Canadian Association of MAiD Assessors and Providers

Association canadienne des évaluateurs et prestataires de l'AMM

Written Brief to the
Standing Committee on Justice and Human Rights
House of Commons
Canada

Submitted by Dr. Stefanie Green
President, Canadian Association of MAiD Assessors and Providers
November 5, 2020

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Committee Members,

Thank you for the opportunity to be submit this written brief to accompany my speaking notes from November 5, 2020.

My name is Stefanie Green, and I am a physician with 25 years of clinical experience. In June 2016, I began working almost exclusively in medical assistance in dying (MAiD), and I am currently an assessor of eligibility as well as a provider of MAiD in Victoria, BC. British Columbia has the highest rate of MAiD provision in the country (by percentage) and the engine of that activity is coming from Vancouver Island, so by virtue of where I work and live, I have become one of the more experienced providers in the country. I am also the medical advisor to the BC MAiD Oversight Advisory Committee and sit on several sub-committees.

While I wear a number of MAiD-related titles, for the purposes of this submission I present myself to the Standing Committee on Justice and Human Rights in my capacity as the President of the Canadian Association of MAiD Assessors and Providers (CAMAP), a national non profit medical association that represents and supports the variety of professionals who have arguably grown into the foremost experts of assisted dying in this country.

I wish to impress upon this committee that as an organization, CAMAP does not work to advocate for assisted dying. We are, in fact, the community of multidisciplinary professionals that do the work of assisted dying to the highest of medical standards, and always within the law of the country, whatever that law may be. We have the collective, lived experience of how the practice of assisted dying has unfolded across this country, where the obstacles and successes have been found, and how the system might be improved to the benefit of all involved. It is in this context that I now present my brief thoughts.

I want to be sure to first emphasize what I think Bill C7 has done well, what I think could benefit from clarification, and then suggest two simple but practically important changes.

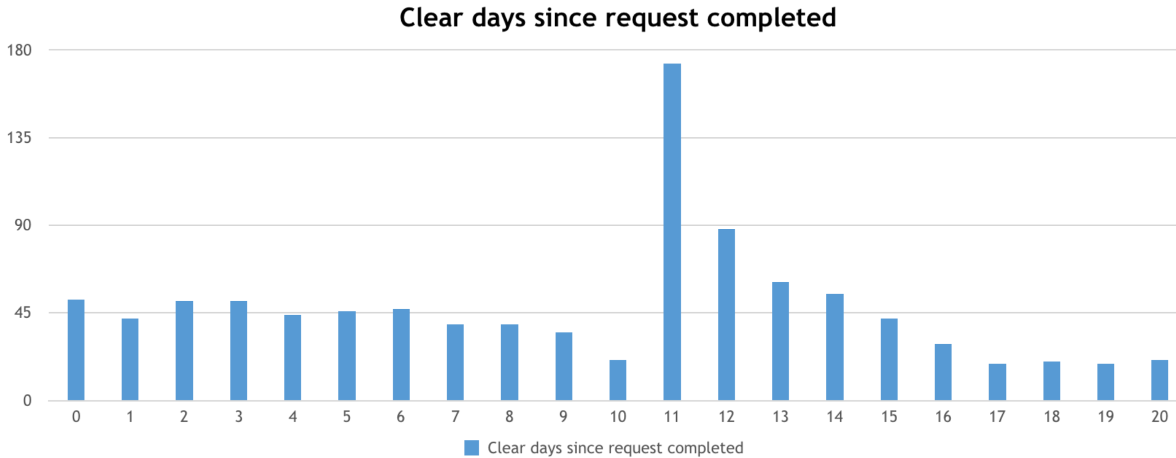
**10 day Reflection Period**

I want to support the proposed removal of the 10 day reflection period for those who's death is reasonably foreseeable. In four and a half years, there has been no evidence this reflection period has been an effective safeguard, but there is convincing evidence to suggest it has mandated substantial suffering which I do not believe was the intention of the law.

The first National Report on Assisted Dying in Canada demonstrated that fully one third of all reported cases MAiD in Canada are actually expedited *within* 10 days of the written request for care. This strongly implies patients are accessing care much too late in the course of their illness. Only the imminent risk of loss of capacity to make this health care decision or the risk of imminent death allows a provider of care to expedite this procedure. Ideally, MAiD should never be done as an emergency. While I do not have access to more detailed national data, I do have access to a large set of MAiD data collected in the Island Health Authority- the region with the highest percentage of assisted dying in the province, the country, and in fact the world (in the first quarter of 2020, fully 7% of all deaths within Island Health were due to MAiD).

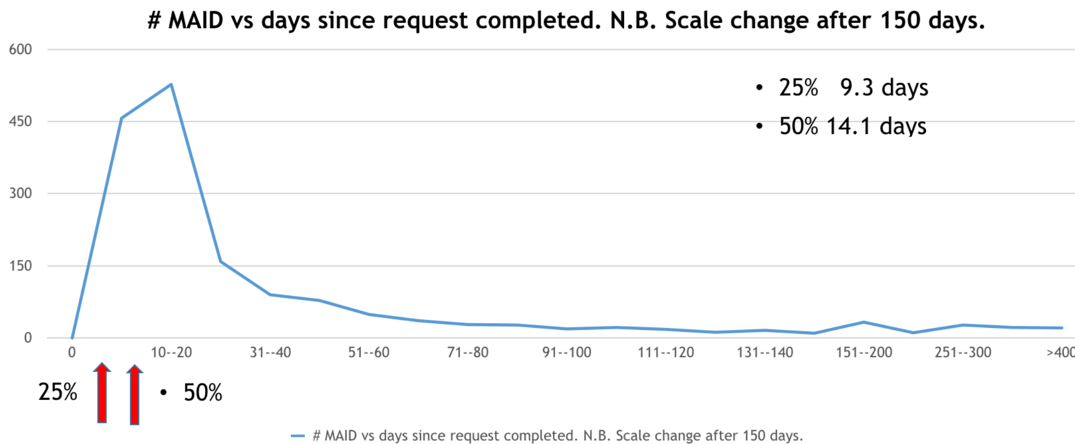
Island Health data shows a smaller percentage of expedited cases of MAiD compared to national data (27% expedited within 10 days of written request in Island Health compared to 34% expedited MAiD cases nationally) which probably reflects our experienced organization, our solid infrastructure, and the simplified, widespread access to care throughout our region. However, in the chart below you will see the absolute greatest number of MAiD procedures occurs on day 11, within 24 hours of the end of the 10 day reflection period.

# MAID each day after completing request




That fully 50% of all MAiD cases in Island Health have occurred by 14 days after the written request is completed (see chart below) means a significant proportion of MAiD procedures are occurring in the 3 days immediately following the 10 day reflection period. This suggests that patients are simply waiting for the 10 days to pass, and then they proceed very quickly. The remaining 50% of MAiD cases in Island Health occur not over the next 14 days, but over a span of a year or more.

# Days from Request to MAID vs frequency

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The vast majority of patients who make this health care choice for themselves do so after a significant period of contemplation- weeks, months, or years. Asking them to wait another 10 days while in intolerable suffering is an insult to their process and a cruel procedural requirement. The anxiety generated during those 10 days merely compounds the already intolerable situation. There is a significant and not unrealistic fear of a sudden, unexpected loss of function or capacity. Patients often withhold taking much needed analgesics during this time to help ensure that their decision-making capacity is retained regardless of their care provider's suggestions otherwise.

The 10 day reflection period was an attempt at safeguarding the vulnerable, but it has not shown itself to be effective in any way that members of our association have seen. It has proven a false safeguard, and it has contrarily produced excess anxiety and suffering. It should go.

## Waiver of Final Consent

I want to strongly support the proposed amendment to allow the waiving of final consent in the specific situation outlined in Bill C7. A 2019 survey of MAiD providers conducted by CAMAP suggested 85% of providers have personally experienced the situation of walking into a room to facilitate an assisted death only to find the patient no longer able to provide final consent due to an unexpected loss of capacity. It is unfortunately not a rarity. I can tell you from first hand experience how horrible that situation is. Loved ones standardly beg for the clinician to proceed, regardless of the obvious illegality of any such action and our certain inability to do so. It is an agonizing situation for all. I am unable to appreciate who exactly is being protected in such a situation by not proceeding with the rigorously processed, eligible, and previously planned MAiD death for such patients. I am absolutely clear on who is harmed.

The proposed amendment to allow the waiving of final consent in the specific, outlined situation in Bill C7 is essential, overdue, and will be welcomed by patients, their families, the public, and the multidisciplinary professionals involved in this work.

I find the proposed requirement of setting a specific date somewhat problematic from a practical point of view. Patients, not uncommonly, shift their requested procedure date due to family travel planning and/or a variety of unexpected reasons. **I would respectfully suggested a 90 day time frame (or some such reasonable limit) be**

**used instead of the requirement of a specific date being set.** I submit the following simply altered wording for your consideration.

*(3.2) For the purposes of subsection (3), the medical practitioner or nurse practitioner may administer a substance to a person to cause their death without meeting the requirement set out in paragraph (3)(h) if*

*(a) before the person loses the capacity to consent to receiving medical assistance in dying,*

*(i) they met all of the criteria set out in subsection (1) and all other safeguards set out in subsection (3) were met,*

*(ii) they entered into an arrangement in writing with the medical practitioner or nurse practitioner that the medical practitioner or nurse practitioner would administer a substance to cause their death* ***within 90 days****,*

*(iii) they were informed by the medical practitioner or nurse practitioner of the risk of losing the capacity to consent to receiving medical assistance in dying prior to the* ***end of the 90 days*** *specified in the arrangement, and*

*(iv) in the written arrangement, they consented to the administration by the medical practitioner or nurse practitioner of a substance to cause their death on or before the* ***end of the 90 days*** *specified in the arrangement if they lost their capacity to consent to receiving medical assistance in dying prior to* ***that time;***

**Required Expert Input (when death is not reasonably foreseeable)**

I applaud the government for specifically using the term ‘expert’ when seeking expertise in the illnesses of patients whose deaths are not reasonably foreseeable. Implicit in this terminology is the recognition that one does not need to be a particular medical sub-specialist to have expertise in illness. Very often, family physicians and nurse practitioners are, by nature of their practices, experts in a wide array of illnesses. This is especially true of practitioners in rural communities. Rehabilitation medicine clinicians, occupational therapist, physiotherapists, clinical nurse specialists, indeed many types of health professionals can and do develop expert knowledge in specific

illnesses of interest, and it is wise to recognize this wide range of possible expertise and to allow for its use.

## Reasonably Foreseeable

While I applaud the government in their attempt to bring the rest of Canada in line with the Truchon decision of Quebec and remove the eligibility requirement that a patient's natural death be reasonably foreseeable, I am disappointed they have chosen the same phraseology be used as the determining factor regarding which set of procedural safeguards a patient must follow in their application for care. The term *reasonably foreseeable* has historically created confusion. Confusion can sow fear and ultimately, inaction.

Luckily, Canadian clinicians now have a working clinical interpretation of *reasonably foreseeable*, fashioned through four and a half years of clinical experience, discussion and debate, legal advice and perhaps most importantly an Ontario trial decision (the case known as AB) where the interpretation of *reasonably foreseeable* was solidified as meaning a trajectory towards death. This reassured clinicians that the criteria of a reasonably foreseeable natural death is met if there is either a temporal relationship to death- a person is dying shortly- or a predictability of death- a person is on a clear, predictable path to the end of their life due to their underlying medical condition.

**It would be extremely helpful if the government were to reinforce that the determination of what constitutes a reasonably foreseeable death is a clinical decision, to be made by the clinicians and not the courts, and that while its use in the proposed amendments has changed (it is no longer an eligibility requirement for MAiD) its meaning or definition has not been altered in any way.**

## Expert as Assessor of MAiD

My final comment points to a small but tremendously important error in Bill C7 that suggests a misunderstanding of the realities our health care resources and carries significant ramification. I believe this error can be easily and consensually remedied.

Current wording of subsection 3.1 suggests that a clinician with expertise in the illness underlying a patient's request for MAiD must be one of the assessors of eligibility for

MAiD in patients whose death is not reasonably foreseeable. Requiring the input of an expert on the illness in such a situation is not an unreasonable requirement, but mandating that the expert complete an assessment of eligibility for MAiD itself is wholly unrealistic.

If we take the example of a patient with a chronic pain syndrome—the input of a pain specialist on the cause of the pain, the various treatment options available, the expected course of illness if treated or if not— such a contribution would indeed prove invaluable to any assessment of the situation. But, as consultants consistently write in their reports, they will happily comment on their area of expertise but respectfully decline to opine on a patient's overall eligibility for MAiD. That is neither their area of expertise nor an area of their interest.

**I respectfully suggest the addition of some simple wording (see below) that will *maintain the requirement for expert input* in the situation where a person's natural death is not reasonably foreseeable but allows, in fact requires, two experienced MAiD assessors to do the work of assessing the patient's eligibility for MAiD.** To do otherwise, to mandate that the 'expert' in the illness be one of the assessors of eligibility for MAiD, as it is currently written, would essentially dramatically obstruct access to MAiD for those whose death is not reasonably foreseeable.

*3.1) Before a medical practitioner or nurse practitioner provides medical assistance in dying to a person whose natural death is not reasonably foreseeable, taking into account all of their medical circumstances, the medical practitioner or nurse practitioner must*

*(e) ensure that a written opinion confirming that the person meets all of the criteria set out in subsection (1) has been provided by*

***(ii) if they do not have the expertise in the condition that is causing the person's suffering, but consulted on the person's condition with someone with that expertise, another medical practitioner or nurse practitioner or***

*(ii) if they have that expertise, another medical practitioner or nurse practitioner;*

I remain available to answer any further question on these or other issues of concern, and I thank you for your serious consideration of my comments.

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Stefanie Green MDCM CCFP
President CAMAP

**Appendix 1**

Summary of suggested changes

*(3.1) Before a medical practitioner or nurse practitioner provides medical assistance in dying to a person whose natural death is not reasonably foreseeable, taking into account all of their medical circumstances, the medical practitioner or nurse practitioner must*

*(e) ensure that a written opinion confirming that the person meets all of the criteria set out in subsection (1) has been provided by*

***(ii) if they do not have the expertise in the condition that is causing the person's suffering, but consulted on the person's condition with someone with that expertise, another medical practitioner or nurse practitioner or***

*(ii) if they have that expertise, another medical practitioner or nurse practitioner;*

*(3.2) For the purposes of subsection (3), the medical practitioner or nurse practitioner may administer a substance to a person to cause their death without meeting the requirement set out in paragraph (3)(h) if*

*(a) before the person loses the capacity to consent to receiving medical assistance in dying,*

*(i) they met all of the criteria set out in subsection (1) and all other safeguards set out in subsection (3) were met,*

*(ii) they entered into an arrangement in writing with the medical practitioner or nurse practitioner that the medical practitioner or nurse practitioner would administer a substance to cause their death* ***within 90 days****,*

*(iii) they were informed by the medical practitioner or nurse practitioner of the risk of losing the capacity to consent to receiving medical assistance in dying prior to the **end of the 90 days** specified in the arrangement, and*

*(iv) in the written arrangement, they consented to the administration by the medical practitioner or nurse practitioner of a substance to cause their death on or before the **end of the 90 days** specified in the arrangement if they lost their capacity to consent to receiving medical assistance in dying prior to **that time;***

**References:**

1. Island Health Authority MAID data- Redcap Data Base, courtesy of Dr. David Robertson Executive Medical Director for Island Health's Laboratory Program, Pharmacy, Medical Imaging and Medical Lead for medical assistance in dying

2. First Annual Report on Medical Assistance in Dying in Canada 2019- https://www.canada.ca/en/health-canada/services/medical-assistance-dying-annual-report-2019.html

3. The AB decision- A.B vs Canada 2017, Ontario Superior Court- https://camapcanada.ca/wp-content/uploads/2018/12/ABDecision1.pdf