



Council of Canadians
with Disabilities

Conseil des Canadiens
avec déficiences

4 October, 2019

Hon. David Lametti, MP. Attorney General

Cc:

Right Hon. Justin Trudeau, Prime Minister, Leader of the Liberal Party of Canada,

Hon. Carla Qualtrough, MP. Minister of Accessibility, Liberal Party of Canada

Dear Minister Lametti,

Re: Advocates Call for Disability-Rights Based Appeal of the Quebec Superior Court's Decision in Truchon & Gladu

We, the undersigned members and supporters of the Canadian disability community, are deeply troubled by the Quebec Superior Court's decision of *Truchon c. Procureur général du Canada*. As you are aware, the decision has struck down the "reasonable foreseeability of natural death" criterion of Canada's medical assistance in dying legislation. As Attorney General of Canada, we urge you to file an appeal of the decision immediately.

We find this decision to be concerning for the following three reasons:

- 1) **It fails to respect Parliament's authority to balance the interests of individuals with the interests of society¹, effectively limiting Parliament's capacity to pursue social targets such as substantive equality and inclusion.**

Justice Christine Baudouin arrives at the conclusion that the end-of-life criterion violates section 7 and section 15 of the *Charter* by rejecting a key objective of Parliament, erasing any need for a section 1 analysis of reasonable limits. Parliament outlined the following societal objective in the preamble of the legislation:

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.

In fully rejecting this objective, the court has limited the authority of Parliament to govern toward an inclusive and equitable Canada. This is a dangerous precedent. Parliament intentionally included the end of life criterion in the legislation as a way of achieving the

¹ <https://www.justice.gc.ca/eng/rp-pr/cp-pm/just/06.html>

above objective. Is it reasonable for Parliament to limit the individual interests of Truchon and Gladu (autonomy) in order to promote the interests of society (equality and inclusion)? Without an appeal, we may never know. The Supreme Court must weigh in on this flawed analysis.

2) **The decision will entrench stereotypes and exacerbate stigma for Canadians with disabilities, contributing to the adversity and oppression experienced by this vulnerable group.**

Without the equalizing effect of the end-of-life criterion, which guarantees that the common thread between all persons who access an assisted death in Canada is that they are all dying, persons with disabilities will be able to gain access ultimately because they have a disability. A worse stereotype couldn't be institutionalized in law - that disability-related suffering, largely caused by lack of support and inequality, justifies the termination of a person's life.

Canada must avoid sending a message that having a disability is a fate worse than death. Canadians with disabilities are already bombarded daily with reminders that they are unwelcome and under-valued. We must not compound this harm by entrenching in law the message that others who share their condition will receive our full support if they choose to die prematurely. This message fits too neatly into the stereotype that a life featuring disability is a bad life, full only of suffering and pity. Such a narrative already exists. Canada must appeal the decision to prevent additional stereotyping and stigma, and to substantively protect the section 15 *Charter* rights of persons with disabilities.

3) **Without the end-of-life criterion in place, Canada's medical assistance in dying legislation will further violate article 10 of the United Nations' Convention on the Rights of Persons with Disabilities (CRPD).**

Article 10 of the CRPD reads as follows:

States Parties reaffirm that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others.

By offering medical assistance in dying to persons with disabilities on the basis of disability, Canada would be further violating international law. If every Canadian who suffers cannot access a medically assisted death, and yet a Canadian who suffers and has a degenerative disability can, it is precisely their disability status that sets them apart.

Canada is already not taking necessary measures to ensure the effective enjoyment of life by persons with disabilities on an equal basis with others. There is case after case of

Canadians whose medical and support needs are not being met, causing them to consider, if not seek out, death. ²

Canada's medical assistance in dying regime already concerns the UN's Special Rapporteur on the rights of persons with disabilities, Catalina Devandas-Aguilar, who shared at the conclusion of her study visit to Canada that she is "extremely concerned about the implementation of the legislation on medical assistance in dying from a disability perspective" and this is before the end of life criterion was struck down.

Minister Lametti, as Attorney General of Canada, we urge you to appeal this decision up through to the Supreme Court. Not to do so, we believe would be a failure on the part of your government to defend persons with disabilities from significant and tangible harm. After extensive consultation by Parliamentary Committees and public debate, your government crafted this legislation intentionally and purposefully. We trust that as Attorney General you will take the steps needed for its vigorous defence. Canadians' human rights are at stake.

Signed,

1. Council of Canadians with Disabilities
2. Canadian Association for Community Living
3. ARCH Disability Law Centre
4. People First of Canada
5. Canadian Mental Health Association
6. Canadian Disability Studies Association / Association canadienne d'études sur le handicap
7. Institute for Research and Development on Inclusion and Society
8. L'Arche Canada
9. Canadian Institute for Inclusion and Citizenship
10. The DisAbled Women's Network of Canada / Réseau d'Action des Femmes Handicapées du Canada (DAWN-RAFH Canada)
11. Barrier free Canada - Canada sans Barrières
12. Toujours Vivant-Not Dead Yet
13. Communication Disabilities Access Canada
14. Société québécoise de la déficience intellectuelle / Quebec Intellectual Disability Society
15. NWT Council for Disability
16. Independent Living Centre London and Area
17. British Columbia Aboriginal Network on Disability Society

² Think of Sean Tagert, Archie Rolland, Natalie Jarvis, and Arleen Reinsborough as examples. Read more here:

<https://www.cbc.ca/news/canada/british-columbia/als-bc-man-medically-assisted-death-1.5244731>

<https://montrealgazette.com/news/local-news/saying-goodbye-to-archie-rolland>

<https://www.cbc.ca/news/canada/nova-scotia/lung-transplants-atlantic-canada-toronto-financial-cost-1.5047818>

<https://www.thestar.com/news/canada/2019/01/20/hamilton-senior-in-unbearable-pain-wants-assisted-dying-to-save-her-from-nursing-home.html>

18. Inclusion Selkirk
19. National Network for Mental Health
20. Families for a Secure Future
21. Citizens With Disabilities - Ontario
22. Nova Scotia League for Equal Opportunities
23. Collectif des médecins contre l'euthanasie / Physicians' Alliance against Euthanasia
24. Coalition of Persons with Disabilities Newfoundland and Labrador
25. Interdisciplinary Master's Program - Disability Studies, University of Manitoba
26. Nova Scotia Association for Community Living
27. Fredericton Association for Community Living
28. Disability Alliance BC
29. Inclusion BC
30. Resila INC
31. Ontario Federation for Cerebral Palsy
32. Euthanasia Prevention Coalition
33. Community Inclusion Society
34. Association for Reformed Political Action
35. Bridges to Belonging Waterloo Region, Ontario
36. Body BRave
37. Community Living Victoria
38. Community Ventures Society
39. Inclusion Alberta
40. Bethesda
41. Disability Rights Coalition of Nova Scotia
42. Living with Dignity / Vivre dans la Dignité
43. Community Living Ontario
44. The Manitoba League of Persons with Disabilities Inc.
45. Burnaby Association for Community Inclusion
46. Christian Medical and Dental Association of Canada
47. Prince Edward Island Association for Community Living
48. posAbilities Association
49. New Brunswick Association for Community Living
50. Inclusion Saskatchewan
51. Inclusion Winnipeg
52. Community Living Manitoba
53. Canadian Physicians for Life
54. Keremeos Measuring Up Team (British Columbia)
55. Disability Studies Program, Kings University College at Western University
56. Alliance for Equality of Blind Canadians (Toronto Chapter)
57. Canadian Federation of Catholic Physicians and Societies
58. PLAN
59. PLAN Edmonton
60. PLAN Calgary
61. PLAN Okanagan

62. Bridges to Belonging (Waterloo)
63. Christian Legal Fellowship / Alliance des chrétiens en droit
64. Newfoundland and Labrador Association for Community Living
65. Inclusion Yukon