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Brief of the

**Christian Legal Fellowship**

to

**The Special Joint Committee on Medical Assistance in Dying**

regarding

**A comprehensive review of the provisions of the *Criminal Code* relating to medical assistance in dying and their 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.**

*[An Act to amend the Criminal Code (medical assistance in dying) (S.C. 2021, c. 2), s. 5(1)]*

**May 9, 2022**

## EXECUTIVE SUMMARY\*

How should we, as a society, support those who are struggling? What treatments should we prioritize for patients? What solutions should we offer to those in painful and difficult circumstances?

“Death” should not become a routine answer to these questions. Yet that may be the effect of continuing to expand Canada’s MAID regime, especially amidst growing concerns about inadequate access to healthcare and supports for those who are suffering.

By offering death as a “solution” for more conditions and forms of suffering, and by expanding eligibility in more circumstances, MAID is undergoing a radical transformation in Canada. It is evolving from an exceptional procedure to *hasten* an already-foreseeable *death*, to a widely-available option to *terminate* a person’s *life* because they have lost their sense of hope and meaning.<sup>1</sup>

This expansion is proceeding in the name of compassion and dignity. But we must ask: where is the compassion and dignity in offering death for “isolation or loneliness”, or because a patient is afraid of being a “burden on family, friends or caregivers”, or for circumstances that can potentially be addressed through other means—including those that ought to be available but may be inaccessible—such as disability supports, palliative care, or adequate housing?<sup>2</sup>

Providing MAID as a “solution” in such circumstances presents patients with the “choice” between death on the one hand, or a life without support on the other. To borrow from the Supreme Court in *Carter v Canada*: “The choice is cruel.”<sup>3</sup> In fact, it is not a true choice at all.

These are not hypothetical arguments. Media reports have highlighted disturbing accounts of Canadians who have reluctantly accepted MAID, including those who felt they had no other option to escape their suffering and socioeconomic distress.<sup>4</sup> And these concerns are further exacerbated by troubling reports about non-compliance with existing safeguards.<sup>5</sup>

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\*This is an executive summary of CLF’s background paper, available at <http://www.christianlegalfellowship.org/amadsubmissions>.

<sup>1</sup> Between mid-2016 to the end of 2020, there were 21,589 reported MAID deaths. According to data reviewed by the court in *Truchon c Procureur général du Canada*, 2019 QCCS 3792 [*Truchon*], psychological suffering (either alone or in combination with physical suffering) had contributed to 94% of MAID cases in Quebec. The main types of mental suffering reported included “psychological, social and existential suffering”, such as “loss of meaning in life [and] the perception of being a burden on one’s loved ones” (at para 210(e)). In 2020, of the 7,384 patients who received MAID, the nature of their suffering was characterized as: “Loss of dignity” (53.9%); “Perceived burden on family, friends, or caregivers” (35.9%); “Isolation or loneliness” (18.6%); “Emotional distress/anxiety/fear/existential suffering” (5.6%); “No/poor/loss of quality of life” (3.1%). Health Canada, *Second Annual Report on Medical Assistance in Dying in Canada, 2020*, (June 2021) at 20. Multiple answers could be selected.

<sup>2</sup> See notes 3 and 9-10.

<sup>3</sup> *Carter v Canada (Attorney General)*, 2015 SCC 5 at para 1 [*Carter*].

<sup>4</sup> E.g., Avis Favaro, “[Women with chemical sensitivities chose medically-assisted death after failed bid to get better housing](#)”, CTV News (13 April 2022).

<sup>5</sup> Discussed in more detail in CLF’s background paper.

Since legalization in 2016, MAID has continually been expanded in response to arguments that restrictions are arbitrary and exclude individuals who desire it as an option. But where does this end?

*Any* limitation on MAID will arguably have an exclusionary effect, unless MAID is to be available, on demand, for everyone. Parliament must draw a line somewhere.

The Supreme Court’s decision in *Carter* relied on the notion that MAID would be “stringently *limited*” through a “carefully monitored system of *exceptions*”.<sup>6</sup> MAID is the *limited exception*, not the rule.<sup>7</sup> And, in defining the parameters of this “stringently limited” exception, Parliament must balance the rights of everyone—not just those seeking the option of MAID.<sup>8</sup>

The courts’ decisions in *Carter* and *Truchon* proceeded on the basis that Parliament’s only purpose for limiting MAID was protecting vulnerable persons from being induced to end their lives at a time of weakness.<sup>9</sup> That is *one* very important purpose, but Parliament’s concerns extend further. The law must also consider:

- The *Charter* rights of patients seeking solutions that prioritize life over death, who have the right to be free from pressures, direct or indirect, to receive MAID;
- Canada’s international law obligations, including the United Nations *Convention of the Rights of Persons with Disabilities*;
- The adverse impact that expanding MAID will have on members of marginalized groups, particularly where access to meaningful healthcare aimed at alleviating suffering is lacking;
- Societal interests, including “affirm[ing] the inherent and equal value of every person’s life” and preventing suicide generally, given its “lasting and harmful effects on individuals, families and communities” (Bill C-14’s preamble); and
- The harms associated with offering death as a medical solution to many forms of suffering, including social and existential suffering, and socioeconomic distress.

Christian Legal Fellowship’s background paper<sup>10</sup> examines these considerations and recommends that the government (1) prioritize healthcare, supports, and safeguards for all Canadians; (2) respond to concerning reports about non-compliance and questionable cases of MAID to date; and (3) do so *before* expanding MAID further.

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<sup>6</sup> *Carter* at para 29, citing *Carter v Canada*, 2012 BCSC 886 at para 1243 (emphasis added).

<sup>7</sup> This is the legal status of MAID under Canadian law: a specific *exception* to culpable homicide and aiding suicide offences. See *Criminal Code*, RSC 1985, c C-46, ss 227(1),(4) and ss 241(2)-(5.1).

<sup>8</sup> *Carter* at paras 98, 125; *Dagenais v Canadian Broadcasting Corp.*, [1994] 3 SCR 835 at 877.

<sup>9</sup> *Truchon* at para 556; *Carter* at para 78.

<sup>10</sup> Available at <http://www.christianlegalfellowship.org/amadsubmissions>.