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# Euthanasia as Therapy? Lessons for France from Canada's Normalization of Health Care Providing Ending of Life

# How Canada Became Jurisdiction with Most Expansive Euthanasia Practice

- Strong Commitment to Broad Right to Die Based on Utilitarian Ideals Reflected in Various Policy Initiatives Prior and After *Carter & Truchon* & influence of well-connected & well-funded lobby group Dying with Dignity
- Legalization Following Judicial Decisions: Rhetoric of Constitutional Right to “MAID” with focus on individual rights & downplaying broader community & societal interests
- Particular Components of Canada’s MAID law
- Experts committed to broad euthanasia legalization dominate policy landscape: FOCUS ON ACCESS to DEATH as a right, NOT PROTECTION against harm
- What is Happening? Where is it Heading?

# Supreme Court *Carter* 2015

- Right to “**physician-assisted death** for a competent adult person who (1) **clearly consents** to the termination of life; and (2) has 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.”
- Confirmation of right to refuse treatment options *in connection with MAID request*

## SCC in *Carter*

“The trial judge, after an exhaustive review of the evidence, rejected the argument that adoption of a regulatory regime would initiate a descent down a slippery slope into homicide. We should not lightly assume that the regulatory regime will function defectively [effectively?], nor should we assume that other criminal sanctions against the taking of lives will prove impotent [potent?] against abuse.”



# *Carter* involved Exceptional Cases

- “The scope of this declaration is intended to respond to the factual circumstances in this case. We make *no pronouncement on other situations* where physician-assisted dying may be sought” (par. 217)
- Criminal law provisions unconstitutional *to the extent that they prohibit people “like Ms. Taylor”* (par. 126) (= person with neurological condition approaching natural death)
- Reports of problems in Belgium relate to cases “which would not fall within the parameters suggested in these reasons, such as *euthanasia for minors* or persons with *psychiatric disorders or minor medical conditions.*” (par. 111)
  - Suggestion: Belgian regime may leave too much discretion in criteria & safeguards

# Rhetoric Post-*Carter*

- Presumption of “Right to Physician Assisted Dying/ Medical Assistance in Dying”
- Abandoning of the Ethical and Policy related arguments in favour of ‘rights rhetoric’.
  - Even professional organizations, including *Canadian Medical Association, Canadian Psychiatric Association*, started to talk about ‘a constitutional right to MAID’ & ‘non-discrimination in access to constitutional right’ *instead of dealing with evidence & health policy arguments, which should inform law & judicial decisions*

# 2016 Bill C 14

- Ministers Judy Wilson-Raybould & Jane Philpott

## **Preamble: Balance between Autonomy - Protection Vulnerable and Society**

- **autonomy** of **persons who have a grievous and irremediable medical condition**
- robust safeguards, reflecting the **irrevocable nature of ending a life**
- **inherent and equal value of all: avoid encouraging negative perceptions of the quality of life of persons who are elderly, ill or disabled**
- **Protection vulnerable persons from being induced to end their lives**
- **Suicide as Significant Public Health Issue** with impact on individuals, families, communities

# MAID LAW 2016

**Adult person grievous and irremediable medical condition that causes unbearable suffering that cannot be addressed in ways that person finds acceptable can request life-ending intervention physician or nurse practitioner or prescription of lethal medicine**

## **Definition Grievous & Irremediable Medical Condition**

a) Serious and incurable medical illness, disease or disability

**b)Advanced state of irreversible decline in capability**

c) enduring & intolerable physical or psychological suffering that cannot be relieved under conditions they find acceptable

**d)Natural death has become reasonably foreseeable**



# Other Elements 2016 Law

- Procedural safeguard: assessment by 2 clinicians, wait period 9 days, signed form w witness, ...
- Obligation for government to **initiate study on**
  - **Mature minors**
  - **Advanced Requests** for MAID
  - **Mental Health** as sole basis for assisted death

*(Council of Canadian Academies Expert Panel: 3 committee reports)*

- Sunshine Provision: **review of the act after 5 years** by Parliamentary committees with full report, also based on 'independent review'

# *Truchon v Canada AG* 2019 Cour Sup.

- REJECTS broad explicit goals of the law, referring to them only as *'vecteurs d'affirmation de valeurs ou d'enjeux sociaux'*:
  - Equal Value of life & avoidance of negative perception of quality & value of life of elderly, disabled, ill persons
  - Suicide prevention as a public health goal
  - Only goal of 'reasonable foreseeable natural death' safeguard: preventing vulnerable person from ending their life at a moment of weakness: focus on 'case by case' assessment
- Questionable treatment of evidence

# *Truchon on Disability*

- Largely ignores evidence re ableism, ageism, mental health euthanasia because of prior rejection goals of the law
- Focused on individual rights claims, glossing over:
  - social context that affects how disabled persons, particularly those living in poverty, old age, Indigenous identity, racialized, may be contextually pressured & need protection
  - Complex impact perception & self-perception of disability, old age, chronic illness

# Why *Truchon* needed to be appealed

- Rejection of explicitly stated goals of the law
- Claim of unconstitutionality 'RFND' safeguard because of discrimination: access to MAID on this constitutional ground never decided by SC
- Treatment of Experts reflected bias
- Broad parliamentary support for very recent law: duty AG to defend law
- NO binding force (outside Quebec) notwithstanding "Courts oblige us to broaden MAID" rhetoric



# Bill c~7

- Pushed through *in midst of pandemic, which disproportionately isolated & impacted on disabled persons* & with strong opposition of disability community
- **Mental Illness First Excluded, then Added via Senate Amendment** with Sunset Clause, debated 1 afternoon in House
- Prior to *Legally Mandated Review MAiD practice*
- Removal other safeguards not 'required' by *Truchon* ruling

# Opposition Against Expansion with Bill C-7

**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**

**COVID-19 Crisis has Exposed Systemic  
Ableism in Healthcare**

**Des rapporteurs de l'ONU  
inquiets de la loi  
canadienne sur l'aide à  
mourir**

## **MAID bill is an affront to equality**

In extending medical assistance in dying to persons with disabilities whose deaths are not reasonably foreseeable, the amended MAID bill exposes the shallowness of Canada's commitment to the human rights of persons with disabilities. We urge MPs to reflect where Bill C-7 would lead us with state-supported medical termination of life for those not already dying.

By Archibald Kaiser Contributor, Isabel Grant Contributor, Trudo Lemmens Contributor, Elizabeth Sheehy Contributor

 Thursday, March 11, 2021 | ⌚ 3 min to read

# Bill C~7: 2~Track System

## TRACK 1: Reasonable Foreseeable Death: *reduction safeguards*

- No wait period
- Loss of capacity post approval: still MAID
- Witness can be paid HC provider

## TRACK 2: People not 'approaching natural death' (not RFND): de facto: **Disabled Persons**

- 90-day assessment period (can be shortened)
- 1 assessor w **expertise** in medical condition that causes suffering
- Additional informed consent measures
  - Offer of counselling
  - Confirmation of 'serious consideration' of other options

**Mental Illness as Sole Underlying Condition: as of March 2024?**

# AMAD Committee Report 2023

- Pays **lip service to concerns expressed by disabled persons & Indigenous communities**, family members, health care providers & experts with concerns about practice & expansion: concerns juxtaposed with longer & often prior discussion of reassurances & recommendations pro expansion
- **Selective ignores legal arguments.** Eg: reference to Int'l Conv R Persons w Disabilities but arguments about violation not even mentioned (exc. Minority report)
- Blatant misunderstanding of why disabled persons are discriminated by Bill C-7: **as if removal of the term 'disability' will do the trick**
- Recommends "in-depth consultations with [org's &] persons...with disabilities, including Black, racialized, Indigenous and young persons with disabilities, as MAID laws and policies continue to evolve" = **full steam ahead, then consult**



# Unique Nature Canadian MAID Regime

- MAID framed by Gov, Prof Org's, Expansionist Advocates as broad 'constitutional right'
- Health care providers' role: informed consent & capacity assessment & verifying **subjective criteria**: 'intolerable suffering' & 'irreversible decline capability'
- MAID **not a last resort**: guaranteed access even if therapeutic/support options are not made accessible and/or exhausted

# Who is designing MAiD Standards now?

- Expert Panel on MAiD for Mental Illness : 2022 REPORT
  - Controversy around 2 prominent resignations
  - No additional safeguards required for mental illness
- Health Canada : Model Practice Standards Medical Assistance in Dying (March 2023): same core group of people

# Canadian Association of MAID Assessors & Providers

- **Funded by federal government to develop education & practice guidelines**
- MAID framed as medical care ("always 100% effective!")
- **MAID needs to be presented as option to all who 'might qualify'; i.e. first-line therapy unlike any other 'high risk' therapy in medicine**
- **Leading members: among the most ardent advocates for broad MAID practice**
  - **Investigative report Alexander Raikin (New Atlantis) reveals closed door discussions of what members publicly deny: MAID for reasons of lack of access to housing, social support, poverty**

# Examples remarkable ‘standards’ CAMAP and those Published by Health Canada

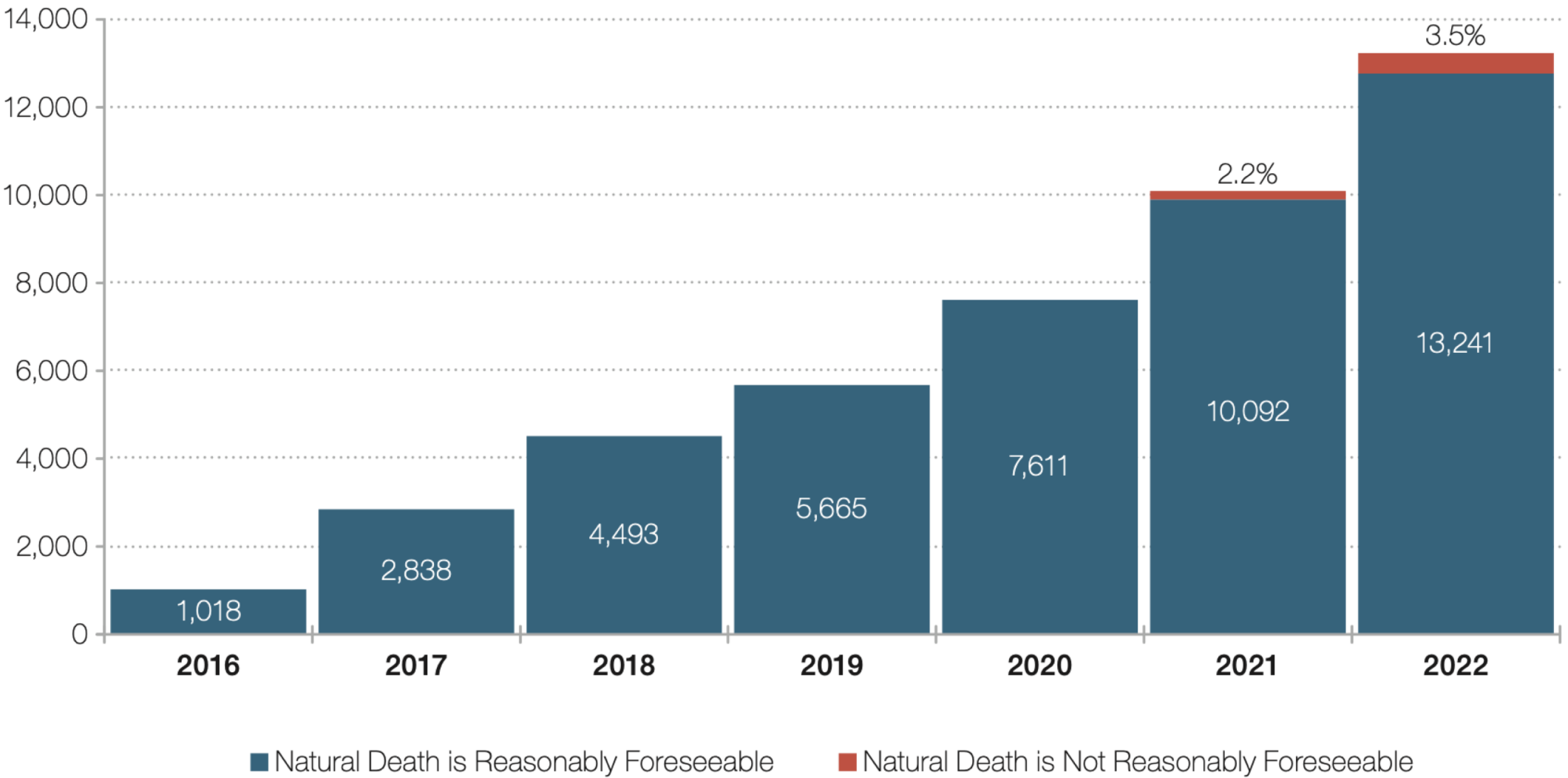
- CAMAP recommends how Persons in Track 2 (not approaching death) can be Fast-Tracked via Track 1 (person with ‘reasonable foreseeable natural death):

4. A person may meet the “reasonably foreseeable” criterion if they have demonstrated a clear and serious intent to take steps to make their natural death happen soon or to cause their death to be predictable. Examples might include stated declarations to refuse antibiotic treatment of current or future serious infection, to stop use of oxygen therapy, to refuse turning if they have quadriplegia, or to voluntarily cease eating and drinking.

- HC Standards Suggests that Health Care Provider who objects to a specific MAID request even for professional standards reason in individual case should be considered ‘Conscientious Objector’. Result: ‘effective referral obligation’ under prof. regulations

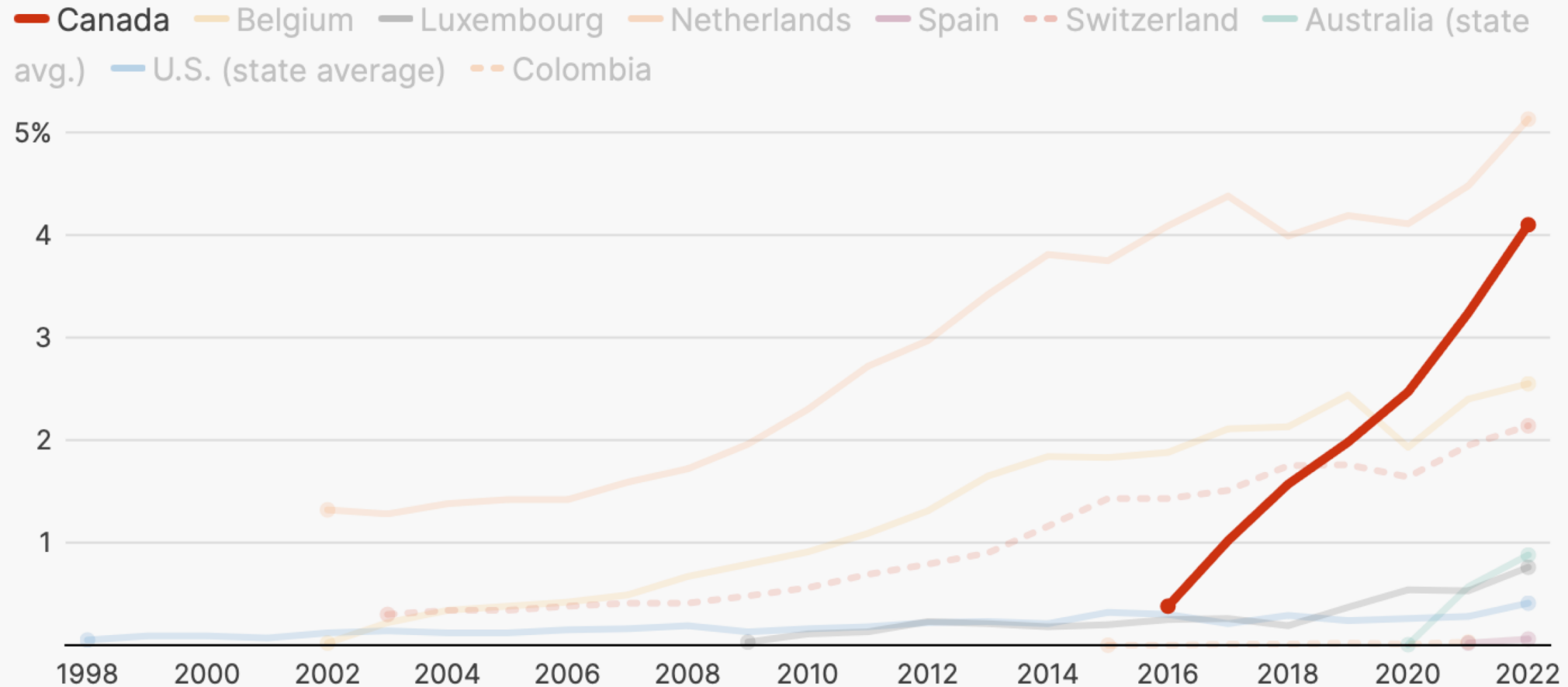


**Chart 3.1:** Total MAID Deaths in Canada, 2016–2022



# MAID deaths in Canada sharply rising

MAID deaths as a percentage of all deaths per year for select countries.



Australian states with MAiD are Tasmania, Victoria and Western Australia. U.S. states are California, Colorado, Hawaii, Maine, New Jersey, New Mexico, Oregon, Vermont and Washington, as well as the District of Columbia.

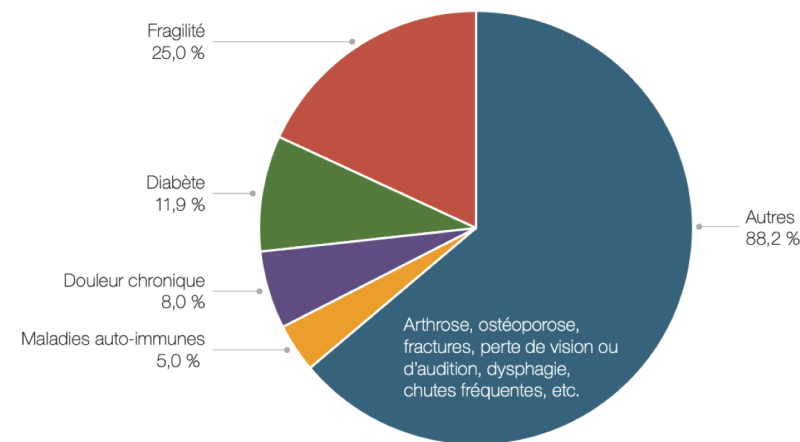
**Graphique 3.2 :** Pourcentage du total des décès attribuables à l'aide médicale à mourir par administration, 2019 à 2022



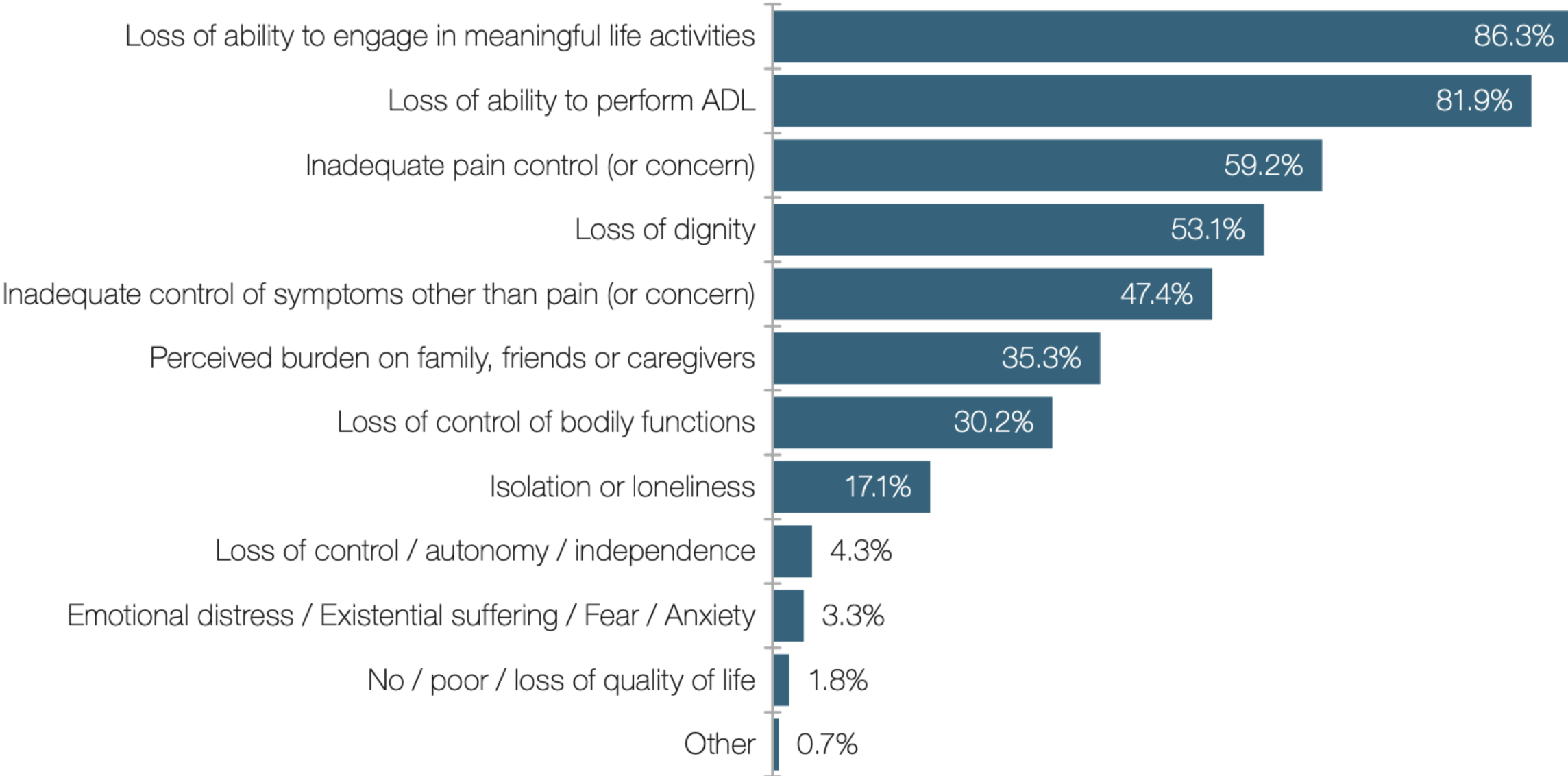
# L'AMM pour des “souffrances de vie” plutôt que pour éviter une mort avec souffrance?

- Déjà avant l'extension : personnes avec co-morbidités incluant maladies psychiatriques
- Nombre de personnes dont la mort naturelle n'est pas 'raisonnablement prévisible':  
> 700 personnes depuis mi-2021
- Augmentation de personnes avec 'co-morbidités multiples': 10% (12% femmes)

**Graphique 4.1D :** Aide médicale à mourir par autre affection ou comorbidités multiples, 2022



**Chart 4.3:** Nature of Suffering of Those Who Received MAID, 2022



**Table 4.4:** MAID Recipients Who Received Palliative Care and Disability Support Services, 2022

Palliative Care Services			Disability Support Services		
	Number	Percentage		Number	Percentage
Persons who received palliative care services	10,169	77.6%	Persons who required disability support services	4,819	36.8%
Persons who did not receive palliative care services	2,573	19.6%	Persons who did not require disability support services	5,242	40.0%
Unknown	360	2.8%	Unknown	3,041	23.2%
			Persons who received disability support services	4,314	89.5%
Palliative care was accessible if needed	2,250	87.5%	Persons who required but did not receive disability support services	196	4.1%
			Disability support services were accessible if needed	147	75.0%
Palliative Care - Duration			Disability Support - Duration		
Less than 2 weeks	2,349	23.1%	Less than 6 months	1715	39.8%

# Some MAID choices driven by poverty, lack of health care & social support

## Welcome to the Disability Filibuster.

This is a place for people with disabilities who believe that we are entitled to live good lives – lives in which we are valued, supported, respected and equal under the law.

It is a place where we honour our struggles, celebrate disability cultures and together do the hard work that solidarity and survival demand. We are located on the lands known as Canada, although the injustices that we resist threaten the lives and dignity of people with disabilities around the globe.

If you wish to join our efforts, or simply learn more, you are welcome here.

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## B.C. woman behind 'dystopian' commercial found 'death care' easier than health care



### Ethics of medically-assisted death questioned as some turn to it as an alternative to poverty

## No Other Options

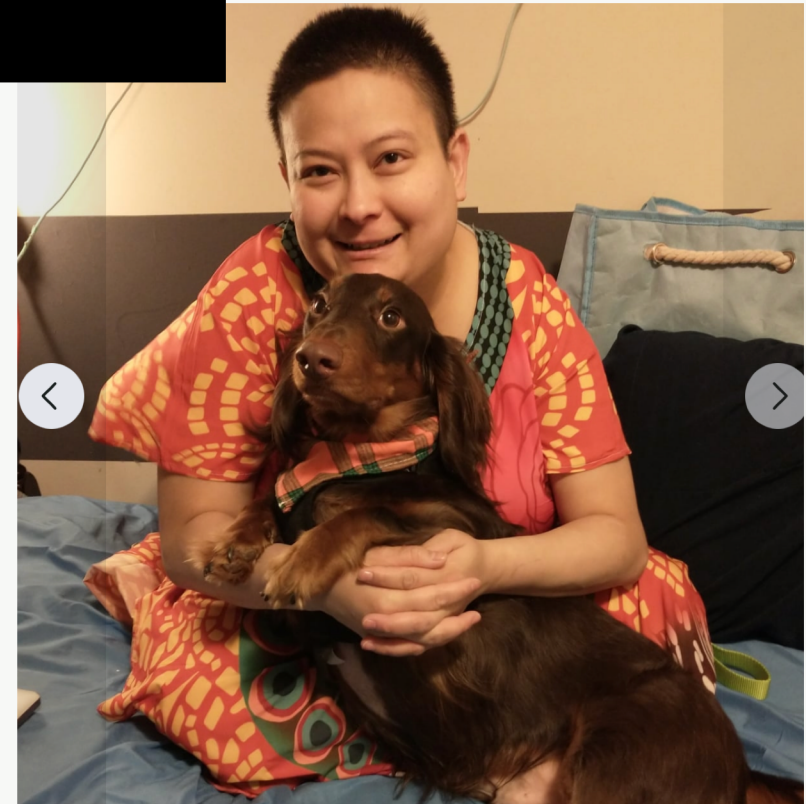
Newly revealed documents depict a Canadian euthanasia regime that efficiently ushers the vulnerable to a “beautiful” death.

Alexander Raikin



# Do You Want To Die Today? Inside Canada's Euthanasia Program

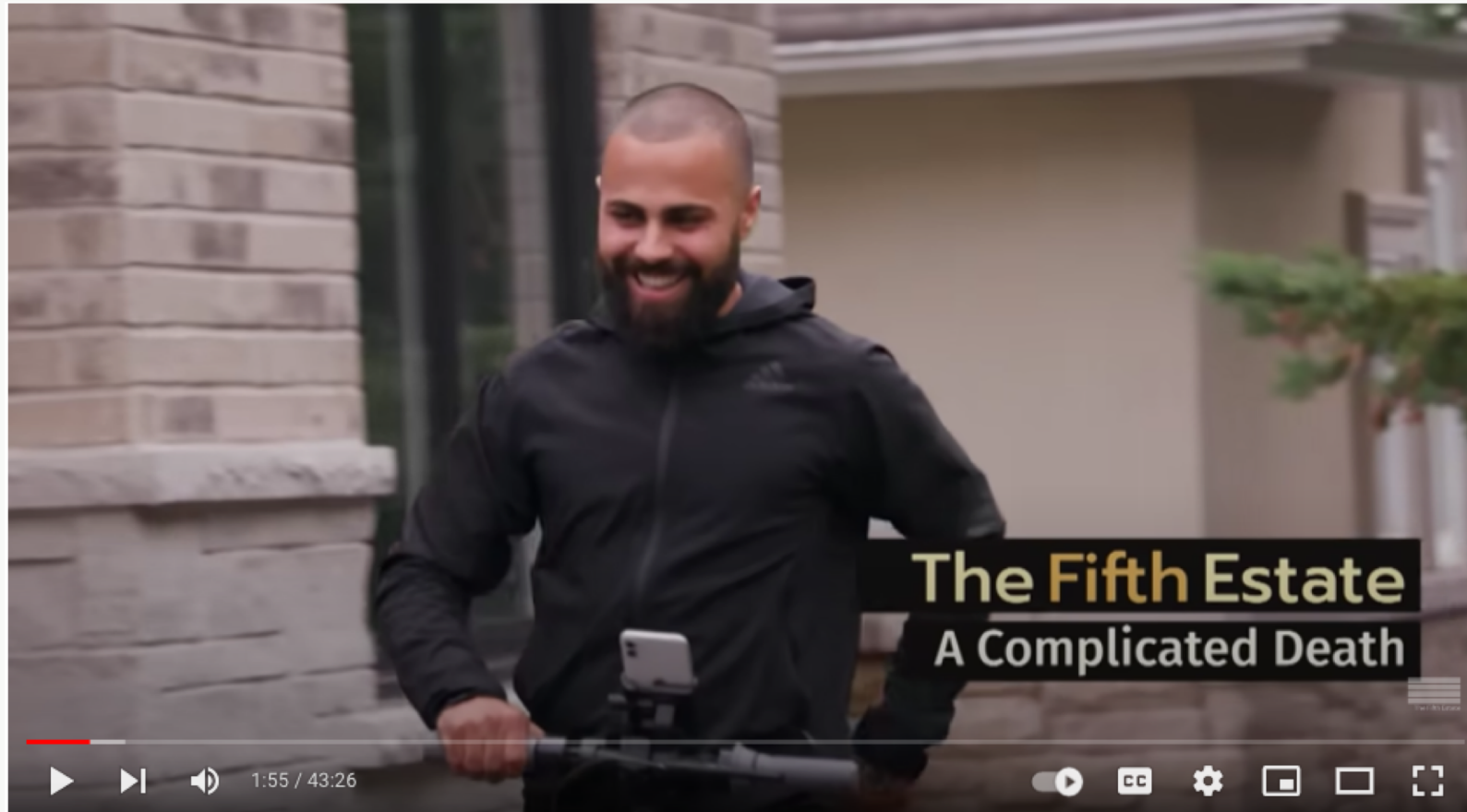
The number of Canadians receiving euthanasia is the highest in the world as the country expands access to the procedure. [Read more](https://www.aljazeera.com/program/fault-lines/2023/11/17/do-you-want-to-die-today-inside-canadas-euthanasia-program)



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## Kiano Vafeian (23): Approved for MAiD, only alive because of mother's public campaign



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Is it too easy to die in Canada? Surprising approvals for medically assisted death -The Fifth Estate

23 février 2024



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## Mettre fin à sa vie doit être un choix véritable et éclairé

Le 23 février 2024 — Ottawa, Ontario — Commission canadienne des droits de la personne

*En réponse à l'intention du gouvernement de faire une pause sur l'élargissement de l'aide médicale à mourir, Charlotte-Anne Malischewski, présidente intérimaire de la Commission canadienne des droits de la personne fait la déclaration suivante :*

Open "https://www.chrc-ccdp.gc.ca/fr" in a new tab

Les experts et les défenseurs des droits de la personne, tant au Canada qu'à l'étranger, continuent de tirer la sonnette d'alarme au sujet des graves répercussions sur droits de la personne que pose l'élargissement proposé et l'actuelle aide médicale à mourir.

Nous exhortons le gouvernement à procéder à un examen approfondi et critique de ces préoccupations.

# Conclusion

- Explosion of cases in Canada result of judicial source of legalization, aggressive push advocates of broadest form of euthanasia; particular shape of the law; and 'buying in' by professionals org's
- **Idea of 'exceptional practice' and 'balancing of rights' largely abandoned: right to life & equal protection against premature death now in the background**
- **Focus on ensuring access to, *not protection against premature death***
- **Death turned into universal therapy for suffering**, regardless of other options & source of suffering, impact on perceptions & self-perceptions, in health care context affected by ageism, ableism, ...
- **Concern for disabled persons and elderly either ignored, or to be addressed by other measures, which will always be incomplete, more expensive, easily de-prioritized in times of cost constraints**
- **Initial hesitation med professionals made place enthusiastic embracing of additional powers & ability to provide 'solution'**