Opening statement to Oireachtas Joint Committee on Assisted Dying

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Good evening. My name is Jocelyn Downie. Thank you for the opportunity to speak with you today on the topic of assisted dying in Canada. By way of background, I am Professor Emeritus in the Faculties of Law and Medicine at Dalhousie University in Canada. I have been researching and writing in the area of assisted dying since the 1990's. Further biographical information is appended to the text of this statement.

I open with a brief description of medical assistance in dying (MAiD) in Canada and look forward to questions from you that will enable me to address the matters that are of most interest to you. I flag for you that Quebec has its own legislation (in addition to the federal *Criminal Code*) but I won't have time in these opening remarks to explain the nuances of MAiD in Quebec.

MAiD came to Canada through the 2015 Supreme Court of Canada decision known as *Carter* in which the Supreme Court unanimously struck down our federal *Criminal Code* prohibition on assisted dying, finding it breached our *Charter of Rights and Freedoms*. The Supreme Court established parameters within which MAiD must be permitted. The federal Parliament then established a detailed legal framework for MAiD within an amended *Criminal Code*.

MAiD can be either provider-administered or self-administered. It can be delivered by either a physician or a nurse practitioner. It can only be provided if the person receiving MAiD has been found to meet the eligiblity criteria by two independent practitioners. One must have decision-making capacity and be an adult. One need not be "terminally ill" and one can be eligible for MAiD based upon a serious and incurable illness, disease, or disability (assuming all of the other eligiblity criteria such as enduring and intolerable suffering are met). There are numerous procedural safeguards that must followed.

All requests for MAiD must be reported to the federal government (whether directly or through a provincial/territorial body). The federal Minister of Health is required to publish a report annually on the data gathered. Oversight/monitoring of MAiD also takes place in the context of provincial/territorial law and policy (e.g., the British Columbia Oversight Unit and the office of the Ontario Chief Coroner) as well as the regulatory practice standards set by the colleges of physicians and nurses (medicine and nursing are self-regulated professions in Canada).

Turning now to the questions that I get asked frequently by people in other countries trying to learn from Canada's experience to inform their own.

Have the eligibility criteria expanded over time? Has there been a descent down a slippery slope? No. The Supreme Court of Canada established parameters in *Carter*. MAiD is not now but nor was it ever limited to the "terminally ill". Patients with psychiatric conditions were not excluded by the *Carter* decision. I would note that this description of *Carter* has been affirmed

by the Alberta Court of Appeal and the Quebec Superior Court and acknowledged by the federal government.

Can people get MAiD for poverty, loneliness, or other forms of socioeconomic vulnerability? No. It is a breach of the *Criminal Code* to provide MAiD for this as the law requires that the person's enduring and intolerable suffering be caused by their serious and incurable illness, disease, or disability or their advanced state of irreversible decline in capability. Furthermore, as demonstrated by the peer-reviewed literature, evidence shows that in Canada, as in all other permissive jurisdictions, "recipients of MAiD are, on average wealthier, better educated and less likely to be residing in institutions than people who die without receiving MAiD" and "the evidence shows that, at a population level, socioeconomic deprivation and service gaps appear, statistically, to be protective against MAiD."

Do people choose MAiD because they can't get access to palliative care? No. Over 95% of those who received MAiD received or had access to palliative care.

Has the legalization of MAiD had a negative impact on palliative care? No. Funding/support for palliative care has increased dramatically since MAiD became legal and more people are receiving palliative care compared with 5 years ago.

Are people getting MAiD when ineligible or incapable? For trivial medical conditions? Are patients being pressured by hospital staff to request MAiD? Are clinicians compelled to provide MAiD? These questions arise from widely-disseminated media reports that, when you dig into the cases behind them, are based upon incomplete information, misinformation, and disinformation. Contexts within which allegations can be properly investigated and tested reveal none of these abuses – for example, there are no reported cases of clinicians being charged or disciplined by their regulatory bodies for abuses of patients or breaches of the law or practice standards despite allegations, reports, and exhaustive reviews.

In conclusion, I offer my opinion that the matter of whether and how to design a MAiD system has been thoroughly examined in Canada by Parliamentary committees and expert panels. Furthermore, it has undergone rigorous testing in the courts. In my view, it can be confidently stated that the Canadian system is effectively achieving its goals of upholding the autonomy and dignity of individuals, mitigating unwanted suffering, and safeguarding the vulnerable.

Bio

Jocelyn Downie, CM, FRSC, FCAHS, SJD is a Professor Emeritus, Faculties of Law and Medicine, Dalhousie University. Her work on end-of-life law and policy includes: Special Advisor to the Canadian Senate Committee on Euthanasia and Assisted Suicide; author of *Dying Justice: A Case for the Decriminalizing Euthanasia and Assisted Suicide in Canada* (winner of the Abbyann Day Lynch Medal in Bioethics from the Royal Society of Canada); and member of the Royal Society of Canada Expert Panel on End-of-Life Decision-Making, the plaintiffs' legal team in *Carter v. Canada (Attorney General),* the Provincial-Territorial Expert Advisory Group on Physician-

Assisted Dying, the Canadian Council of Academies Expert Panel on Medical Assistance in Dying, and the federal MAiD Model Practice Standard Task Group. She was named a member of the Order of Canada in part in recognition of her work advocating for high-quality, end-of-life care. She is also a Fellow of both the Royal Society of Canada and the Canadian Academy of Health Sciences.

NOTE: REFERENCES, RESOURCES, AND FURTHER INFORMATION ARE PROVIDED IN THE WRITTEN SUBMISSION MADE SEPARATELY TO THE COMMITTEE.