end-of-life-care-bill-1.2665834

[189] Government of Canada. Legislative Background: Medical Assistance in Dying, Part 3 – Relation to Québec's Law. Available: https://www.justice.gc.ca/eng/rp-pr/other-autre/adra-amsr/p4.html#:~:text=The%20National%20Assembly%20of%20Quebec,%2C%20on%20December%2010%2C%202015.

[190] See https://www.nicolasrouleau.com/

[191] An intervenor is an entity, other than the parties to litigation, that is permitted to participate in the proceedings in a limited way in order to provide the decision-maker with a perspective that goes beyond that which the parties themselves can or will offer. In cases such as Truchon and Gladu that raise questions of a constitutional nature, intervenors such as CCD and CACL with expertise on disabled people’s experiences of discrimination and social disadvantage can assist the court in appreciating the broader implications of the Court’s judgement in the particular case at hand. Intervenors are generally permitted to supply a written summary of their perspective on the case and to make closing oral submissions within time limits prescribed by the Court. Unlike parties, however, they are not permitted to introduce evidence or to examine or cross-examine witnesses; nor are they permitted in any way to enter the fray of the proceedings, which remain a dispute between the parties.

[192] Personal communication (email) with Nicolas Rouleau, January 10, 2018.

[193] Truchon v Canada (AG), pretrial ruling on intervention applications, February 1, 2018.

[194] An illustration of how the testimony of lay witnesses can shed light on the nature and sources of Jean Truchon's suffering can be found for example in an August 2017 email to Jonathan Marchand, a disabled activist who fought for the right for disabled persons to live with adequate assistance at home. Truchon confided (translated from French), “I want to thank you for your interest in my cause. In response to your question concerning home care, I think that actually if there were services of 70 hours and more, I would have preferred to stay at home and possibly I would not have had the same wish to die.”

[195] *Truchon v Canada (AG)*, pretrial ruling on expert evidence, February 1, 2018.

[196] Supra, note 157, paragraphs 274-287.

[197] A phrase coined to describe research findings that disabled person's' self-perception of well-being and satisfaction are strikingly discordant with the so-called "objective" expectations of nondisabled others. See Albrecht GL, Devlieger PJ. The disability paradox: high quality of life against all odds. Soc Sci Med. 1999 Apr;48(8):977-88.

[198] Supra, note 157, paragraph 283.

[199] Supra, note 157161, paragraph 307.

[200] Supra, note 157161, paragraph 308.

[201] Supra, note 157161, paragraph 310.

[202] Supra, note 157161, paragraphs 511-638.

[203] Supra, note 157161, paragraphs 639- 684.

[204] Supra, note 62, paragraph 78.

[205] Supra, note 109, "Preamble".

[206] Supra, note 157161, paragraph 551.

[207] Supra, note 157161, paragraph 555.

[208] Supra, note 157161, paragraph 506.

[209] Supra, note 157161, paragraph 556.

---

[210] Supra, note 157161, paragraphs 253 and 273.

[211] Sheehy, Elizabeth, this issue.

[212] Inclusion Canada, 2019. Advocates Call for the Disability-Rights Based Appeal of the Québec Superior Court's Decision in Truchon and Gladu. October 4, 2019. Available: https://inclusioncanada.ca/2019/10/04/advocates-call-for-disability-rights-based-appeal-of-the-quebec-superior-courts-decision-in-truchon-gladu/

[213] Lemmens, Trudo and Jacobs, Laverne, 2019. The latest medical assistance in dying decision needs to be appealed: Here's why. The Conversation, October 9, 2019. Available: https://theconversation.com/the-latest-medical-assistance-in-dying-decision-needs-to-be-appealed-heres-why-124955

[214] Ibid.

[215] Panetta, Alexander 2019. Why Trudeau's political survival hinges on Québec. Politico, October 7, 2019. Available: https://www.politico.com/news/2019/10/07/canada-justin-trudeau-political-survival-quebec-028907

[216] Canadian Press, 2019. Québec won't appeal court ruling that struck down restriction to medically assisted dying law. The Globe and Mail, October 3, 2019. Available: https://www.theglobeandmail.com/canada/article-quebec-wont-appeal-court-ruling-that-struck-down-restriction-to/

[217] Montréal Gazette, 2019. Please don't appeal assisted death ruling, medical professionals tell Québec. Montréal Gazette, October 1, 2019. Available: https://montrealgazette.com/news/quebec/please-dont-appeal-assisted-death-ruling-medical-professionals-tell-quebec

[218] Browne, Rachel, 2019. Trudeau says the Liberals would 'relax' assisted dying law within 6 months if re-elected. Global News, October 11, 2019. Available: https://globalnews.ca/news/6019623/canada-election-assisted-dying-law/

[219] Privy Council Office 2021. Guidelines on the Conduct of Ministers, Ministers of State, exempt staff and public servants during an election. Government of Canada, August 2021. Available: https://www.canada.ca/en/privy-council/services/publications/guidelines-conduct-ministers-state-exempt-staff-public-servants-election.html

[220] Frazee, Catherine. Twitter thread. Available: https://threadreaderapp.com/thread/1184962833890435072.html

[221] Supra, note 211.

[222] For a critical reflection on Canadian media reporting leading up to the 2019 federal election, see Ditchburn, Jennifer, 2019. What do the media know about the ballot box question? Policy Options, September 17, 2019. Available: https://policyoptions.irpp.org/magazines/september-2019/what-do-the-media-know-about-the-ballot-box-question/

[223] According to Canadian government data, "In 2019 there were 5,631 cases of MAID reported in Canada, bringing the total number of medically assisted deaths reported in Canada since the enactment of legislation to 13,946. The number of cases of MAID in 2019 represents an increase of 26.1% over 2018 numbers, with all provinces experiencing a steady year over year growth since the enactment of legislation in the province of Quebec and at the federal level." See Government of Canada, First Annual Report on Medical Assistance in Dying in Canada, 2019. Published July 2020. Available: https://www.canada.ca/en/health-canada/services/publications/health-system-services/annual-report-medical-assistance-dying-2019.html In 2020, this growth continued at an exponential rate, with 7,595 cases of MAID reported, representing a growth rate of 34.2% over 2019 and increasing the total number of MAID deaths to 21,589. In 2021, this pattern continued to escalate with 10,064 MAID deaths, representing a 32.4% increase over 2020 and putting the total death toll at 31,664. In 2022, there were an additional 13,241 MAID deaths reported, representing an increase of 31.2% over 2021. As of December 31, 2022, there had been a total of 44,958 MAID deaths in Canada since the practice was first authorized in 2016. No data are yet available for 2023 and 2024. Source documents available at https://publications.gc.ca/site/eng/9.889100/publication.html

[224] Eight such reported cases where Québec courts granted judicial authorization for MAID can be found at http://eoldev.law.dal.ca/?page_id=2219

[225] The original deadline set by the court was March 11, 2020. At the request of the federal government, this was extended by four months to July 11, 2020, then extended again, ostensibly because of pandemic disruptions, to December 18, 2020. Following the dissolution of Parliament for the October 2020 federal election, a further and final extension was granted to February 26, 2021. Source: Health Law Institute, Dalhousie University. Available: http://eol.law.dal.ca/?page_id=2219

[226] Response was muted, for example, to the 11th-hour premise to apply a "disability lens" in evaluating federal laws and policies. See McQuigge, Michelle, 2019. Liberals vow to evaluate existing, future policies with disability lens if re-elected. Global News, October 18, 2019. Available: https://globalnews.ca/news/6048587/liberals-disability-promise-canada-election/ The outgoing government's promise in this regard yielded a direct retort that connected the dots with their failure to appeal the Truchon decision. See Roche, David and Etmanski, Al, 2019. Feds face first test in commitment to apply disability lens to decisions. The Hill Times, November 15, 2019. Available: https://www.hilltimes.com/story/2019/11/15/feds-face-first-test-in-commitment-to-apply-disability-lens-to-decisions/266456/

[227] See for example, Frazee, Catherine, 2019. Canadian leaders should defend human dignity in life – not just death. CBC News Opinion, October 27, 2019. Available: https://www.cbc.ca/news/opinion/assisted-dying-1.5330654 The author notes that earlier drafts of this piece were far sharper in their critique, but concessions to ableist sensibility are often the price of admission to Canadian mainstream media. Other opinion pieces published in the interval that preceded the tabling of legislative amendments include Lemmens, Trudo, 2020. Canada must learn lessons from Belgium on assisted dying. Montréal Gazette, January 29, 2020. Available: https://montrealgazette.com/opinion/opinion-canada-must-learn-lessons-from-belgium-on-assisted-dying and Severino, Samandhi Mora, 2020. Is medically assisted dying a choice if persons with disabilities aren't given the necessary supports to live? Toronto Star, January 28, 2020. Available: https://www.thestar.com/opinion/contributors/is-medically-assisted-dying-a-choice-if-persons-with-disabilities-aren-t-given-the-necessary/article_175986af-47e0-55fb-9d43-230b138a5a12.html

---

[228] Cullen, Catherine, 2020. Online government survey on medical aid in dying sees record-breaking response. CBC News, January 23, 2020. Available: https://www.cbc.ca/news/politics/medical-assistance-dying-survey-response-1.5434832

[229] Devandas-Aguilar, Catalina, 2019. Report on the impact of ableism in medical and scientific practice. Issued by the Special Rapporteur on the rights of persons with disabilities. December 17, 2019. For the United Nations General Assembly, Human Rights Council, 43rd session, Geneva. Available: https://www.ohchr.org/en/calls-for-input/report-impact-ableism-medical-and-scientific-practice

[230] Ibid., paragraph 11.

[231] Ibid., paragraph 20.

[232] UN General Assembly, *Convention on the Rights of Persons with Disabilities : resolution / adopted by the General Assembly*, 24 January 2007, A/RES/61/106. Available at: https://www.refworld.org/docid/45f973632.html Canada ratified the CRPD on March 11, 2010 and acceded to its Optional Protocol on December 3, 2018.

[233] Supra, note 229, paragraph 73.

[234] Supra, note 226, paragraph 70.

[235] Devandas-Aguilar, Catalina, 2019. Visit to Canada – Report of the Special Rapporteur on the rights of persons with disabilities. December 19, 2019, Human Rights Council, United Nations General Assembly. Available: https://www.ohchr.org/en/documents/country-reports/ahrc4341add2-visit-canada-report-special-rapporteur-rights-persons

[236] Ibid., paragraph 69.

[237] Klowak, Marianne, 2020. Man who filled out federal government's survey 68 times questions its validity. CBC News, February 7, 2020. Available: https://www.cbc.ca/news/canada/manitoba/MAID-survey-alex-schadenberg-1.5455726

[238] Vulnerable Persons Standard, 2020. Voices from the Margins. Available: https://static1.squarespace.com/static/56bb84cb01dbae77f988b71a/t/5f9065e56d65272858143fca/1603298789807/Voices+from+the+Margins.pdf. See also accompanying blog post, Frazee, Catherine, 2020. Medical assistance in dying, public confidence and the lesson of the driverless car. Vulnerable Persons Standard, October 21, 2020. Available: http://www.vps-npv.ca/blog/2020/10/21/medical-assistance-in-dying-public-confidence-and-the-lesson-of-the-driverless-car

[239] Government of Canada, 2020. What We Heard Report. A Public Consultation on Medical Assistance in Dying (MAID). Government of Canada, March 2020. Available: https://www.justice.gc.ca/eng/cj-jp/ad-am/wwh-cqnae/index.html

[240] Supra, note 238.

[241] Government of Canada, 2020. Roundtables on Medical Assistance in Dying: Discussion Paper, January 2020.

[242] Acton, Robin; Bach, Michael; Belanger, Neil; Frazee, Catherine; Pauls, Rebecca; Smith, Jewelles; and Stainton, Timothy, 2020. Correcting the Record: An Urgent Submission to the Senate Standing Committee on Legal and Constitutional Affairs, February 3, 2021.

[243] Ibid.

[244] Jordan's Principle is defined by the Canadian Human Rights Tribunal as "a child-first principle meant to prevent First Nations children from being denied essential public services or experiencing delays in receiving them". See First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada), 2017 CHRT 14. Canadian Human Rights Tribunal, May 26, 2017. Paragraph 2. Available: https://decisions.chrt-tcdp.gc.ca/chrt-tcdp/decisions/en/item/232587/index.do?r=AAAAAQAOY2FyaW5nIHNvY2lldHkB#_Toc483407862

[245] Archie Rolland's story of the deprivations, indignities and medical mistreatment that motivated his "choice" of an assisted death was the first of many to surface to public attention as a result of his herculean efforts to communicate his suffering in a long-term care facility in Québec. See Fidelman, Charlie, 2016. Life in long-term hospital "unbearable": Montréal man with ALS. Montréal Gazette June 27, 2016. Available: https://montrealgazette.com/news/local-news/life-in-long-term-hospital-unbearable-montreal-man-with-als

[246] Article 19 of the Convention on the Rights of Persons with Disabilities recognizes the rights of all persons with disabilities to "live in the community, with choices equal to others" and obliges state parties to the Convention to take "appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community". See https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities

[247] Supra, note 242.

[248] The three federal Cabinet Ministers responsible for Canada's MAID consultations in 2020 were the Honourable David Lametti, Minister of Justice and Attorney General of Canada, the Honourable Patty Hajdu, Minister of Health and the Honourable Carla Qualtrough, Minister of Employment, Workforce Development and Disability Inclusion.

[249] Impressions recorded contemporaneously and shared in an email by the author, on the afternoon of January 16, 2020.

[250] Supra, note 133.

[251] End of Life, Equality and Disability: A national forum on medical assistance in dying. Canadian Association for Community Living and the Council of Canadians with Disabilities, Ottawa, January 30, 2020. Full recording available at: https://youtu.be/7Btr4U3n8ag

[252] Participants/presenters in the Ottawa Forum included several of the contributors to this volume: Krista Carr as moderator and Catherine Frazee, Trudo Lemmens and Heidi Janz as panelists. Other panelists were Kory Earle, President of People First of Canada; Bonnie Brayton, National Executive Director of DisAbled Women's Network of Canada (DAWN Canada); Laverne Jacobs, Professor at the University of Windsor, Faculty of Law; and Nicolas Rouleau, appellate and constitutional lawyer who represented CCD/CACL in the Truchon case.

---

[253] Dr. Jacobs would go on in 2022 to become the first Canadian elected to serve on the United Nations CRPD Committee, where she now plays an important role in monitoring the global implementation of the Convention.

[254] Office of the High Commissioner, United Nations Human Rights, 2018. General Comment No. 6 on equality and non-discrimination. April 26, 2018, Geneva. Paras 8-11. Available at: https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no6-equality-and-non-discrimination

[255] Jacobs, Laverne, 2020. Panel presentation for "End of Life, Equality and Disability: A national forum on medical assistance in dying (MAID)", Ottawa, January 30, 2020. Transcribed from video archive. Available at: https://www.youtube.com/watch?v=7Btr4U3n8ag

[256] Ibid. A short video clip of this passage is available at https://www.youtube.com/clip/UgkxxMmbWJgJNGRIhyVls43gSwEl8Wcbb59V

[257] Supra, note 255. A short video clip of this passage is available at https://youtube.com/clip/UgkxTC6ZxKxSeGqTjqT_2tPJaSPD2lIC1OQi

[258] Supra, note 255.

[259] Supra, note 255.

[260] Supra, note 255. A short video clip of this passage is available at https://youtube.com/clip/UgkxriiWWZZrupJY4E2n1If_-ReHFSujjDkB

[261] Rouleau, Nicolas, 2020. Notes for a panel presentation for "End of Life, Equality and Disability: A national forum on medical assistance in dying (MAID)", Ottawa, January 30, 2020. Available at: https://www.youtube.com/watch?v=7Btr4U3n8ag

[262] Qualtrough, Carla, 2020. Supra, note 251. A short video clip of this passage is available at https://youtube.com/clip/UgkxIXb_Tb0m0Jp5ZKi84XTQ3kAS67gAcbSx

[263] Bill C-7, An Act to amend the Criminal Code (medical assistance in dying), 2nd Session, 43rd Parliament, 2021. For more detailed legislative history of Bill C-7, see parliamentary records at https://www.parl.ca/legisinfo/en/bill/43-2/c-7 and legislative summary at https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/LegislativeSummaries/432C-7E

[264] Department Of Justice Canada, 2020. Government of Canada proposes changes to medical assistance in dying legislation. News release, February 24, 2020. Available: https://www.canada.ca/en/department-justice/news/2020/02/government-of-canada-proposes-changes-to-medical-assistance-in-dying-legislation.html

[265] Ibid.

[266] Ibid.

[267] See for example, Wilson-Raybould, Jody, 2016. Remarks in the House of Commons on second reading of Bill C-7, April 22, 2016. Available: https://openparliament.ca/debates/2016/4/22/jody-wilson-raybould-1/

[268] Supra, note 62, paragraph 98.

[269] Parliament of Canada, Legisinfo. Available: https://www.parl.ca/legisinfo/en/bill/43-1/c-7

[270] Supra, note 225.

[271] Connolly, Amanda, 2020. Trudeau proroguing Parliament ahead of new throne speech this fall. Global News, August 18, 2020. Available: https://globalnews.ca/news/7283553/justin-trudeau-prorogation-coronavirus/

[272] Canadian Public Health Association, 2021. Review of Canada's Initial Response to the COVID-19 Pandemic. February 16, 2021. Available: https://www.cpha.ca/review-canadas-initial-response-covid-19-pandemic

[273] See for example, Hilary K. Brown, Sudipta Saha, Timothy C.Y. Chan, Angela M. Cheung, Michael Fralick, Marzyeh Ghassemi, Margaret Herridge, Janice Kwan, Shail Rawal, Laura Rosella, Terence Tang, Adina Weinerman, Yona Lunsky, Fahad Razak, Amol A. Verma, 2022. Outcomes in patients with and without disability admitted to hospital with COVID-19: a retrospective cohort study. CMAJ Jan 2022, 194 (4) E112-E121 Available: https://www.cmaj.ca/content/194/4/E112. Also Pettinicchio, David, Maroto, Michelle, Chai, Lei, Lukk, Martin, 2021. Findings from an online survey on the mental health effects of COVID-19 on Canadians with disabilities and chronic health conditions. Disability and Health Journal, Volume 14, Issue 3, 2021. Available: https://www.sciencedirect.com/science/article/pii/S1936657421000315

[274] See Iretron, Julie, 2021. Canada's nursing homes have worst record for COVID-19 deaths among wealthy nations: report. CBC News, March 30, 2021. Available: https://www.cbc.ca/news/canada/ottawa/canada-record-covid-19-deaths-wealthy-countries-cihi-1.5968749 For an investigative account of the organizational negligence and triage practices that account for Canada's leading the world in Covid 19 deaths occurring in long-term care in 2020, see Farrow, Anna, 2022. Who Killed Granny? Pandemic Death Protocols in Canada's Long-Term Care Facilities. C2C Journal March 7, 2022. Available: https://c2cjournal.ca/2022/03/who-killed-granny-pandemic-death-protocols-in-canadas-long-term-care-facilities/

[275] See for example, Loreto, Nora, 2021. The COVID outbreaks that Ontario wasn't counting. Maclean's, July 1, 2021. Available: https://macleans.ca/news/canada/the-covid-outbreaks-that-ontario-wasnt-counting/ and Linton, Megan, 2020. 'We have always been disposable': the structural violence of neoliberal healthcare. Canadian Dimension, March 31, 2020. Available: https://canadiandimension.com/articles/view/we-have-always-been-disposable-the-structural-violence-of-neoliberal-healthcare

[276] See Linton, Megan, 2021. On prisons and personal care: Disabled confinement and COVID-19. Winnipeg Police Cause Harm, January 14, 2021. Available: https://winnipegpolicecauseharm.org/blog/on-prisons-and-personal-care-disabled-confinement-and-covid-19/

---

[277] Lemmens, Trudo and Mykitiuk, Roxanne, Disability Rights Concerns and Clinical Triage Protocol Development During the COVID-19 Pandemic (August 17, 2020). 40(4) Health Law in Canada 103-112, Available at SSRN: https://ssrn.com/abstract=3675742 or http://dx.doi.org/10.2139/ssrn.3675742

[278] Saba, Rosa, 2021. CERB and CRB discriminated against Canadians with disabilities, new Charter challenge claims. Toronto Star, November 26, 2021. Available: https://www.thestar.com/business/cerb-and-crb-discriminated-against-canadians-with-disabilities-new-charter-challenge-claims/article_deff4d4b-9a23-5b8c-8824-5c10351c960a.html and Pettinicchio, David, 2021. Canadians with disabilities are feeling left behind by pandemic policy. First Policy Response, July 7, 2021. Available: https://policyresponse.ca/canadians-with-disabilities-are-feeling-left-behind-by-pandemic-policy/

[279] Department of Finance Canada, 2020. Government introduces Canada Emergency Response Benefit to help workers and businesses. Government of Canada news release, March 25, 2020. Available: https://www.canada.ca/en/department-finance/news/2020/03/introduces-canada-emergency-response-benefit-to-help-workers-and-businesses.html

[280] A collective experience reported by participants in the international research study conducted jointly by the University of Guelph and the Disabled Women's Network of Canada in 2021. See Stienstra, Deborah, Rodenburg, Erin, Reinders, Kathryn, Garwood, Kim, Pin, Laura, Grand'Maison Mar, Valérie , 2021. Disability Inclusion Analysis of Lessons Learned and Best Practices of the Government of Canada’s Response to the COVID-19 Pandemic. University of Guelph, Live Work Well Research Centre, March 18, 2021. Available: https://liveworkwell.ca/disability-inclusion-analysis-covid-19. See also a reference to the study in Thomas, Aslinn, 2022. Perhaps They Won't Have Died in Vain: The GRIM Project. Disability Visibility Project, March 31, 2022. Available: https://disabilityvisibilityproject.com/2022/03/31/perhaps-they-wont-have-died-in-vain-the-grim-project/

[281] The 2nd session of Canada's 43rd Parliament began on September 23, 2020.

[282] Bill C-7, An Act to amend the Criminal Code (medical assistance in dying), 2nd Session, 43rd Parliament, 2021. Assented to March 17, 2021. For more detailed legislative history of Bill C-7, see parliamentary records at https://www.parl.ca/legisinfo/en/bill/43-2/c-7 and legislative summary at https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/LegislativeSummaries/432C-7E#ftn37

[283] Lametti, David, 2020. House of Commons Debates Official Report (Hansard). October 9, 2020. Available: https://www.ourcommons.ca/DocumentViewer/en/43-2/house/sitting-13/hansard#10947242

[284] For an empirically rigorous critique of what expansionists have falsely labelled a "90-day reflection period", see the entreaty of Dr. Karen Ethans, this issue. Dr. Ethans has decades of clinical and research experience with people with spinal cord injuries, and reports that in the case of sudden onset neurologic disabilities, "people really cannot adjust to their 'new normal' for at least two years". She concludes that the availability of T2 MAID at early stages in the rehabilitation process is "a grave failure to those patients".

[285] For a thoughtful elaboration of the autonomy/austerity nexus in neoliberal times and how MAID choices are shaped by social and economic conditions, see Stienstra, Deborah, 2017. DisAbling Women and Girls in Austere Times. Atlantis, Vol. 38 No. 1, 2017. https://journals.msvu.ca/index.php/atlantis/article/view/5330

[286] Hajdu, Patricia, 2020. Testimony before the Standing Committee on Justice and Human Rights, November 3, 2020. 43rd Parliament, 2nd session. Available: https://www.ourcommons.ca/DocumentViewer/en/43-2/JUST/meeting-4/evidence

[287] Qualtrough, Carla, 2020. Testimony before the Standing Committee on Justice and Human Rights, November 3, 2020. 43rd Parliament, 2nd session. Available: https://www.ourcommons.ca/DocumentViewer/en/43-2/JUST/meeting-4/evidence

[288] See for example, Inclusion Canada, 2020. Bill C-7 Through a Disability Lens. October 22, 2020. Available: https://inclusioncanada.ca/wp-content/uploads/2020/11/Bill-C-7-Through-a-Disability-Lens.pdf Also, Council of Canadians with Disabilities, 2020. Disability-Rights Organizations' Public Statement on the Urgent Need to Rethink Bill C-7, The Proposed Amendment to Canada's Medical Aid in Dying Legislation. November 7, 2020. Available: http://www.ccdonline.ca/en/humanrights/endoflife/Statement-Bill-C-7

[289] See, for example, ARCH Disability Law Centre, 2020. Submission to the Senate on Bill C-7 – Medical Assistance in Dying, November 25, 2020. Available: https://archdisabilitylaw.ca/resource/submission-to-the-senate-on-bill-c-7-medical-assistance-in-dying/ See also Lemmens, Trudo and Shariff, Mary, 2020. Brief to the House of Commons Standing Committee on Justice and Human Rights Re Bill C-7: An Act to Amend the Criminal Code (medical assistance in dying). Published by the Committee on November 27, 2020. Available: https://www.ourcommons.ca/Content/Committee/432/JUST/Brief/BR10946962/br-external/Jointly2-e.pdf

[290] Formerly the Canadian Association for Community Living, CACL changed its name to Inclusion Canada in September 2020.

[291] Dignity Denied https://dignitydenied.ca/

[292] Peters, Gabrielle, 2020. Statement from Gabrielle Peters, December 7, 2020. https://dignitydenied.ca/2020/12/07/statement-from-gabrielle-peters/

[293] Disability Justice Network of Ontario https://www.djno.ca/

[294] Supra, note 151.

[295] https://www.facebook.com/whyuscanada/

[296] Dignity Denied, 2020. No To Bill C-7. DO NOT eliminate "Reasonably Foreseeable" Death Requirement for MAID. Online Petition. November 28, 2020. Available: https://www.change.org/p/no-to-bill-C-7-do-not-eliminate-reasonably-foreseeable-death-requirement-from-assisted-suicide-legislation-MAID

[297] The brainchild of DJNO, this event was co-sponsored by DAWN Canada, Independent Living Canada, Inclusion Canada and the British Columbia Aboriginal Network on Disability Society (BCANDS).

---

[298] The panel for this event included Syrus Marcus Ware, co-founder of Black Lives Matter Canada; River Holland- Valade, two-spirit, Indigenous youth activist and mental health worker; Trudo Lemmens, Professor Law & Bioethics and one of the contributors to this collection; Ameil Joseph, Professor of Social Work; and an "anonymous MAID applicant" known as @ALYSM745, who "can no longer afford the medication she needs and believes [MAID] is the only option left for her". The archived recording for this panel is available at https://youtu.be/AZYPLoWVRlQ?si=H3H0aEj8kRmDJBaM

[299] See, for example, a collaboration with SURJ Toronto at https://www.facebook.com/djnontario/posts/pfbid02vcK9XTA37kRRSf8UoeCa5GKuP8LSGSkneUAeAjvuvkYnmYAoCNkFNV79CnMWSzi5l

[300] See for example, Peters, Gabrielle, 2020. Dying for the right to live. Maclean's magazine, November 12, 2020. Available: https://macleans.ca/opinion/dying-for-the-right-to-live/ Also Peters, Gabrielle, 2021. Taking MAID way too far. Maclean's magazine, February 24, 2021. Available: https://macleans.ca/opinion/dying-for-the-right-to-live/ Also Bains, Serena, 2022. The future of MAID has the disability community worried. The Peak, May 24, 2022. Available: https://the-peak.ca/2022/05/the-future-of-MAID-has-the-disability-community-worried/

[301] See, for example, smith, sb, 2021. Who speaks for us? Bill C-7 and class privilege. The Nova Scotia Advocate, March 4, 2021. Available: https://nsadvocate.org/2021/03/04/who-speaks-for-us-bill-c-7-and-class-privilege/ Also, Frazee Catherine, 2020. Assisted dying legislation puts equality for people with disabilities at risk. Globe and Mail, November 17, 2020. Available: https://www.theglobeandmail.com/opinion/article-assisted-dying-legislation-puts-equality-for-people-with-disabilities/ Also McCallum, Dulcie and Estey, Steve, 2021. Bill C-7 is a matter of life and death. Ipolitics, March 12, 2021. Available: https://www.ipolitics.ca/news/bill-c-7-is-a-matter-of-life-and-death

[302] See, for example, the Twitter Bill C-7 Die-In of March 2021. https://twitter.com/billC-7diein and https://billC-7diein.blogspot.com/

[303] On International Human Rights Day, the WhyUs campaign posed the question "Dear Canada, #WhyUs? Why does Bill C-7 single out people with disabilities, providing us with a shortcut to an assisted death? Why when you never waver in preventing suicide for other Canadians?". The message, submitted to political leaders in all federal parties, was accompanied by photo images of dozens of campaign contributors across the country demanding an answer. See: https://www.facebook.com/whyuscanada/posts/pfbid02qeKhb8oYHmbthEp68FFSkubJRZDqgDXo23G8V2wQSS3Xe62oac8XVmSSWdg7XbX3l

[304] For example, Bill C-7 and its impacts featured in the 2021 hosting of the Disability Day of Mourning, an annual vigil honouring disabled people killed by acts of filicide and state violence. Disability Day of Mourning, March 1, 2021. https://www.facebook.com/events/parliament-hill/disability-day-of-mourning-2021-remembering-disabled-people-killed-by-state-viol/550287692616141/. See also Peters, Gabrielle, 2021. Disability Day of Morning 2021. Posted August 8, 2021. https://mssinenomineblog.wordpress.com/2021/08/08/disability-day-of-mourning-2021/

[305] See, for example, DJNO activist Sarah Jama's lively exchange with expansionist law professor Jocelyn Downie on CBC's Canada Today on February 2, 2021. Available: https://fb.watch/mMTyzntqJ-/

[306] See the collaboration between Dignity Denied and LeadNow at https://www.leadnow.ca/stopc7/

[307] For a sample of the range of voices and approaches in these submissions, see the submission of Thomas, Aislinn, posted February 15, 2021 at https://sencanada.ca/Content/Sen/Committee/432/LCJC/briefs/Brief_AislinnThomas_e.pdf; the submission of Armstrong, Helen, posted February 3, 2021 at https://sencanada.ca/Content/Sen/Committee/432/LCJC/briefs/HelenArmstrong_e.pdf; the submission of Fries, Kenny, posted February 1, 2021 at https://sencanada.ca/Content/Sen/Committee/432/LCJC/briefs/Brief_KennyFries_e.pdf; the submission of Joseph, Ameil, posted January 27, 2021 at https://sencanada.ca/Content/Sen/Committee/432/LCJC/briefs/Brief_AmeilJoseph_e.pdf; the submission of Yoshida, Karen, posted January 21, 2021 at https://sencanada.ca/Content/Sen/Committee/432/LCJC/briefs/Brief_KarenKYoshida_e.pdf; the submission of Tremaine, Shelley, posted November 23, 2020 at https://sencanada.ca/Content/Sen/Committee/432/LCJC/briefs/ShelleyTremain_e.pdf; the submission of Foley, Roger, posted December 1, 2020 at https://sencanada.ca/Content/Sen/Committee/432/LCJC/briefs/LCJC_C-7_Brief_RogerFoley_e.pdf; and the submission of Parker, Ian, posted November 25, 2020 at https://sencanada.ca/Content/Sen/Committee/432/LCJC/briefs/Brief_IanParker_e.pdf

[308] https://cp-ep.org/

[309] Images from the event can be found at: https://www.facebook.com/djnontario/posts/pfbid032hw3ZosUTfrAYSYNvns1Q5oMqU1mEuEAGogNKp273esFGcYxpochnXPooYx8fyH7l. A live video feed was mostly thwarted by the effects of freezing temperatures on videographers' recording equipment, but dramatic glimpses of the event can be found beginning at approximately the 25-minute mark at https://www.facebook.com/watch/live/?ref=watch_permalink&v=911040832975902

[310] A telling example of this increasingly diverse coalition of opposition to Bill C-7 can be found in the open letter to Members of Parliament coordinated by the VPS in February 2021. See http://www.vps-npv.ca/stopC-7 The signatories of this letter had expanded well beyond those represented five years earlier in the Call to Parliamentarians referenced at supra, note 130. Included in the 2021 coalition were new national groups like the Canadian Feminist Alliance for International Action and the National Association of Women and the Law, but also more locally based grassroots activists like Black Lives Matter [BLM] Toronto, Showing up for Racial Justice [SURJ] Toronto, Protecting ODSP OW Funding [P00F], No Pride in Policing Coalition [NPPC], The Poverty and Human Rights Centre, Spring Socialist Network, Fédération des femmes du Québec [FFQ], Pauline Jewett Institute of Women’s and Gender Studies, Vancouver Rape Relief & Women's Shelter, Nunavummi

---

Disabilities Makinnasuaqtiit Society, Parkdale People's Economy, Ecohesian, and Hamilton Health Workers for Alternatives to Policing, along with a growing list of disability, faith, hospice and palliative care associations. See http://www.vps-npv.ca/stopC-7

[311] As of October 2022, Ellen Wiebe had assessed "almost 800" Canadians for MAID and had administered death by MAID to "over half of those", according to her testimony before the Special Joint Committee on Medical Assistance in Dying on October 28, 2022. Available: https://parl.ca/DocumentViewer/en/44-1/AMAD/meeting-23/evidence

[312] Ibid.

[313] For a thoughtful examination of the complex terrain of intimate care in the context of disability, see Fritsch, Kelly, 2010. Intimate Assemblages: Disability, Intercorporeality, and the Labour of Attendant Care. Critical Disability Discourses, 2. https://cdd.journals.yorku.ca/index.php/cdd/article/view/23854/28098

[314] Although at time of writing, only limited data specific to Track 2 MAID are available, the federal government's Fourth Annual Report on Medical Assistance in Dying, released in October 2023, indicates that the official number of track 2 MAID deaths was 686, between March 17, 2021 and December 31, 2022. https://www.canada.ca/en/health-canada/services/publications/health-system-services/annual-report-medical-assistance-dying-2022.html. However, as Grant and Sheehy observe, "This is almost certainly an underestimate because some providers are willing to shift these people into what is known as Track 1, where natural death is reasonably foreseeable, if they stop eating or decline medical treatment." Grant, Isabel and Sheehy, Elizabeth, 2024. The real problem with MAID for mental illness. Toronto Star, February 9, 2024. https://www.thestar.com/opinion/contributors/the-real-problem-with-MAID-for-mental-illness/article_633b1372-c5df-11ee-a8af-ab8395b3051a.html

[315] Peters, Gabrielle, 2021. Testimony before the Senate Standing Committee on Legal and Constitutional Affairs, February 3, 2021. Available: https://sencanada.ca/en/Content/Sen/Committee/432/LCJC/12EV-55130-E For the full statement before editing to its five-minute version, the author recommends referring to https://mssinenomineblog.wordpress.com/2022/02/04/my-unedited-draft-testimony-to-senate-on-bill-C-7/

[316] Responses to these questions range from categorical denial to liberal reassurance, but consistently overlook the troublesome fact that an untold number of MAID requests have been precipitated not by medical conditions, but rather have been effectively coerced by social circumstances. DWDC, for example, electing the categorical approach, addressed the issue on the "Myths and Facts" page of their website. There they responded to the "myth" that "vulnerable populations can be eligible for MAID if they are suffering from inadequate social supports, including housing", with the unequivocal assertion that "suffering from a lack of social supports does not qualify a person for MAID. No one can receive MAID on the basis of inadequate housing, disability supports, or home care." https://www.dyingwithdignity.ca/advocacy/myths-and-facts/#:~:text=Myth%3A%20Vulnerable%20populations%20can%20be,disability%20supports%2C%20or%20home%20care.

Dr. Stefanie Green, co-founder and former president of CAMAP, was similarly dismissive. When asked about case reports suggesting that conditions of poverty and social disadvantage may be funneling disabled people toward Track 2 MAID, her reply was “you cannot access MAID in this country because you can’t get housing. That is clickbait. These stories have not been reported fully.” Raikin, Alexander, 2022. No Other Options. The New Atlantis, December 16, 2022. https://www.thenewatlantis.com/publications/no-other-options. At times, Dr. Green’s responses to cases of concern have tended to veer toward the glib. When invited to comment on the 2024 case of a quadriplegic man who died by MAID after sustaining severe iatrogenic injury when his critical need for a pressure reducing mattress was neglected for four days in a hospital emergency department, Dr. Green was adamant that this event should not be “hijacked into a conversation about MAID. According to Dr. Green, Normand Meunier’s suffering and death should “not reflect on” Canada’s MAID program, “or the price of rice in Beijing for that matter”. DeMaine, Clayton, 2024. *Quadriplegic man chose assisted suicide after hospital stay ended with bed sores*. True North, April 14, 2024. https://tnc.news/2024/04/14/quadriplegic-man-chose-MAID/ Somewhat more nuanced in its progressive veneer, was the knowing reassurance of André Picard that "of course, assisted death is not a solution to poverty or poor housing, but these cases are not as black-and-white as they have been made out to be." Picard asserts simply that "the answer to that problem is to improve social assistance for people with disabilities, with a Canada Disability Benefit, and more and better social housing. The solution is not to condemn people with disabilities – physical or mental – to suffering." Picard, André, 2022. *We must make it easier to both live and die with dignity, but denying MAID to those living in poverty is not the answer.* Globe and Mail, June 6, 2022. https://www.theglobeandmail.com/opinion/article-we-must-make-it-easier-to-both-live-and-die-with-dignity-but-denying/. Thus expansionists in various styles refute that poverty or deprivation would make one eligible for MAID – a fact that is indisputably correct. With these assertions, however, they avoid any discussion of the legal, regulatory or ethical dimension of administering a lethal medical "treatment" upon patients whose intolerable suffering is substantially social in nature. But for the care and housing crises that tormented many of the MAID recipients referred to in the outlier narratives of entreaties and press reports, these disabled individuals would have chosen to live their natural lives. While this does not appear to give pause to DWDC, Dr. Green, or Mr. Picard, it is surely outside the spirit of the Supreme Court's ruling in Carter.

[317] About the Disability Filibuster. https://disabilityfilibuster.ca/about/

[318] Ibid.

[319] Ibid.

[320] For a generous understanding of the fragility and radical embrace of crip space, see smith, s.e. “The Beauty of Spaces Created for and by Disabled People.” in Disability Visibility: First Person Stories from the Twenty-First Century, edited by Alice Wong, 274. New York: Vintage Books, 2020.

---

[321] Supra, note 317.

[322] For a straightforward framing of the links between neoliberal "autonomy" and MAID, see Lyon, Christopher, 2023. Necroneoliberalism, MAID and the 'karenification' of life and death. Substack, August 24, 2023. Available: https://christopherlyon.substack.com/p/necroneoliberalism-MAID-and-the-karenification

[323] Personal communication. Laura Mac, email, March 17, 2021.

[324] Following the 2019 federal election, with 170 seats required for a majority Parliament, the Liberal party had secured 157 seats and the Bloc Québecois had secured 32 seats. The other minority parties, also expansion-inclined, held 24 NDP seats, and 3 Green seats. The official opposition Conservative party, rarely aligned with disability rights positions but ideologically opposed to MAID expansion, held only 121 seats, insufficient to influence the legislative trajectory of Bill C-7. See https://newsinteractives.cbc.ca/elections/federal/2019/results/

[325] Frazee, Catherine, 2020. Thoughts on December 10, 2020. The fragile and the wild, a WordPress blog, December 10, 2020. Available: https://fragileandwild.com/2020/12/10/thoughts-on-december-10-2020/

[326] Bridgman, A. (2021). A nonpartisan legislative chamber: The influence of the Canadian Senate. Party Politics, 27(5), 1009–1016. Also, Reuters, 2015. Canada gov't sets non-partisan process for Senate appointments. Reuters Domestic News, December 3, 2015. Available: https://www.reuters.com/article/cnews-us-canada-politics-idCAKBN0TM2DN20151203

[327] Stefanovich, Olivia, 2019. Will Trudeau's experiment with Senate 'independence' outlast the election? CBC News, June 25, 2019. Available: https://www.cbc.ca/news/politics/stefanovich-senate-reforms-trudeau-1.5187149

[328] Bryden, Joan, 2016. Assisted dying bill: Senate sends C-14 back to House with 7 amendments. CBC News, June 16, 2016. The Canadian Press. Available: https://www.cbc.ca/news/politics/assisted-dying-c14-senate-amendments-1.3638240

[329] Patil, Anjuli, 2016. Assisted-dying bill discriminates: Senator James Cowan. CBC Views, June 18, 2016. Available: https://www.cbc.ca/news/canada/nova-scotia/ns-senator-james-cowan-assisted-dying-bill-c-14-1.3641890

[330] This did not ultimately prove to be the case for either Senator. The federal five-year prohibition on lobbying after leaving public office did not appear to have any effect in restraining Senator Joyal's or Senator Cowan's advocacy efforts at the highest levels of government. See the post-employment restrictions of the Office of the Commissioner of Lobbying of Canada at https://lobbycanada.gc.ca/en/rules/the-lobbying-act/5-year-post-employment-prohibition-on-lobbying/. Notwithstanding the lobbying restrictions, Senator Serge Joyal was invited back from his 2020 retirement to testify about Bill C-7 and mental illness in February 2021 before the Standing Senate Committee on Legal and Constitutional Affairs. There he was warmly welcomed and provided with extensive opportunity to express his support for expansion in addressing his former colleagues. See the official record of proceedings at https://sencanada.ca/en/Content/Sen/Committee/432/LCJC/10ev-55128-e Senator James Cowan's ongoing involvements appeared to fall squarely within the frame of lobbying activity. After his retirement from the Senate in January 2017, Senator Cowan remained visible and influential in MAID debates, as part of his role as Director of DWDC's Board. See Duggan, Kyle, 2017. *Retired Senator Cowan to work with Dying with Dignity*. iPolitics, February 15, 2017. https://www.ipolitics.ca/news/retired-senator-cowan-to-work-with-dying-with-dignity. In addition to meeting privately with his former parliamentary colleagues, he testified before the House of Commons Standing Committee on Justice and Human Rights in November 2020. This testimony was interrupted by technical difficulties, but is available at https://www.ourcommons.ca/DocumentViewer/en/43-2/JUST/meeting-4/evidence. Senator Cowan did testify again in May of 2022 before the Special Joint Committee on Medical Assistance in Dying, but it is notable that this intervention would have fallen outside of the five-year restriction period. https://www.parl.ca/DocumentViewer/en/44-1/AMAD/meeting-5/evidence

[331] See for example, Harris, Kathleen, 2020. Lametti urges MPs to pass assisted death bill as disability groups demand a halt. December 8, 2020, CBC News. Available: https://www.cbc.ca/news/politics/lametti-MAID-assisted-dying-bill-disabilities-1.5831436

[332] Pennings, Ray, for Angus Reid, 2020. Canadians' views on assisted dying are complex. Policy Options, December 4, 2020. Available: https://policyoptions.irpp.org/magazines/december-2020/canadians-views-on-assisted-dying-are-complex/

[333] United Nations Human Rights Council, 2021. Disability is not a reason to sanction medically assisted dying – UN experts. Press release, January 25, 2021. Available: https://www.ohchr.org/en/press-releases/2021/01/disability-not-reason-sanction-medically-assisted-dying-un-experts?LangID=E&NewsID=26687

[334] Ibid.

[335] Ibid.

[336] Bryden, Joan, for The Canadian Press, 2021. UN human rights experts alarmed by trend toward assisted dying for non-terminal conditions. Globe and Mail, January 27, 2021. Available: https://www.theglobeandmail.com/canada/article-un-human-rights-experts-alarmed-by-trend-toward-assisted-dying-for/

[337] Quinn, Gerard; Mahler, Claudia; DeSchutter, Olivier, 2021. Letter to the Canadian Ambassador to the United Nations, February 3, 2021. Available: https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=26002

[338] Quinn, Gerard, 2021. Testimony before the Senate Standing Committee on Legal and Constitutional Affairs, February 1, 2021. Available: https://sencanada.ca/en/Content/Sen/Committee/432/LCJC/10EV-55128-E

[339] McPhedran, Marilou, 2021. Intervention at third reading of Bill C-7. February 11, 2021. Available: https://sencanada.ca/en/senators/mcphedran-marilou/interventions/553872/26

[340] Ibid.

[341] It should be noted that prominent Conservative Senators, notably Senator Denise Batters, Senator Donald Plett, Senator Michael MacDonald and Senator Victor Oh all spoke powerfully from the floor of the Senate in opposition to Bill C-7. Text

---

and video recordings of their interventions are available at: https://sencanada.ca/en/senators/batters-denise/interventions/552173/27; https://www.donplett.ca/en/my-work/in-the-red-chamber/speeches/bill-c-7-will-be-offering-patients-with-mental-illness-the-most-readily-available-lethal-means-instead-of-increased-suicide-prevention/; https://sencanada.ca/en/senators/macdonald-michael-l/interventions/554716/25; and https://sencanada.ca/en/senators/oh-victor/interventions/553872/21 respectively.

[342] McCallum, Mary Jane, 2021. Intervention on Bill C-7, Message from the House, March 17, 2021. Available: http://maryjanemccallum.ca/in-the-chamber/speeches/bill-c-7-medical-assistance-in-dying-message-from-the-house/

[343] Ibid.

[344] Pate, Kim, 2021. Intervention at third reading of Bill C-7. February 11, 2021. Text and video recording available at: https://sencanada.ca/en/senators/pate-kim/interventions/554572/26

[345] Ibid.

[346] Miville-Dechêne, Julie, 2021. Intervention at third reading of Bill C-7 in the Canadian Senate. From Debates of the Senate (Hansard), 2nd Session, 43rd Parliament, Volume 152, Issue 28, February 16, 2021. Available: https://sencanada.ca/en/senators/miville-dechene-julie/interventions/554572/26

[347] Petitclerc, Chantal, 2016. Intervention at 2nd reading of Bill C-14 in the Canadian Senate. From Debates of the Senate (Hansard), 1st Session, 42nd Parliament, Volume 150, Issue 43. June 3, 2016. Available: https://sencanada.ca/en/content/sen/chamber/421/debates/043db_2016-06-03-e#12

[348] It is important to note that there have been tremendous advances in clinical understandings of and approaches to pain and trauma in the thirty years since Senator Petitclerc's experience in 1983. Standards and protocols for multidisciplinary pediatric care, especially in cases of severe acute injury, are much more effective in providing whole-person care and psychological support. As well, state-of-the-art technologies such as pressure offloading mattresses would avoid the horrors of hourly turning routines described in her narrative. While severe neuropathic pain may become chronic after spinal cord injury, in the vast majority of cases such symptoms resolve, abate or are otherwise managed at tolerable levels over time. Source: Personal email communications with Dr. Suzanne Saltsman and Dr. Karen Ethans, September 26, 2023.

[349] In Senate speeches that followed Senator Petitclerc on June 3, 2016 Senators Fraser, Munson, Martin, Greene-Raine and Joyal all made direct and highly favourable reference to her speech, underscoring its effect upon their thinking. See supra, note 347.

[350] See Reynolds, Joel Michael (2017) "I'd rather be dead than disabled"—the ableist conflation and the meanings of disability, Review of Communication, 17:3, 149-163. Available: http://dx.doi.org/10.1080/15358593.2017.1331255 Also Reynolds, Joel Michael, 2022. The Life Worth Living. University of Minnesota Press, Minneapolis.

[351] Ibid.

[352] Shannon, David, 2022. This issue.

[353] Supra, note 347.

[354] Petitclerc, Chantal, 2021. Final intervention at third reading of Bill C-7 in the Canadian Senate. From Debates of the Senate (Hansard), 2nd Session, 43rd Parliament, Volume 152, Issue 28, February 16, 2021. Available: https://sencanada.ca/en/content/sen/chamber/432/debates/028db_2021-02-16-e#56

[355] Supra, note 347.

[356] Among many who spoke with authority on these issues during the pre-study in November 2020 and the Committee hearings in February 2021, see for example the testimony of Claire McNeil from the Disability Rights Coalition of Nova Scotia at the Pre-Study of Bill C-7 on November 26, 2020 and the testimony of Neil Belanger, Executive Director of the British Columbia Aboriginal Network on Disability Society, also on November 26, 2020. Transcripts and video recordings of testimony are available at https://sencanada.ca/en/committees/LCJC/noticeofmeeting/549560/43-2

[357] See Mulligan, Cynthia and Yawar, Mahnoor, 2020. ODSP recipients calling for help, exploring assisted dying. City News, September 2, 2020. https://toronto.citynews.ca/2020/09/02/odsp-covid19-pandemic/

[358] Harris, Kathleen, 2020. Disability advocates say assisted dying bill fails to protect vulnerable Canadians. CBC News, November 10, 2020. https://www.cbc.ca/news/politics/MAID-assisted-dying-legislation-disabilities-1.5796697

[359] Petitclerc, Chantal, 2020. Intervention at second reading of Bill C-7 in the Canadian Senate. From Debates of the Senate (Hansard), 2nd Session, 43rd Parliament, Volume 152, Issue 20, December 14, 2020. Available: https://sencanada.ca/en/content/sen/chamber/432/debates/020db_2020-12-14-e#35

[360] See for example the story of Jennyfer Hatch, (aka "Kat"), who died by MAID in October 2022. In an interview with CTV news four months earlier, she explained "I can't afford the resources that would help improve my quality of life. Because of being locked in financially as well and geographically, it is far easier to let go than keep fighting." Daflos, Penny, 2022. *'Easier to let go' without support: B.C. woman approved for medically assisted death speaks out.* CTV News, June 8, 2022. https://bc.ctvnews.ca/easier-to-let-go-without-support-b-c-woman-approved-for-medically-assisted-death-speaks-out-1.5937496. Similarly, a woman with multiple chemical sensitivities who used the pseudonym Sophia, died by MAID in February 2022. According to CTV news, Sophia "left behind letters showing a desperate two-year search for help, in which she begs local, provincial and federal officials for assistance in finding a home away from the smoke and chemicals wafting through her apartment." Favaro, Avis, 2022. *Woman with chemical sensitivities chose medically-assisted death after failed bid to get better housing.* CTV News, April 13, 2022. https://www.ctvnews.ca/mobile/health/woman-with-chemical-sensitivities-chose-medically-assisted-death-after-failed-bid-to-get-better-housing-1.5860579. Also relevant, Amir Farsoud withdrew a.m. meet you here his application for MAID when a generous financial donation enabled him to avoid homelessness in November 2022. Marcus, Josh, 2022. *Canadian man applies for euthanasia because he can't afford a home*

---

but reconsiders after $60,000 GoFundMe. The Independent, November 19, 2022. https://www.independent.co.uk/news/world/americas/canada-euthansia-MAID-gofundme-homeless-b2228890.html

[361] Supra, note 354.

[362] Petitclerc, Chantal, 2021. Intervention at third reading of Bill C-7 in the Canadian Senate. From Debates of the Senate (Hansard), 2nd Session, 43rd Parliament, Volume 152, Issue 24, February 8, 2021. Available: https://sencanada.ca/en/senators/petitclerc-chantal/interventions/552173/27

[363] Ibid.

[364] Much like Senator Petitclerc, other Senators anchored their support of Bill C-7 in strong sentiments of trust in the medical profession. For example, Progressive Caucus member Senator Jane Cordy made clear in her speech at third reading, "I will be supporting Bill C-7. I will be doing so to respect the wishes of those who opt for the choice of receiving MAID under what I believe is a thorough assessment system by medical personnel that will allow for dignity in dying." See Cordy, Jane, 2021. Intervention at third reading of Bill C-7 in the Canadian Senate. From Debates of the Senate (Hansard), 2nd Session, 43rd Parliament, Volume 152, Issue 28, February 17, 2021. Available: https://sencanada.ca/en/senators/cordy-jane/interventions/554716/25

[365] Supra, note 354.

[366] Ibid.

[367] Supra, note 354.

[368] Coyle, Mary, 2021 Intervention at third reading of Bill C7. Debates of the Senate (Hansard), 2nd Session, 43rd Parliament. Volume 152, Issue 28. Tuesday, February 16, 2021. https://sencanada.ca/en/content/sen/chamber/432/debates/028db_2021-02-16-e?language=e

[369] Simons, Paula, 2021. Intervention at third reading of Bill C7. Debates of the Senate (Hansard), 2nd Session, 43rd Parliament. Volume 152, Issue 28. Tuesday, February 16, 2021. https://sencanada.ca/en/content/sen/chamber/432/debates/028db_2021-02-16-e?language=e

[370] Moncion, Lucie, 2021. Intervention at third reading of Bill C7. Debates of the Senate (Hansard), 2nd Session, 43rd Parliament. Volume 152, Issue 28. Tuesday, February 16, 2021. https://sencanada.ca/en/content/sen/chamber/432/debates/028db_2021-02-16-e?language=e

[371] Munson, Jim, 2021. Intervention at third reading of Bill C7. Debates of the Senate (Hansard), 2nd Session, 43rd Parliament. Volume 152, Issue 28. Tuesday, February 16, 2021. https://sencanada.ca/en/content/sen/chamber/432/debates/028db_2021-02-16-e?language=e

[372] Ibid.

[373] Beaudry, Jonas-Sébastien, 2023. *The "Reasonably Foreseeable Natural Death" Requirement in Bill C-7, and Expressivist Harm* in Kotalik, Jaro and Shannon, David, Eds. Medical Assistance in Dying (MAID) in Canada: Key Multidisciplinary Perspectives. Springer, the International Library of Bioethics, Volume 104. 2023 at p. 92.

[374] Bill C-7: *An Act to amend the Criminal Code (medical assistance in dying)*, Statutes of Canada 2021. 2nd Session, 43rd Parliament, Assented to March 17, 2021. Available: https://parl.ca/DocumentViewer/en/43-2/bill/C-7/royal-assent

[375] Supra, note 109. Section 241.2(3)(h) required that practitioners "immediately before providing the medical assistance in dying, give the person an opportunity to withdraw their request and ensure that the person gives express consent to receive medical assistance in dying". Bill C-7 added a provision to the law to permit waiving this requirement in certain circumstances.

[376] Petracek, Heidi, 2021. 'Audrey's amendment' is now the law after medically assisted dying bill gets royal assent. CTV News, March 18, 2021. Available: https://atlantic.ctvnews.ca/audrey-s-amendment-is-now-the-law-after-medically-assisted-dying-bill-gets-royal-assent-1.5353376

[377] MacDonald, Michael, for the Canadian Press, 2018. Accidental activist sought to change assisted dying law after terminal diagnosis. CTV News, November 2, 2018. Available: https://atlantic.ctvnews.ca/accidental-activist-sought-to-change-assisted-dying-law-after-terminal-diagnosis-1.4160291

[378] Dying with Dignity Canada, 2018. Halifax's Audrey Parker 'changed the national conversation' around assisted dying, Dying with Dignity Canada says. November 1, 2018. Available: https://www.dyingwithdignity.ca/blog/remembering_audrey_parker/

[379] Beliveau, Suzette, 2016. N.S. woman shares cancer journey in hopes of changing the way people view death. CTV Atlantic, March 23, 2016. Available: https://atlantic.ctvnews.ca/n-s-woman-shares-cancer-journey-in-hopes-of-changing-the-way-people-view-death-1.2829991

[380] Ibid.

[381] Audrey Parker, 2018. Audrey Parker: Honouring a life. Saltwire, November 1, 2018. Available: https://www.saltwire.com/halifax/news/local/audrey-parker-honouring-a-lifetime-255685/

[382] Prentiss, Mairin, 2018. 'I wanted to make it to Christmas': Woman calls for assisted dying law changes. CBC News, November 1, 2018. Available: https://www.cbc.ca/news/canada/nova-scotia/audrey-parker-assisted-dying-legislation-1.4887472

[383] Vancouver City News, 2016. Senators reject expanding assisted death law to include advanced directives. June 13, 2016. Available: https://vancouver.citynews.ca/2016/06/13/senators-reject-expanding-assisted-death-law-to-include-advance-directives/

[384] Supra, note 109. Section 9.

---

[385] Council of Canadian Academies, 2018. Medical Assistance in Dying: The Expert Panel on Medical Assistance in Dying. December 12, 2018. Available: https://cca-reports.ca/reports/medical-assistance-in-dying/

[386] Expert Panel Working Group on Advance Requests for MAID, 2018. The State of Knowledge on Advance Requests for Medical Assistance in Dying. Council of Canadian Academies, December 12, 2018. Available: https://cca-reports.ca/wp-content/uploads/2019/02/The-State-of-Knowledge-on-Advance-Requests-for-Medical-Assistance-in-Dying.pdf

[387] Supra, note 385. Page 35.

[388] Beaudry, Jonas-Sébastien, 2022. This issue.

[389] Reynolds, Joel Michael, 2016. The Ableism of Quality of Life Judgments in Disorders of Consciousness: Who Bears Epistemic Responsibility? AJOB Neuroscience, 7:1, 59-61. See also Goering, S. 'You Say You're Happy, but…': Contested Quality of Life Judgments in Bioethics and Disability Studies. Bioethical Inquiry 5, 125–135 (2008).

[390] Duranleau, Amélie, 2022. This issue.

[391] Lemmens, Trudo, 2022. This issue.

[392] Wallin, Pamela, 2020. Intervention in the Senate at second reading of Bill C-7, December 15, 2020. Available: https://sencanada.ca/en/senators/wallin-pamela/interventions/551847/14#hID

[393] Bach, Michael, 2022. This issue.

[394] Bryden, Joan, 2021, for the Canadian Press. Senators approve amendment allowing advance requests for medical assistance in dying. CTV News, February 10, 2021. Available: https://www.ctvnews.ca/politics/senators-approve-amendment-allowing-advance-requests-for-medical-assistance-in-dying-1.5304039

[395] Bryden, Joan, 2021, for the Canadian Press. Government agrees mentally ill should have access to assisted dying – in 2 years. CBC, February 23, 2021. Available: https://www.cbc.ca/news/politics/MAID-bill-senate-amendments-1.5924163

[396] Special Joint Committee on Medical Assistance in Dying, 2023. *Medical Assistance in Dying in Canada: Choices for Canadians*. Presented to the House of Commons on February 15, 2023. Available: https://www.parl.ca/DocumentViewer/en/44-1/AMAD/report-2

[397] Duclos, Jean-Yves and Lametti, David, 2023. Government response to the second report of the Special Joint Committee on Medical Assistance in Dying, June 13, 2023. Available: https://www.parl.ca/content/Committee/441/AMAD/GovResponse/RP12536195/441_AMAD_Rpt02_GR/DepartmentOfHealth-2023-06-15-b.pdf

[398] Bill S-248, An Act to amend the Criminal Code (medical assistance in dying), 1st Session, 44th Parliament, 2022. For more detailed legislative history, see parliamentary records at https://www.parl.ca/legisinfo/en/bill/44-1/s-248. The Bill was referred to Committee on June 8, 2023, but at time of writing no further activity has been initiated in the Senate.

[399] Bill 11, An Act to amend the Act respecting end-of-life care and other legislative provisions, 1st Session, 43rd Legislature, 2023. For more detailed legislative history of Bill 11, see records of the Québec National Assembly at https://www.assnat.qc.ca/en/travaux-parlementaires/projets-loi/projet-loi-11-43-1.html. Text of the Bill is available at: https://www.publicationsduquebec.gouv.qc.ca/fileadmin/Fichiers_client/lois_et_reglements/LoisAnnuelles/en/2023/2023C15A.PDF. See also Dyer O. Assisted dying: Quebec extends eligibility to cover severe disability and allow procedure in outdoor spaces BMJ 2023; 381: p. 1361

[400] Ibid., section 18. The provision requires that at the time MAID is administered, the patient be incapable of giving consent, be in an advanced state of irreversible decline in capability and objectively appear to be experiencing the enduring and unbearable physical or psychological suffering they described in their request.

[401] See for example the disparaging dismissal of observable indications of contentment expressed by persons with cognitive disabilities in discussions of "happy dementia" in supra, note 396, at pp. 69-70.

[402] Supra, note 62, para 111.

[403] Wilson-Raybould, Jody, 2016. Speech in the House of Commons at 2nd reading of Bill C-14. Debates (Hansard) No. 45, Volume 148, 42nd Parliament, 1st session, April 22, 2016. Available: https://www.ourcommons.ca/DocumentViewer/en/42-1/house/sitting-45/hansard#8881567

[404] For example, Senator Wallin described such losses in the following terms: "They will lose dignity, their character, their personality and, of course, their choices. For any of us who have witnessed this slow descent into hell, it is genuinely uncivilized." Wallin, Pamela, 2021. Intervention at 3rd reading of Bill C-7 in the Canadian Senate, February 8, 2021. Available: https://sencanada.ca/en/senators/wallin-pamela/interventions/552173/28#hID

[405] See ibid. Senator Wallin spoke of "the what-ifs of aging", imploring her colleagues, "I don't want to fall a victim to the disease lottery. If my cancer returns, MAID would be possible. But if dementia or Alzheimer's comes first, then there is no such promise."

[406] Baril, Alexandre, & McRuer, Robert, (2023). Undoing Suicidism: A Trans, Queer, Crip Approach to Rethinking (Assisted) Suicide p. 11. Temple University Press. Available: https://www.jstor.org/stable/jj.5104041.6

[407] Supra, note 329.

[408] Ibid.

[409] Council of Canadian Academies, 2018. *The State of Knowledge on Medical Assistance in Dying Where a Mental Disorder Is the Sole Underlying Medical Condition.* Ottawa (ON): The Expert Panel Working Group on MAID Where a Mental Disorder Is the Sole Underlying Medical Condition. Available: https://cca-reports.ca/wp-content/uploads/2018/12/The-State-of-Knowledge-on-Medical-Assistance-in-Dying-Where-a-Mental-Disorder-is-the-Sole-Underlying-Medical-Condition.pdf

[410] It should be noted that although Canada's MAID legislation has consistently used the terminology of "mental illness" the authors of the CCA report deliberately "chose to use the term *mental disorder* to be consistent with current clinical and legal

---

practice". According to the authors, 'mental disorder' is "the term used in the two primary classification systems in psychiatry: the World Health Organization's *International Statistical Classification of Diseases and Related Health Problems* and the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders*".

[411] Supra, note 409 at p. 34.

[412] Ibid.

[413] Ibid.

[414] Vrakas, Georgia, this issue.

[415] Gaind, Sonu, this issue.

[416] Krausert, Sean, this issue.

[417] Maher, John, this issue.

[418] Supra, note 409 at pp. 61-108.

[419] The CCA Working Group for MD-SUMC brought together academic and practitioner experts in psychiatry, geriatrics, health law and policy, sociology, bioethics, suicidology, nursing and Indigenous health. It did not include experts from critical disability theory or mad studies from whom strongly dissenting perspectives could be expected, yet consensus proved elusive within the group. Unlike with the two other MAID working groups convened simultaneously by the CCA, polarized opinions on fundamental issues figure prominently in their final report. See supra, note 409 at p. 196-8.

[420] For an elaboration of how working group members approached questions about suicide prevention differently, see supra, note 409 at pp. 84-96.

[421] Ibid, at p. 68.

[422] Supra, note 409 at pp. 63-83.

[423] Krausert, Sean, this issue.

[424] Gaind, Sonu, this issue.

[425] Supra, note 409 at p. 64.

[426] Maher, John, this issue.

[427] Supra, note 409 at p. 107.

[428] Supra, note 409 at p. 68.

[429] Supra, note 59, s. 241(2.1).

[430] Lametti, David, 2020. Intervention at 2nd reading of Bill C-7. From Hansard, No. 13, 43rd Parliament, 2nd Session, October 9, 2020. Available: https://www.ourcommons.ca/DocumentViewer/en/43-2/house/sitting-13/hansard#10947242

[431] Kutcher, Stan, 2021. Intervention at 3rd reading of Bill C-7, February 9, 2021. Available: https://sencanada.ca/en/senators/kutcher-stan/interventions/553870/11

[432] Ibid.

[433] Petitclerc, Chantal, 2021. From Debates of the Senate (Hansard), 2nd Session, 43rd Parliament, Volume 152, Issue 25, February 9, 2021. Available: https://sencanada.ca/Content/SEN/Chamber/432/debates/pdf/025db_2021-02-09-e.pdf, p. 862.

[434] Batters, Denise, 2021. From Debates of the Senate (Hansard), 2nd Session, 43rd Parliament, Volume 152, Issue 25, February 9, 2021. Available: https://sencanada.ca/Content/SEN/Chamber/432/debates/pdf/025db_2021-02-09-e.pdf. 863.

[435] Petitclerc, Chantal, 2021. Ibid.

[436] Lametti, David, 2021. From Debates of the House of Commons (Hansard), 2nd Session, 43rd Parliament, Volume 150, Issue 64, February 23, 2021. Available: https://www.ourcommons.ca/DocumentViewer/en/43-2/house/sitting-64/hansard

[437] Ibid.

[438] Supra, note 282, clause 3.1.

[439] Tumilty, Ryan, 2021. Expanded medically assisted dying bill passed by House of Commons after Liberals force vote. National Post, March 11, 2021. Available: https://nationalpost.com/news/politics/liberals-force-vote-on-expanded-medically-assisted-dying-bill-that-includes-access-for-mental-illness

[440] Gaind, Sonu, 2022. This issue.

[441] Kirby, Jeff, 2022. MAID expert panel recommendations are inadequate, contends panel member who resigned. The Hill Times, June 16, 2022. Available: https://www.hilltimes.com/story/2022/06/16/MAID-expert-panel-recommendations-are-inadequate-contends-panel-member-who-resigned/270807/

[442] Cohen, Ellen, 2022. Why I resigned from the federal expert panel on the medical assistance in dying. Globe and Mail, October 14, 2022. Available: https://www.theglobeandmail.com/opinion/article-expert-panel-MAID-mental-illness/

[443] Cohen, Ellen, 2022. This issue.

[444] Ibid.

[445] Health Canada, 2022. Final Report of the Expert Panel on MAID and Mental Illness. May 13, 2022, pp. 13-17. Available: https://www.canada.ca/en/health-canada/corporate/about-health-canada/public-engagement/external-advisory-bodies/expert-panel-MAID-mental-illness/final-report-expert-panel-MAID-mental-illness.html

[446] Ibid., p. 49.

[447] Ibid., p. 37.

[448] Ibid., pp. 36-37.

[449] ibid., pp. 75-76.

[450] Sethi, Sanyam, 2021. Doctors are the most trusted profession in Canada and across the world. Ipsos public opinion, October 12, 2021. Available: https://www.ipsos.com/en-ca/news-polls/doctors-most-trusted-profession-in-canada According to this

---

2021 Ipsos poll, 70% of Canadians consider doctors to be a trustworthy professional group, compared with only 13% who consider politicians to be trustworthy.

[451] Although expansionists frequently refer to an Alberta Court of Appeal decision – Canada (Attorney General) v E.F., 2016 ABCA 155 – in which a judicial authorization for MAID was granted in May 2016, the case bears little relevance to Canada's current legislative context. The Alberta Court had ruled in favour of EF, a 58-year-old woman who sought MAID for relief from suffering from painful muscle spasms and debilitating physiological symptoms associated with severe conversion disorder, classified as a psychogenic movement disorder. Issued during the brief hiatus following the Supreme Court's decision in Carter and prior to the passage of Bill C-14, the Alberta judgement was written in a legislative vacuum, without the benefit of reference to the "complex regulatory regime" established by Canada's elected Parliament. For a more fulsome discussion of Canada v. E.F., see Lemmens, Trudo; Kim, Heesoo & Kurz, Elizabeth, "Why Canada's Medical Assistance in Dying Legislation Should be C(h)arter Compliant and What It May Help to Avoid" (2018) 11:1 McGill JL & Health S61 at pp. 107-109. Available: https://mjlhmcgill.files.wordpress.com/2018/06/mjlh-11-1-lemmens.pdf. The Alberta Court of Appeal judgement is available at: https://www.canlii.org/en/ab/abca/doc/2016/2016abca155/2016abca155.html

[452] Bill C-39, An Act to amend the Criminal Code (medical assistance in dying), 1st Session, 44th Parliament, 2023. Assented to March 9, 2023. For more detailed legislative history of Bill C-39, see parliamentary records at https://www.parl.ca/legisinfo/en/bill/44-1/c-39 and legislative summary at https://openparliament.ca/bills/44-1/C-39/

[453] Lametti, David, 2023. Intervention at second reading of Bill C-39. From Debates of the House of Commons (Hansard), 1st Session, 44th Parliament, Volume 151, Issue 159, February 13, 2023. Available: https://www.ourcommons.ca/DocumentViewer/en/44-1/house/sitting-159/hansard#12054200

[454] Kutcher, Stan, 2023. From Debates of the Senate (Hansard), 1st Session, 44th Parliament, Volume 153, Issue 103, March 7, 2023. Available: https://sencanada.ca/en/content/sen/chamber/441/debates/103db_2023-03-07-e#57

[455] Ibid.

[456] Ibid.

[457] At the urging of the Expert Panel, Health Canada tasked an elite Task Group of six influential MAID expansionists to develop a 'Model Practice Standard for MAID'. This detailed clinical guidance manual for MAID practitioners and an accompanying document, 'Advice to the Profession", were published in March 2023. Both of these documents, along with a Backgrounder on their evolution are available at https://www.canada.ca/en/health-canada/services/publications/health-system-services/background-document-work-medical-assistance-dying-practice-standards-task-group.html

[458] In a formal response to the Expert Panel report in October 2022, Canada's Minister of Health, Jean-Yves Duclos, disclosed that $3.3 million had been provided to the Canadian Association of MAID Assessors and Providers [CAMAP] for development of a MAID curriculum to provide "high quality MAID training to healthcare practitioners across Canada". Minister Duclos's full response can be found at ttps://www.parl.ca/content/Committee/441/AMAD/GovResponse/RP11995101/441_AMAD_Rpt01_GR/DepartmentOfHealth-e.pdf. More information about the CAMAP MAID curriculum that this massive federal investment produced is available at https://camapcanada.ca/curriculum/ . The CAMAP MAID curriculum, launched nationally in August 2023 as an accredited Canadian medical education program, has since been criticized as inadequate and dangerous. See the testimony of Sonu Gaind before the Special Joint Committee on Medical Assistance in Dying on November 28, 2023, during hearings held to determine readiness for the MD-SUMC expansion. https://www.parl.ca/DocumentViewer/en/44-1/AMAD/meeting-40/evidence

[459] The shift in language from "mental illness", which had provided the framing for the Expert Panel's mandate and existence, to "mental disorder", around which all of the Panel's reporting and recommendations were organized, was made deliberately, in response to the urging of medical regulators to use the "major diagnostic classification schemes relied upon in Canadian psychiatric practice". See supra, note 445 at p. 21.

[460] See for example, Dying with Dignity Canada, 2021. MAID for those with a mental disorder: A deep dive into the issues of the Parliamentary Review. August 25, 2021. Available at: https://www.dyingwithdignity.ca/blog/pr_mental_illness/ Also, Dying with Dignity Canada, 2023. MAID for mental disorders: Insight from Dr. Lilian Thorpe. August 25, 2023. Available at: https://www.dyingwithdignity.ca/blog/MAID-for-mental-disorders-insight-from-dr-lilian-thorpe/

[461] Angus Reid Institute, 2023. Cardus: Mental Health and MAID: Canadians question looming changes to Canada's assisted-death law. February 12, 2023. Available at: https://angusreid.org/assisted-dying-MAID-mental-health/ See also, Editorial Board, *It's time to take a step back on assisted death*. Globe and Mail, November 4, 2023. Available: https://www.theglobeandmail.com/opinion/editorials/article-its-time-to-take-a-step-back-on-assisted-death/

[462] Anderson, Erin, 2022. *Medical experts call on government to delay expansion of MAID for mental illness*. Globe and Mail, December 1, 2022. Available at: https://www.theglobeandmail.com/canada/article-MAID-delay-mental-illness-medical-experts/ Also, Gaind, Sonu and Maher, John, 2022. Society of Canadian Psychiatry Call to Action, November 10, 2022. Available at: https://static1.squarespace.com/static/61db373a8e4e00423c117825/t/637bef81233c136bd0eb6d6d/1669066626054/SocPsych+Call+to+Action.pdf. See also, for example, Gaind K.S. What Does "Irremediability" in Mental Illness Mean? The Canadian Journal of Psychiatry. 2020;65(9):604-606; Sinyor M, Schaffer A. The Lack of Adequate Scientific Evidence Regarding Physician-assisted Death for People with Psychiatric Disorders Is a Danger to Patients. The Canadian Journal of Psychiatry. 2020;65(9):607-609.

---

[463] Bill C-314, An Act to amend the Criminal Code (medical assistance in dying), 1st Session, 44th Parliament, 2023. Defeated at second reading on October 18, 2023. For more detailed legislative history of Bill C-314, see parliamentary records at https://www.parl.ca/legisinfo/en/bill/44-1/c-314 and legislative summary at https://openparliament.ca/bills/44-1/C-314/

[464] Voting in favour of excluding mental illness from the definition of "grievous and irremediable medical condition" were all present members of the Conservative party, the NDP and the Green Party, along with a handful of 7 renegade Liberal Party members. An additional 22 MPs were not present for the vote. This distribution indicated a dramatic shift for the NDP and Green parties and some softening of support for expansion in the governing Liberal party. See details at https://openparliament.ca/votes/44-1/423/

[465] Supra, note 396. Recommendation 13 in the Committee's official report stated 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."

[466] Special Joint Committee on Medical Assistance in Dying, 2023. Follow-up on Recommendation 13 of the Second Report of the Special Joint Committee on Medical Assistance in Dying, Tuesday, November 7, 2023. Available: https://www.parl.ca/Committees/en/AMAD/StudyActivity?studyActivityId=12421513

[467] Wilson, Angus and Lafleur, Jean-François, 2023. Minutes of Proceedings, Special Joint Committee on Medical Assistance in Dying, 44th Parliament, 1st Session. November 7, 2023. Available: https://www.parl.ca/DocumentViewer/en/44-1/AMAD/meeting-38/minutes

[468] Vulnerable Persons Standard, 2023. Submission to the Special Joint Committee on Medical Assistance in Dying. November 16, 2023. Available: https://www.vps-npv.ca/amad2023. Published on the Committee's website on January 25, 2024 at https://www.ourcommons.ca/Content/Committee/441/AMAD/Brief/BR12752951/br-external/VulnerablePersonsStandard-e.pdf

[469] Bach, Michael and Frazee, Catherine, 2023. Medical Assistance in Dying: A Policy Solution to Suffering, but what's the question? A Brief Submited to the Special Joint Commitee on Medical Assistance in Dying, November 16, 2023. https://www.ourcommons.ca/Content/Committee/441/AMAD/Brief/BR12722989/br-external/Jointly2-e.pdf

[470] Peters, Gabrielle, 2023. Submission to the Special Joint Committee on Medical Assistance in Dying. November 16, 2023. Available: https://www.ourcommons.ca/Content/Committee/441/AMAD/Brief/BR12829397/br-external/PetersGabrielle-10817788-e.pdf

[471] In the early debates around Bill C-14, for example, Canadian media outlets entertained a brief enthrallment with first-person stories of suicidal aspiration by individuals with mental illness like Adam Maier-Clayton and Graeme Bayliss, who argued for access to MAID. In this context, the compelling autobiographical account of suicide intervention and recovery offered by Mark Henick offered a powerful counter-narrative. See Henick, Mark, 2016. *Why people with mental illness shouldn't have access to medically assisted death.* Globe and Mail, May 8, 2016. Available: https://www.theglobeandmail.com/life/health-and-fitness/health/why-people-with-mental-illness-shouldnt-have-access-to-medically-assisted-death/article29912867/; Maier-Clayton, Adam, 2016. *As a person with mental illness, here's why I support medically assisted death.* Globe and Mail, May 8, 2016. Available: https://www.theglobeandmail.com/life/health-and-fitness/health/as-a-person-with-mental-illness-heres-why-i-support-medically-assisted-death/article29912835/; and Bayliss, Graeme, 2016. *It Doesn't Get Better.* The Walrus, April 14, 2016. Available: https://thewalrus.ca/suicide-is-not-painless/

[472] Vrakas, Georgia, 2022. This issue.

[473] Krausert, Sean, 2022. This issue.

[474] Wedlake, Marnie, 2023. MAID and Mental Illness: An interview with Dr. Jeffrey Kirby. Mad in Canada, October 5, 2023. Available: https://madincanada.org/2023/10/MAID-and-mental-illness-an-interview-with-dr-jeffrey-kirby/

[475] Baril, Alexandre, 2017. The Somatechnologies of Canada's Medical Assistance in Dying Law: LGBTQ Discourses on Suicide and the Injunction to Live. Somatechnics 2017 7:2, 201-217. Available: <https://www.euppublishing.com/doi/abs/10.3366/soma.2017.0218?journalCode=soma>

[476] McRuer, Robert, and Baril, Alexandre. "Foreword." In *Undoing Suicidism: A Trans, Queer, Crip Approach to Rethinking (Assisted) Suicide*, xiv. Temple University Press, 2023. Available: https://www.jstor.org/stable/jj.5104041

[477] Supra, note 406 at p.8.

[478] Supra, note 406 at p. 9.

[479] Kafer, A. (2013). *Feminist, Queer, Crip*. Indiana University Press.

[480] Supra, note 475.

[481] Landau Emily, 2023. The Year Ahead: Politics in 2024. Maclean's, December 28, 2023. https://macleans.ca/year-ahead/canadian-politics-today/

[482] Tunney, Catharine, 2023. Trudeau overhauls his cabinet, drops 7 ministers and shuffles most portfolios. CBC News, July 26, 2023. https://www.cbc.ca/news/politics/cabinet-shuffle-trudeau-1.6916367

[483] Zimonjic, Peter, 2022. Mark Holland discusses personal trauma in plea to make politics more compassionate. CBC News, Oct 25, 2022. https://www.cbc.ca/news/politics/mark-holland-hybrid-parliament-compassion-1.6628963

[484] Canadian Press, 2023. Is Canada ready to expand medical assistance in dying? Liberals will face that choice with deadline closing in. CBC News, December 27, 2023. https://www.cbc.ca/news/politics/liberals-debate-expanding-medical-assisted-dying-1.7069887

[485] Supra, note 461.

---

[486] Angus Reid Institute, 2023. Mental Health and MAID: Canadians who struggle to get help more likely to support expanding eligibility. September 28, 2023. https://angusreid.org/mental-health-care-access-MAID-mental-illness/

[487] Editorial Board, 2023. It's time to take a step back on assisted death. Globe and Mail, November 4, 2023. https://www.theglobeandmail.com/opinion/editorials/article-its-time-to-take-a-step-back-on-assisted-death/ See also Star Editorial Board, 2024. Why the surge in medically assisted deaths? Toronto Star, February 6, 2024. https://www.thestar.com/opinion/editorials/why-the-surge-in-medically-assisted-deaths/article_94409938-c459-11ee-8837-c7971120b029.html and Editorial Board, 2024. Canada, there's still time to rethink this risky expansion of euthanasia. Washington Post, January 27, 2024. https://www.washingtonpost.com/opinions/2024/01/27/canada-MAID-euthanasia-death-assisted-suicide/.
See also the following two major investigative reports: Fault Lines, 2023. Do You Want To Die Today? Inside Canada's Euthanasia Program. Al Jazeera, November 17, 2023. https://www.aljazeera.com/program/fault-lines/2023/11/17/do-you-want-to-die-today-inside-canadas-euthanasia-program; and Khalatbari, Masih and Cribb, Robert, 2024. Surge in medically assisted deaths under Canada's MAID program outpaces every other country. Toronto Star, January 27, 2024. https://www.thestar.com/news/investigations/surge-in-medically-assisted-deaths-under-canada-s-MAID-program-outpaces-every-other-country/article_29028f96-bc6b-11ee-8f67-03bf29ac7d34.html

[488] See for example the letter signed by 28 law professors from universities across the country, challenging what they described as the "problematic and… unfounded rhetoric" of the government's figurative hands being "tied by the courts". The professors urged the government ""to conduct a serious, inclusive, and evidence-based re-evaluation of the appropriateness of expanding MAID" and "to suspend this implementation." Lemmens, Trudo, 2023. Parliament is not forced by the courts to legalize MAID for mental illness: Law Professors' Letter to Cabinet. February 2, 2023. https://www.law.utoronto.ca/blog/faculty/letter-federal-cabinet-about-governments-legal-claims-related-MAID-mental-illness

[489] See Gaind, Sonu et al, 2023. More Canadian Psychiatrists Respond: No MAID for Mental Illness. Impact Ethics, November 28, 2023. https://impactethics.ca/2023/11/28/more-canadian-psychiatrists-respond-no-MAID-for-mental-illness/ See also the testimony of Dr. Jitender Sareen, head of psychiatry at the University of Manitoba, before the Special Joint Committee on Medical Assistance in Dying on November 21, 2023. Dr. Sareen, speaking on behalf of eight chairs of Canadian university psychiatry departments, urged an "extended pause" on MAID for MD-SUMC. https://www.parl.ca/DocumentViewer/en/44-1/AMAD/meeting-39/evidence As a member of the Association of Chairs of Psychiatry in Canada, Dr. Sareen and his counterparts at all 17 Canadian medical schools had been influential in the government's February 2023 decision to delay implementation of MAID for MD-SUMC. See Supra, note 462.

[490] 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), section 16 (4). Supra, note 399.

[491] Thompson, Michelle et al, 2024. Letter to federal Minister of Health, Mark Holland, January 29, 2024.

[492] Gillmore, Meagan, 2023. Report on MAID's expansion may disregard 900 submissions. Canadian Affairs, December 7, 2023. https://www.canadianaffairs.news/2023/12/07/report-on-MAIDs-expansion-may-disregard-900-submissions/

[493] Special Joint Committee on Medical Assistance in Dying, 2024. Report 3: MAID and Mental Disorders: The Road Ahead. Presented to the House of Commons on January 29, 2024. https://www.parl.ca/documentviewer/en/44-1/AMAD/report-3

[494] Ibid. Dissenting opinions were recorded collectively by Senators Kutcher, Mégie and Wallin and separately by Senator Dalphond. Supplementary opinions were recorded by the Conservative Party and the Bloc Québecois.

[495] Supra, note 493.

[496] Major, Darren, 2024. Federal government seeking another pause on the planned expansion of medical assistance in dying. CBC News, January 29, 2024. https://www.cbc.ca/news/politics/medical-assistance-in-dying-mental-illness-delay-1.7098313

[497] Grant, Isabel and Sheehy, Elizabeth, 2024. Cited in supra, note 314.

[498] Bill C-62, An Act to amend the Criminal Code (medical assistance in dying), No. 2. 1st Session, 44th Parliament, 2024. Assented to February 29, 2024. For more detailed legislative history of Bill C-62, see parliamentary records at https://www.parl.ca/legisinfo/en/bill/44-1/c-62 and legislative summary at https://openparliament.ca/bills/44-1/C-62/. Also see the Charter Statement for Bill C-62 tabled in the House of Commons on February 8, 2024 at https://www.justice.gc.ca/eng/csj-sjc/pl/charter-charte/c62.html

[499] Government of Canada, 2024. Charter Statement, Bill C-62. Tabled in the House of Commons, February 8, 2014. https://www.justice.gc.ca/eng/csj-sjc/pl/charter-charte/c62.html

[500] Question Period, CTV News. Interview with Justice Minister Arif Virani, February 4, 2024 https://www.ctvnews.ca/video/c2860391-question-period--MAID-extension-delayed-3-years?playlistId=1.6194352 See also Van Dyk, Spencer, 2024. MAID expansion delay 'categorically' not a political move: justice minister, CTV News, February 3, 2024. https://www.ctvnews.ca/politics/MAID-expansion-delay-categorically-not-a-political-move-justice-minister-1.6754632

[501] Saks, Ya'ara, 2024. Intervention at second reading of Bill C-62. February 7, 2024. Available: https://www.ourcommons.ca/DocumentViewer/en/44-1/house/sitting-277/hansard#12564384

[502] Kutcher, Stanley, 2024. Intervention at second reading of Bill C-62. February 26, 2024. Available: https://sencanada.ca/en/content/sen/chamber/441/debates/181db_2024-02-26-e#38

[503] Senator Kutcher's aspersions would later be rebutted by Senator Marilou McPhedran when she rose in the Senate to support Bill C-62: "Colleagues, that may be how the senator perceives those who have a different view from his, but the experts that I am bringing to your attention are not cacophony. They deserve respect and acknowledgment of their skills and their direct,

---

current testimony…, and I ask you to consider the human rights analysis they offer, with respect." McPhedran, Marilou, 2024. Intervention at third reading of Bill C-62. February 27, 2024. https://sencanada.ca/en/content/sen/chamber/441/debates/182db_2024-02-27-e?language=e#69

[504] Supra, note 502.

[505] Parliamentary bills are said to pass "on division" to indicate that the question was not decided unanimously, but without a recorded vote.

[506] Supra, note 109, section 9.1 (1).

[507] Council of Canadian Academies, 2018. The State of Knowledge on Medical Assistance in Dying for Mature Minors. Ottawa (ON): The Expert Panel Working Group on MAID for Mature Minors. Available: https://cca-reports.ca/wp-content/uploads/2018/12/The-State-of-Knowledge-on-Medical-Assistance-in-Dying-for-Mature-Minors.pdf

[508] The report explains the concept of "mature minor" in Canadian jurisprudence in the following terms: "Canadian legislation does not provide a definition of a mature minor — rather, the Supreme Court of Canada recognizes the common law mature minor doctrine, which defines this population as individuals with the capacity to make an informed healthcare decision but who have not yet reached the age of majority. Quebec law does not recognize the concept of a mature minor, but instead links decisional rights to age ranges." Ibid., at p. 34.

[509] According to a Library of Parliament study, the South American nation of Colombia also permits assisted suicide and euthanasia for minors at least six years of age with a prognosis of six months or less. See Library of Parliament, 2022. Medical Assistance in Dying: The Law in Selected Jurisdictions. P. 26. Available: https://lop.parl.ca/staticfiles/PublicWebsite/Home/ResearchPublications/HillStudies/PDF/2015-116-E.pdf

[510] Supra, note 507, at p. 116.

[511] Supra, note 507, pp. 148-149.

[512] Supra, note 507, at p. 92.

[513] Although the report makes a brief and passing reference to a 2018 research study in which youth with disabilities reported between 3 and 9 times higher rates of suicide attempts relative to youth with no disability, it neither presents the findings of this study nor accords it any significance except as a factor that might hypothetically "compound… vulnerability in healthcare contexts". See Moses, T. Suicide Attempts Among Adolescents with Self-Reported Disabilities. *Child Psychiatry & Human Development* 49, 420–433 (2018).

[514] Supra, note 507, p. 149. It is notable as well, when parsing this concluding observation by the CCA working group, that MAID is positioned as a "right" that should not be "diminished". MAID is not currently a "right" for non-adult persons. Moreover, arguably, MAID is not a "right" for any person, regardless of their age and eligibility. For those who hold this view, MAID may be said to confer rights upon authorized medical practitioners in Canada to perform euthanasia or to assist suicide under specified conditions without incurring criminal prosecution.

[515] Belanger, Neil, 2022. This issue.

[516] Ibid.

[517] Saulis, Conrad, 2022. This issue.

[518] Jama, Sarah, 2022. This issue.

[519] Mehdi, Ahona, 2022. This issue.

[520] In 2016, Canadian paediatrician Dawn Davies, who chaired the CCA working group on MAID for Mature Minors, led a study to address the question "How often are Canadian paediatricians engaging in exploratory conversations or receiving explicit requests for medical assistance in dying?" Her study results revealed an alarming level of receptivity to MAID "for minors of all ages", including in circumstances beyond end-of-life, and upon parental request in the case of "incapable" children and youth. Although MAID by third party request for any disabled person, including disabled minors, has always been prohibited by the Criminal Code, Davies reported in a 2018 article that "According to the CPSP-MAID study, 118 (11.2%) of participants reported having had exploratory discussions about MAID with parents, on behalf of 419 never-competent patients." See Public Health Agency of Canada, 2016. Canadian Paediatric Surveillance Program, 2016 Results Pp. 34-35. Available: https://cpsp.cps.ca/uploads/publications/CPSP-2016-Results.pdf Also, Davies, Dawn, 2018. Medical assistance in dying: A paediatric perspective. Paediatrics and Child Health. 2018 May;23(2):125-130. Available: https://pubmed.ncbi.nlm.nih.gov/30653625/

[521] Supra, note 519.

[522] Supra, note 519.

[523] Lemmens, Trudo, 2022, citing Carter, Supra, note 62, at para. 111.

[524] Sheehy, Elizabeth, 2022. This issue.

[525] Supra, note 396. It should be noted that the anti-expansion submissions are better represented in the dissenting minority report that accompanies the official report of the majority.

[526] Supra, note 396 at p. 62.

[527] Supra, note 396, recommendation 14 at p. 57.

[528] Supra, note 396, recommendation 15 at p. 57.

[529] Supra, note 397.

[530] Supra, note 396 at p. 56.

[531] Supra, note 396, recommendation 16 at p. 61.

---

[532] Supra, note 396, recommendation 17 at p. 63.

[533] Supra, note 397.

[534] Ibid. It is worth noting, in conjunction with supra, note 410, that the government of Canada has continued using the designation of "mental illness" rather than "mental disorder" to describe the pending expansion. This is likely because conditions such as autism and dementia are likely already deemed MAID-able as disabilities or disabling diseases, notwithstanding their inclusion in the diagnostic criteria for "mental disorder".

[535] Supra, note 397. These comments specifically addressed recommendations 16 and 17 from the Committee's report. The Committee's more benign recommendations 14 and 15 were endorsed strongly in the government's response, which acknowledged "a history of systemic discrimination, cultural insensitivity, and mistreatment in the healthcare system" affecting Indigenous Peoples, and "youth suicide crises" among Indigenous youth.

[536] Supra, note 396, recommendation 18 at p. 64. The government's response places recommendation 18 in the same cluster as recommendations 14 and 15, suggesting some commitment to move forward in this direction.

[537] Lametti, Hon. David, 2016. Testimony before the Standing Senate Committee on Legal and Constitutional Affairs. 43rd Parliament, 2nd Session, *Evidence* November 23, 2020. Available at https://sencanada.ca/en/Content/Sen/Committee/432/LCJC/02ev-55071-e

[538] Cullen, Catherine, 2020. Thousands of responses to medically assisted dying survey swamp government website. CBC News, January 14, 2020. Available: https://www.cbc.ca/news/politics/medical-aid-in-dying-response-1.5426564. See also Department of Justice Canada, 2020. Government of Canada proposes changes to medical assistance in dying legislation, News Release, February 24, 2020. The news release sets out the context for Bill C-7 in part as follows: "As expected, there has been a consistent and gradual increase in MAID deaths over the last three years as people become more aware of assisted dying as a legal option and it gains greater acceptance by Canadians." Available: https://www.canada.ca/en/department-justice/news/2020/02/government-of-canada-proposes-changes-to-medical-assistance-in-dying-legislation.html

[539] Supra, note 430.

[540] Gubitz, Gordon, 2022. Testimony before the Special Joint Committee on Medical Assistance in Dying. 44th Parliament, First Session. November 1, 2022. Available at https://www.parl.ca/DocumentViewer/en/44-1/AMAD/meeting-24/evidence. Cited in supra, note 396 at page 62.

[541] According to the most current government report, Track 1 MAID accounted for 41,282 deaths between 2016 and 2022. See Health Canada, Fourth Annual Report on Medical Assistance in Dying in Canada, 2022. Published October 2023. Available: https://www.canada.ca/en/health-canada/services/publications/health-system-services/annual-report-medical-assistance-dying-2022.html

[542] Not surprisingly, official government reports couch MAID expansion in different language, for example explaining simply that "MAID legislation has continued to evolve as Canadians, practitioners and decision-makers become more familiar with MAID and its application over time." See ibid. at p. 11.

[543] Serebrin, Jacob, 2023. Quebecers no longer seeing doctor-assisted deaths as exceptional, oversight body says. The Gazette, August 15, 2023. https://montrealgazette.com/news/local-news/quebecers-no-longer-seeing-doctor-assisted-deaths-as-exceptional-oversight-body-says

[544] Government of Canada, 2024. Regulations for the Monitoring of Medical Assistance in Dying, Consolidation SOR/2018-166. Current to February 20, 2024. Last amended on January 1, 2024. Available: https://laws-lois.justice.gc.ca/eng/regulations/SOR-2018-166/page-1.html

[545] Ibid., section 13. At present, the regulations require reporting the number of requests; the requesters' medical characteristics, race, Indigeneity and/or self-reported disability and the nature of their suffering; the reasons why any requests may have been declined; the timeframes and venues for MAID provision; and particulars about practitioner involvement, consultation and prior treatment history with MAID requesters. Methodology employed to arrive at any findings, and analysis of trends emerging from requests and/or MAID provisions are also required.

[546] Supra, note 541. This report of MAID fatalities and analysis from 2022 was not available until October 2023. Assuming that this pattern of reporting lag continues, we will have only 2022 data to rely on until the late fall of 2024. The author is aware of no efforts on the part of government to improve the timeliness of MAID reporting. Indeed, there are indications that the problems of delay in 'counting the dead' is endemic to Canadian federalism. See Philpott, Jane, 2020. Canada counts its dead much too slowly. MacLean's, December 15, 2020. https://macleans.ca/opinion/canada-counts-its-dead-much-too-slowly/

[547] Khalatbari, Masih and Cribb, Robert, 2024. Supra, note 487.

[548] Supra, note 541, p. 20.

[549] Supra, note 487.

[550] Khalatbari, Maish. “Surge in medically assisted deaths under Canada’s MAID program outpaces every other country.” *Toronto Star*, 20 Jan. 2024, https://www.thestar.com/news/investigations/surge-in-medically-assisted-deaths-under-canada-s-MAID-program-outpaces-every-other-country/article_29028f96-bc6b-11ee-8f67-03bf29ac7d34.html.

[551] See for example, the profiles of Rob Rollins, John Shields, Noreen Campbell, Hugh Wallace and Josephine Hopkins, selected from many similar reports in 2017. Ireland, Nicole, 2017. *1,300 Canadians have died with medical assistance since legalization — here's one man's story*. CBC news, April 20, 2017. https://www.cbc.ca/news/health/medically-assisted-dying-canadians-rob-rollins-1.4056700; Porter, Catherine, 2017. *At His Own Wake, Celebrating Life and the Gift of Death*. New York Times, May 25, 2017. https://www.nytimes.com/2017/05/25/world/canada/euthanasia-bill-john-shields-death.html; Smart, Amy, 2017. *'Thank you for a Peaceful Death'; Island woman shares her story of assisted dying to reassure and inspire others*. Vancouver Sun, January 14, 2017; Krajewski, Paul, 2017. *Woman shares how ailing husband choreographed*

---

his death; Medical Assistance in Dying said to be an option for people suffering from terminal illnesses. The High River Times, February 10, 2017; Egan, Kelly, 2017. *'I'm ready': The life and (assisted) death of Josephine Hopkins*. The Ottawa Citizen, August 26, 2017. https://ottawacitizen.com/feature/im-ready-the-life-and-assisted-death-of-josephine-hopkins

[552] See for example, Warick, Jason, 2023. A good death. CBC News, June 4, 2023. https://www.cbc.ca/newsinteractives/features/a-good-death-MAID. Also, Kostandoff, Kate, 2023. *What it's like to watch a loved one die with MAID*. Globe and Mail, August 27, 2023. https://www.theglobeandmail.com/life/first-person/article-what-its-like-to-watch-a-loved-one-die-with-MAID/

[553] Nichols, Trish and Nichols, Gary, 2022. This issue.

[554] For example, one prolific MAID provider, Dr. Ellen Wiebe, is reported to have consulted actuarial tables to calculate the life expectancy of the plaintiff in a case heard by the Ontario Superior Court in 2017, *A. B. v. Canada (Attorney General), 2017 ONSC 3759* https://www.canlii.org/en/on/onsc/doc/2017/2017onsc3759/2017onsc3759.html The plaintiff in this case was an 80-year-old woman with significant, unremitting, debilitating and essentially untreatable pain as a result of a 25-year history of osteoarthritis. In the very early days of Canada's MAID regime, AB's physicians were cautious about whether she met the RFND requirement for MAID, prompting her to seek a court ruling. The Court reviewed her circumstances in some detail and granted a judgement that AB's natural death was reasonably foreseeable. The Court ruled at para.79 that "what is a reasonably foreseeable death is a person-specific medical question to be made without necessarily making, but not necessarily precluding, a prognosis of the remaining lifespan", in no way suggesting that broader guidance regarding life expectancy should be taken from its judgement. Nevertheless, Dr. Wiebe's medical freelancing cleared the way for her to adopt a 10-year timeframe when assessing "reasonably foreseeable natural death". See Bryden, Joan, 2020. *Experts concerned Ottawa has revived uncertainty over meaning of foreseeable death in assisted-dying bill*. Globe and Mail, March 3, 2020. https://www.theglobeandmail.com/politics/article-experts-concerned-ottawa-has-revived-uncertainty-over-meaning-of/

[555] Supra, note 180. The 2022 amendments to these CAMAP guidelines specify that the RFND criterion is met whenever a non-dying person signals “a clear and serious intent” to take some action that would hasten their own death.[555] Among the specific examples included in this category are persons who threaten to stop eating and drinking, persons who speak about declining antibiotics or oxygen and persons with spinal cord injuries who threaten to refuse turning.

[556] In British Columbia, as in most Canadian provinces and territories, MAID deaths are deemed to be "natural" deaths. Although Ontario and Québec permit no mention of MAID on death certificates, British Columbia does require the manner of death to be recorded as "MAID (due to) underlying illness, disease or disability". See Brown J, Thorpe L, Goodridge D. Completion of Medical Certificates of Death after an Assisted Death: An Environmental Scan of Practices. Healthcare Policy. 2018 Nov;14(2):59-67, Table 1. https://pubmed.ncbi.nlm.nih.gov/30710442/

[557] Duncan, Alicia and Duncan, Christie, 2022. This issue.

[558] Supra, note 282. Section 241.2 (3.1) (i).

[559] Ibid. Practitioners are given some latitude to waive this 90-day safeguard, but only in cases where they are jointly of the opinion that their patient is at risk of losing their capacity to consent.

[560] Supra, note 62, para. 78.

[561] In addition to the Nichols and Duncan cases, supra notes 553 and 557, see Anderssen, Erin, 2023. *A complicated grief: Living in the aftermath of a family member’s death by MAID*. Globe and Mail, January 18, 2023. See also reports of a very disturbing case involving the imminent MAID death of a 27-year-old woman with autism whose father has turned to the courts in seeking to prevent his daughter's death. Martin, Kevin, 2024. *Calgary judge rules woman with autism can seek Medical Assistance in Dying*. Calgary Herald, March 25, 2024. https://calgaryherald.com/news/local-news/calgary-judge-woman-with-autism-medical-assistance-in-dying . On March 11, 2024, the Alberta Court of King's Bench ruled against her father, permitting an interim injunction to remain in place for 30 days to permit commencement of an appeal. See WV v MV, 2024 ABKB 174. https://www.canlii.org/en/ab/abkb/doc/2024/2024abkb174/2024abkb174.html

[562] Selley, Chris, 2024. *If not a judge, then who can find proof of oversight on MAID?* National Post, March 27, 2024. https://nationalpost.com/opinion/chris-selley-if-not-a-judge-then-who-can-find-proof-of-oversight-on-MAID

[563] Rocca, E., Anjum, R.L. (2020). Complexity, Reductionism and the Biomedical Model. In: Anjum, R.L., Copeland, S., Rocca, E. (eds) Rethinking Causality, Complexity and Evidence for the Unique Patient. Springer, Cham.

[564] Coelho, Ramona, 2022. This issue.

[565] Li, Madeline, as told to Agrba, Liza, 2023. *I am a MAID provider. It’s the most meaningful—and maddening—work I do. Here’s why.* Maclean's, February 13, 2023. https://macleans.ca/society/i-am-a-MAID-provider-its-the-most-meaningful-and-maddening-work-i-do-heres-why

[566] From the experience of Archie Rolland, whose 2016 MAID death was triggered by an upheaval in long-term care arrangements that left him in intolerable conditions, to that of Normand Meunier, whose 2024 MAID death was precipitated directly by injuries sustained through negligent emergency department care, there is abundant evidence of how bureaucratized medical "care" harms disabled people and thereby funnels them into the MAID pipeline. See supra, note 245, and Watts, Rachel, 2024. *Quadriplegic Quebec man chooses assisted dying after 4-day ER stay leaves horrific bedsore.* CBC News, April 12, 2024. https://www.cbc.ca/news/canada/montreal/assisted-death-quadriplegic-quebec-man-er-bed-sore-1.7171209

[567] Janz, Heidi, 2022. This issue.

[568] Hewitt, Michelle, 2022. This issue.

[569] Supra, note 567.

---

[570] Supra, note 568.

[571] Living with Dignity Canada, for example, records photographs and thumbnail biographies of disabled persons who have died by MAID or are at risk of dying by MAID. https://living-with-dignity.ca/home/the-reflection-room/. Not Dead Yet Canada and ARCH Disability Law also actively track questionable or problematic MAID deaths affecting disabled people.

[572] This was the phrase used by Dr. Jeff Blackmer, Vice President of the Canadian Medical Association, when he testified before the federal government's Physician-Assisted Dying Committee in 2016. Dr. Blackmer gave clear expression to the radical nature of the changes that this law would herald when he advised the Committee members at the time that legalized euthanasia would represent "… no less than a sea change for physicians in Canada." He continued, "… I cannot underscore enough the significance and the importance of this change." Blackmer, Dr. Jeff, 2016. Testimony before the Special Joint Committee on Physician-Assisted Dying, 42nd Parliament, 1st Session. January 27, 2016. https://www.parl.ca/DocumentViewer/en/42-1/PDAM/meeting-6/evidence

[573] Fong, Petti, 2012. *Gloria Taylor, B.C. right-to-die activist, dies of natural causes*. Toronto Star, October 5, 2012. https://www.thestar.com/news/canada/gloria-taylor-b-c-right-to-die-activist-dies-of-natural-causes/article_4949d913-fa8a-518d-bd46-f97c4efe460e.html

[574] Pellus, Johanna, 2022. *Nicole Gladu, Quebec advocate of right to medical assistance in dying, dies of natural causes.* The Globe and Mail, April 1, 2022. https://www.theglobeandmail.com/canada/article-nicole-gladu-quebec-advocate-of-right-to-medical-assistance-in-dying/

[575] Larsen, Karin, 2019. *BC woman wins right to receive medically assisted death*. CBC News, September 18, 2019. https://www.cbc.ca/news/canada/british-columbia/b-c-woman-wins-right-to-receive-medically-assisted-death-1.5276011.

[576] Grant, Kelly, 2019. *BC woman drops challenge of MAID law after learning she qualifies for assisted dying.* Globe and Mail, September 18, 2019. https://www.theglobeandmail.com/canada/article-bc-woman-challenging-reasonably-foreseeable-clause-in-MAID-law/

[577] See Board member profiles for Disability Alliance BC at https://disabilityalliancebc.org/about-dabc/board-of-directors/

[578] Ha, Tu Thanh, 2020. *Jean Truchon, MAID advocate, receives assisted death early because of coronavirus fears.* Globe and Mail, April 8, 2020. https://www.theglobeandmail.com/canada/article-jean-truchon-MAID-advocate-receives-assisted-death-early-due-to/ See also the full text of Jean Truchon's statement at https://www.newswire.ca/news-releases/jean-truchon-receives-medical-aid-in-dying-882864208.html

[579] Gardner, Bill, 2023. Death by referral. Comment Magazine, April 20, 2023. https://comment.org/death-by-referral/

[580] See for example, Coelho R, Maher J, Gaind KS, Lemmens T (2023). The realities of Medical Assistance in Dying in Canada. Palliative and Supportive Care 21, 871–878. https://www.cambridge.org/core/services/aop-cambridge-core/content/view/3105E6A45E04DFA8602D54DF91A2F568/S1478951523001025a.pdf/the-realities-of-medical-assistance-in-dying-in-canada.pdf

Also, Kim, S. Y. H. (2023). *Canadian Medical Assistance in Dying and the Hegemony of Privilege.* The American Journal of Bioethics, 23(11), 1–6. https://www.tandfonline.com/doi/full/10.1080/15265161.2023.2264096

[581] Grant, Isabel, Benedet, Janine, Sheehy, Elizabeth, and Frazee, Catherine, 2024. A Conversation on Feminism, Ableism, and Medical Assistance in Dying. Canadian Journal of Women at the Law, forthcoming.

Also, Lemmens, T. (2023). When Death Becomes Therapy: Canada’s Troubling Normalization of Health Care Provider Ending of Life. The American Journal of Bioethics, 23(11), 79–84. https://www.tandfonline.com/doi/epdf/10.1080/15265161.2023.2265265

[582] See for example, Atkins Chloë, 2023. A Disabled Bioethicist's Critique of Canada's Medical Assistance in Dying (MAID). American Journal of Bioethics, 2023 Nov;23(11):102-104.

[583] Day, Shelagh and Brodsky, Gwen, 1996. The Duty To Accommodate: Who Will Benefit? Canadian Bar Review Vol. 75 No. 3 (1996). https://cbr.cba.org/index.php/cbr/article/view/3720. Brodsky and Day describe the difference between formal and substantive equality in the following terms:

Whereas the principle of formal equality is concerned with like treatment of like individuals, the principle of substantive equality is concerned with conditions of inequality experienced by groups, and with the imbalance in power among groups in society that is at the root of inequality. In the human rights context, the ideal implicit in formal equality is to eliminate differential treatment of individuals in relation to employment, housing, and public services. The ideal implicit in substantive equality is to eliminate systemic factors that produce conditions of inequality for disadvantaged groups, recognizing that that may mean altering systems that facially treat everyone the same.

[584] Adair, Bill, 2022. This issue.