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**Submission to the Standing Senate Committee on Legal and Constitutional Affairs on Bill C-7
(MAiD)**

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Thank you for the invitation to appear before you today. My name is Laverne Jacobs. I am a law professor at the University of Windsor. I research and teach and in the areas of law and disability, human rights and administrative law. I am the founder and Director of the the Law, Disability & Social Change Project, a research and public advocacy centre at the University of Windsor's Faculty of Law. I am also a Black woman and a person with physical disabilities.

The current debate about medical assistance in dying (MAiD) has focused on very specific issues in relation to MAiD — namely, eligibility, safeguards and advanced requests. These are all important topics. But, permeating all of these topics is an issue that is of primary importance and that should be front and centre. This is the issue of STIGMA. Stigma surrounding people with disabilities is perpetuated by the proposed revisions to the MAiD legislation, and there are a number of things that this legislation (and the key government actors) need to do in order to ensure that people with disabilities do not face extended social inequality as a result of MAiD.

It is useful to begin this discussion with an analogy that takes us outside of the very many tangled pieces relating to medical assistance in dying. So, I want to open this presentation by asking you to think about the situation of racial stigma faced by members of the Black

community. Racial stigma forms part of anti-Black racism. In Canada, the US and elsewhere, the Black community is often identified as being a troubled community and “problematic”, although a thorough investigation would find many of the problems experienced by the group to be connected to historical, socio-economic and legal structures of society. Strong systems of substantive equality would look beyond the actions of individuals to investigate the structure of social relations within which people act.

As a result of social structures that have been built on biased understandings of social existence, inequality becomes not just a set of individual circumstances but also a much larger web of *systemic discrimination*. **And what’s particularly troubling about any structure of systemic discrimination is that once ideas harmful to a minority group have been legislated into law, it becomes extremely difficult to convince the general public that those ideas are stigma-inducing or, ultimately, discriminatory.**

The situation of racial inequality mirrors the situation that we are living, breathing and discussing now with MAiD. In both cases, we are dealing with the stigmatization of a historically disadvantaged group and, in both cases, the stigma itself has caused harm to the group. However, we are in the privileged position to learn from mistakes of the past and prevent our legislation from continuing to systemically stigmatize people with disabilities. The question now is how to do that. How do we strip the structure of our MAiD legislation of ableist understandings of social existence?

I argue that we cannot allow access to MAiD without ensuring protection of the disability community from stigma. Moreover, the government should not be allowing MAiD if it is not also enabling those with disabilities to have the supports they need to live a fulsome life when they choose to do so, at all stages of life, including at the end of life.

The topic of medical assistance in dying presents two different visions of equality. The first is a formalistic vision of equality which asks for likes to be treated alike. This is the type of equality that underlies the *Truchon* decision of September 2019 – the decision that led to these legislative changes in relation to MAiD. The idea fought for and won in *Truchon* is that all people with disabilities should be given the same opportunity to obtain death. However, this is a very narrow and problematic conception of equality. It does not address the substantive implications of saying that it is okay to seek medical assistance to die if one is disabled, and regardless of the stage of life you are in. It certainly does not inquire about whether the label of being “MAiDable” furthers the historical disadvantage of the disability community as a whole. Finally, it does nothing to ensure that the social situation of people with disabilities as a community is ameliorated overall.

In fact, this conception of equality also runs contrary to the principles of the UN Convention on the Rights of Persons with Disabilities. (CRPD) Committee published its interpretive guidance on the notion of equality under the Convention in 2018. (Canada ratified the CRPD and it entered into force for Canada on April 12, 2010).

There are now several stories that have come up in the news and elsewhere about individuals feeling pushed into MAiD because of lack of supports that would enable them to live in the community. This includes most recently during the Covid 19 crisis where there is evidence of people who rely on the Ontario Disability Support Program (but effectively living below the poverty line) turning to MAiD (Mulligan and Yawar, 2020).

In conclusion, I share the concern of the UN Special Rapporteur who concluded on her 2019 visit to Canada that the implementation of the legislation on medical assistance in dying is problematic from a disability perspective (Lemmens and Jacobs, 2019). In light of recent events

relating to the COVID-19 pandemic and its impact on people with disabilities who live in poverty, I would go beyond this to say that this legislation is beyond problematic as it may be encouraging death as an alternative to the government fulfilling its obligations to ensure necessities of life such as food. I think that the federal government needs to face and come to grips with the very real issue of stigma and its harmful impact on the disability community and ensure that the legislation is changed so that it's not stigma inducing. **This legislation should require that all other treatment and support options be made available and explored first before MAiD is permitted.**

I thank you for the opportunity to provide to my comments.

References

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