

Correcting the Record:

An Urgent Submission to the Senate Standing Committee on Legal and Constitutional Affairs

February 3, 2021

Dear Senators,

The authors of this submission are CEO's, Directors and senior advisors to national disability rights organizations who were specifically invited to participate in the Government of Canada's "Roundtable Consultations on Medical Assistance in Dying", in particular the special disability-focused session held in Vancouver on January 16, 2020¹.

We were shocked to hear, in his testimony before the Committee on February 1, when Minister David Lametti made assertions to the effect that the "architecture" and content of Bill C-7 were in some way responsive to our direct submissions in the course of these roundtable consultations. We believe this to have been a serious misrepresentation of the position that we each clearly communicated to the Minister, his staff and other responsible Ministers and government employees at this face-to-face meeting, and in all of our subsequent advocacy related to the Truchon decision and Bill C7 in particular.

Our response is therefore a formal submission to the Committee, in an effort to correct the record of what we consider to be Minister Lametti's highly misleading assertions in his formal testimony before you.

WHAT THE MINISTER SAID:

On at least two occasions during the course of his testimony, Minister Lametti assured the Committee that he had heard and been responsive to the "very legitimate concerns raised by the disability community and their leadership".

First, at approximately 10:53:30, in response to a question posed by Senator Harder, Minister Lametti stated:

"... in particular, if you have heard the concerns as I have heard the concerns of people living with disabilities, we constructed this regime in this Bill precisely based on the comments that we heard from their leadership group, that a second track in the non-end-of-life regime with additional safeguards tailored to those questions where end of life is not in view were important to them. This is a very meaningful critique from the leadership of the disability community."

In a 2nd and more detailed elaboration of this misrepresentation, at approximately 11:38:00, in response to a question posed by Senator Pate, Minister Lametti replied:

¹ Some of us, in our individual capacity, were also included in other Roundtable Consultations across the country, (e.g. in Halifax and Vancouver) but these latter sessions were decidedly not disability-focused and our distinct perspective and objections were not seriously engaged with as a result.

“... We have worked with the disability community and indeed the very architecture of this piece of legislation — the fact that there are two streams — is a direct result of the advocacy of the disability community, who made it clear to us that in the non-end-of-life regime, additional safeguards were required, and so it’s precisely in the architecture of this act that we were responding to the very meaning — I felt, very meaningful consultations we were having with the leadership of the disability community. We met with them in round-tables across the country, we had a specific round-table with them I attended with other colleagues and at a conference that they organized specifically for this issue. And so, I think, there was a great deal of influence on this piece of legislation that was had by the disability community and I think we’ve reached a good balance. And it is ... again, it is, I think, a testament to the impact that they had...”

Insofar as these statements purport to describe the contribution that we made to the development of Bill C7, they are categorically incorrect.

WHAT WE RECALL:

We were individually invited to a Roundtable Consultation in Vancouver on January 16, 2020. Our recollection is that the invitations were issued at different times through the previous week. One of us, for example, received her invitation less than 48 hours before the meeting was to occur.

We understood that all three Ministers responsible for Medical Assistance in Dying would be present at this meeting, along with their political staff and senior staff from their respective departments.²

Prior to these consultations, our focus for advocacy related to the Truchon judgement had consisted entirely of efforts to persuade the government to appeal the Québec Superior Court decision. Several of us, along with other community leaders, had been on a conference call with Minister Lametti in October urging that, as Attorney General, he initiate an appeal because in our view expanding access beyond end of life was unconstitutional and a violation of the rights of persons with disabilities.

We had not met as a coalition for any collective discussions of what position we would take if the government decided instead to open up the Criminal Code for amendments in order to accommodate the Superior Court ruling.

However, in the Discussion Paper circulated just prior to our Consultation meeting, the government had made its next step clear:

“While the parliamentary review of the legislation will provide an opportunity to undertake a comprehensive review of all aspects of the legislation, the Government of Canada has committed to responding to the Truchon decision before the March 11 deadline by expanding eligibility for MAID beyond persons nearing the end of life.”

Each of us was therefore challenged to pivot, on very short notice, to consider not legal and policy arguments for the preservation of “reasonably foreseeable natural death” as a necessary threshold for MAID eligibility, but instead how to contribute constructively to the development of a legislative response to a court ruling that we considered to be fundamentally in error. Given the profound importance of issues related to Medical Assistance in Dying to the disability rights movement in Canada,

² On the afternoon of the meeting, Minister Hajdu conveyed her regrets, citing her lead responsibility for Canada’s preparedness for what would become the Covid 19 pandemic.

we all understood the importance of having some strategic discussions together before any formal engagement with a Minister of Justice who clearly saw the removal of this critical safeguard as the natural next step in the “evolution” of MAID practice.

We therefore made hasty arrangements for a conference call on January 15, one day before the consultation meeting. During that meeting, we discussed mutual concerns about:

- the framing of the government’s consultations, and in particular the inclusion of issues completely unrelated to the Truchon decision; and
- the absence of any reference in the government’s Discussion Paper to the consistent and emphatic assertions and reasoning of the disability rights community that the law should be restricted to end-of-life.

In addition, we discussed our shared concern that expanding access beyond end-of-life would fundamentally undermine the equal respect and dignity of people with disabilities, and the infringement of section 15 equality rights that this would represent. We agreed that these were important points to raise with the Ministers the following day.

And finally, we worked together to conceive of any possible constellation of safeguards that, absent an end-of-life requirement, might “honour and protect the lives of vulnerable individuals, but also, by its strong messaging and meaningful resourcing, protect and preserve what the court in Truchon & Gladu dismissed in such a cavalier fashion – affirming the inherent and equal value of every life, and preventing suicide.”³

It was in this spirit that we formulated together a set of commitments inspired by the precedent of “[Jordan’s Principle](#)”, which we reimagined as “Archie’s Principle”, invoking the memory and the struggles of individuals like [Archie Rolland](#) and [Sean Tagert](#). If indeed the government was intent on removing the end-of-life criterion, we knew and agreed that Canada’s disability rights community would require “a meaningful commitment to ensuring that disabled Canadians nearing the end of our lives will never again have to endure the immense physical and existential suffering – the needless suffering – of such deplorable deprivation [as these disabled citizens had to endure].”⁴ As one member wrote in our group email chain, “If the Ministers could embrace this framing, I could be convinced of the authenticity of their commitment to this.”⁵

Each of us clearly understood that we would not be making formal submissions at this roundtable, but that we would raise our concerns about what we believed was coming in the wake of the Truchon decision and the government’s failure to appeal that decision. The time afforded to us leading up to this important consultation was completely inadequate for any measure of discussion with the memberships of our respective organizations and communities to which we are accountable. We agreed that if any ideas were to be brought to the table, the intent would be clearly and explicitly exploratory.

³ In preparing this submission, we have been aided by detailed email messages shared amongst ourselves in a group thread dated January 16, 2020, as we consolidated a consensus view that had been loosely sketched out on our call. This quotation is from one of those messages in which a member of the group articulated the sentiments that we had expressed in our call together.

⁴ As above.

⁵ As above.

An email message written by one of us and shared with the group as part of our preparatory deliberations on January 16, summarized in broad strokes what we had in mind for “Archie’s Principle”. The email confirms, by way of context, what we understood, through private communications with ministry staff, to be a building pressure for “a two-track system”. In that context, it then describes the critical components for “Archie’s Principle” in the following terms:

“A ‘duty to assist’ by provincial/territorial and federal government – meaning that the resources must be made available to address those causes of suffering – whether it is lack of adequate/affordable housing, fear about being confined to an institution, needed aids/devices, personal attendant/care services and other supports required to live in the community, consistent with Article 19 CRPD.”

OUR CONCLUSIONS:

The architecture for a two-track system was most certainly not a concept of our intervention, nor was it in any way reflective of the desires or imagination of the disability rights movement.

Contrary to the Minister’s assertions, the formulation of a second track to medically assisted death for persons who were not at the end of their natural lives was never proffered by us. Nor were any of the so-called safeguards proposed for the 2nd track in Bill C7 authored or introduced or even suggested by us. Rather, as a matter of political pragmatism, and mindful of our duty to participate in good faith in the democratic processes available to civil society, we had turned our minds to the question of suitable safeguards for a two-track system, and what formulations we could discuss with the Minister if -- and only if -- it was clear that this was indeed the architecture he was intent on introducing.

Moreover, the robust safeguard that we imagined as “Archie’s Principle” was floated with the Minister on January 16 as the only protective measure that might achieve his desired end of removing the end-of-life requirement without running afoul of our section 15 equality rights. When the Minister expressly dismissed this formulation – without hesitation – as one that would require a level of federal/provincial/territorial cooperation that the government was either unable or unwilling to pursue, we immediately withdrew from any further discussion of possible safeguards to replace the end-of-life requirement for MAID.

We made it clear to the Minister and his staff that nothing short of a robust “Archie’s Principle” could be “tailored” to address our concerns. If the Minister indeed formulated his plans for Bill C7 following our roundtable, he did so in a manner that was inattentive to the clear and consistent message that each of us had, deliberately and consistently, brought to our conversations with him and his staff.

We are not naïve to the fact that in the political arena statements can be made, for example in a media scrum, that depart from full accuracy of content or inference. But in the context of a Senate Committee meeting on legal and constitutional affairs, we believe there can be serious consequences when a senior government leader makes assertions about the origins of a consequential and highly controversial legislative proposal that contradict the collective memory of those who were present.

In summary, as the persons invoked by Minister Lametti as “the disability community leadership”, we did not at any time devise, nor did we endorse, the two-track approach of Bill C7.

The formal proceedings of the Committee's deliberations on Bill C7 are and will remain, an important historical record of Canada's understanding of and commitment to the equality rights of disabled citizens. It is for this reason that we cannot let any misrepresentations, made in error or otherwise, stand.

We would ask if there is any procedure within the Committee for the Minister's statements to be corrected, and if so, we call for him to do so. Whether or not this is possible, we ask that our statement of objection be formally entered into the record of your proceedings with respect to Bill C7.

Respectfully,

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