



Brief of the

Wabanaki Council on Disability

regarding

Bill C-7, An Act to amend the Criminal Code

Medical Assistance in Dying

“From Isolation to Self-Determination”

November 2020

On October 5, 2020, the Minister of Justice and Attorney General of Canada reintroduced a bill, which proposes changes to the *Criminal Code*'s provisions on medical assistance in dying (MAID). These proposed changes are the same as those introduced in the previous parliamentary session but were delayed due to the onset of the Covid-19 pandemic.

Introduction

The Wabanaki Council on Disability (WCD) is recognized as an Indigenous organization in Atlantic Canada that advances the economic, social and cultural, spiritual, civil and human rights of Mi'kmaq, Wolastoqiyik (Maliseet), Passamaquoddy, Penobscot, Inuit and Metis persons with disabilities and special needs residing in the Atlantic region.

The Atlantic region (for the purposes of the WCD) is inclusive of all Indigenous Nations ancestral lands which includes the provinces of New Brunswick, PEI, Nova Scotia, Newfoundland/Labrador and the Rivière-du-Loup / Gaspé regions of Quebec. (Wabanaki confederacy ancestral lands also include the eastern part of the USA state of Maine – which is not readily included for the purpose of this Brief.)

Traditional Perspectives of Life and Living

Traditional Indigenous (Wabanaki) perspectives of life, living, dying, and of persons with disabilities and persons with special needs have very particular significance since our ancestors did not see persons with disabilities and special needs as having deficiencies. They were not compared to other people in reductive ways rather they were held in high esteem and considered as gifts of the creator. Therefore, their lives, knowledge, perspectives of life and living and more were considered to complete the views and understandings of life.

In fact, Indigenous world views of all life on Mother Earth as provided by the Creator were considered sacred and worth cherishing for the gifts they brought to humans. When Indigenous people took the life of any animal they gave thanks to its spirit and life. We thanked them for giving up their life in order for ours to survive. We also gave thanks for the abundant resources provided by Mother Earth and gave her thanks for all of them.

The Wabanaki Council on Disability and our partners are steeped in the traditional ancestral values and beliefs of life and living. We exist to advance the dreams, aspirations and goals of Indigenous persons with disabilities and special needs. Our work is directed to assist them to move from Isolation to Self-Determination.

Present day societies primarily have perspectives of persons with disabilities and special needs as that of weaknesses not strengths; of deficiencies not of competencies, capabilities and capacity – these views are not a strengths-based view however this is the traditional ancestral perspective of Indigenous Nations.

The strengths-based view does not support ableism in fact it is counter ableism because all people including persons with disabilities and special needs are as able as everyone else. The strengths based traditional ancestral view finds the strengths in everyone and the purpose is to support them achieving the greatest accomplishments in their special capabilities. Our Elders and Traditional Knowledge Keepers (and other specialists) played significant roles in identifying the gifts of each person and facilitating them to continuous life-long learning by having them learn from others in our societies that also held the knowledge of these special strengths.

Our ancestors and Traditional Knowledge Keepers were very spiritual starting from the perspective that all life had a spirit. This spiritual perspective taught us to value all life – to give thanks for life and to cherish our lives and all life for its purpose and existence.

Indigenous traditional ancestral value of life carried on throughout all stages of life from pre-birth to old age. In fact, our ancestors also believed that our spiritual life did not stop rather it continued on in the afterlife – a new life with those who passed-on before us. Some Nations call it the Spirit Walk and it is known by other terms by other Nations. Therefore, life does not end at the death of life on Mother Earth rather it moves into a new realm.

While we cannot definitively say whether or not our ancestors either did or did not exercise assisted dying, we do know that respecting all stages of life had equal value.

Indigenous Persons with Disabilities and Special Needs

In modern day contexts Indigenous persons with disabilities and special needs face and confront all of the same issues as those of mainstream society. This is inclusive of the fact that for the most part persons with disabilities and special needs are left on the margins of society and many times at best are after-thoughts for government programs, supports and services.

In the case of Indigenous persons with disabilities and special needs many of the supports they require simply do not exist or funded whether on or off reserve. This reality forces many Indigenous persons with disabilities and special needs to live in poverty resulting in poor health and poor living conditions. Further this reality places them at high risk of being taken advantage of or coerced to consider their quality of life. The vulnerability they face is the highest of any people in the country.

It is for these facts that the Wabanaki Council on Disability calls for a moratorium of the current parliamentary deliberations on Bill C-7 and allow for the time for Indigenous groups and organizations to undertake thorough dialogue and discussions with our experts to formulate our positions on the MAID legislation and the Bill C-7 proposed amendments.

To halt the deliberations now would be an act of true reconciliation.

There is a very serious and imperative need for Indigenous groups especially those with mandates for persons with disabilities and special needs to fully examine the proposed legislative changes under Bill C-7.

Further, the serious imperativeness of this work is because Indigenous persons with disabilities and special needs truly are the poorest of the poor in Canada. There is no one poorer. There are no peoples more underserved and less provided for. Indigenous persons with disabilities and special needs do not choose to be the poorest or the poor or the most underserved peoples rather they are victims of ableism, of racism and of government policies and programs that do not fully support their goals and aspirations. They are the most left-behind and are the most vulnerable. It is likely among the highest of at-risk of being coerced to end their lives under the amendments proposed in Bill C-7.

If the Standing Committee on Justice and the government does not provide for full, proper and comprehensive dialogue in Indigenous populations then Indigenous persons with disabilities and special needs could be of the highest risk to unnecessarily die and be put to death because of Bill C-7.

Bill C-7 MAID

Canadian lawmakers are currently pondering the merits and demerits of proposed amendments to its original legislation on assisted dying. Bill C-7 (MAID) is proposing to make significant changes to the previous legislation based on the finds of the Quebec judicial system under the Truchon-Gladu case. In the judicial decision it found that the 2016 legislation:

“On September 11, 2019, the Superior Court of Québec found the "reasonable foreseeability of natural death" eligibility criterion in the Criminal Code, as well as the "end-of-life" criterion from Québec's Act respecting end-of-life care, to be unconstitutional”

In essence Bill C-7 attempts to address what was found to be unconstitutional to the 2016 legislation with particular focus of ‘safeguards’ on “foreseeable death” and “waiver of final consent”.

The complexities of everything under and within these proposed amendments are significant.

Unfortunately, the Wabanaki Council on Disability has not had the opportunity to conduct any consultation with our constituents, with our partners, with Elders, Healers, Traditional Knowledge Keepers, medical or legal experts regarding any of the proposed Bill C-7 amendments. Further it appears that the parliamentary Justice Committee has not heard from Indigenous organizations or peoples regarding this topic during this iteration of ‘hearings’. This is a major omission.

It is an omission that should not be allowed to stand rather it is an omission that should be recognized and provided time to be completed. The work related to these consultations cannot be properly or adequately done by the proposed date of December 18, 2020 which seems to be the parliamentary date to have the work completed on Bill C-7.

Indigenous groups and peoples must have the opportunity to conduct the work required to establish their positions on this matter based on our ancestral traditional knowledge and world views.

The Wabanaki Council on Disability is not prepared – at this time – to present recommendations regarding the proposed legislative amendments to the MAID under Bill C-7. It is not possible for the WCD to make any type of recommendations or to highlight cautions regarding Bill C-7 until we have had the opportunity to have effective dialogue on this matter with Indigenous persons with disabilities; with Indigenous persons with special needs; with families; with Indigenous medical, health and wellness health specialists, service providers; with Indigenous traditional resource people including; Elders, Traditional Knowledge Keepers, Indigenous Spiritual Knowledge Keepers, Indigenous legal experts and political leadership.

The Wabanaki Council on Disability is concerned that without any due consideration of Indigenous traditional perspectives, beliefs and knowledge of life and living the impact of MAID and the proposed changes under Bill C-7 could have serious detrimental impacts to Indigenous persons with disabilities and special needs.

The Wabanaki Council on Disability has reviewed some of the briefs submitted to the Standing Committee on Justice (JUST) under the present study. Many of these briefs highlight the probabilities of serious adverse impacts of the MAID legislation on vulnerable peoples especially on persons with disabilities and special needs.

The WCD agrees with these perspectives and serious cautions – the WCD agrees that vulnerable people who are already at the highest levels of risk for being unnecessary victimized through coercion must be properly protected. The WCD postulates that Indigenous persons with disabilities and special needs are the most vulnerable people in Canada. Based on this reality it is of the utmost importance that the WCD have the opportunity to dialogue with Indigenous peoples and communities in the Atlantic region regarding the proposed legislative change to the MAID in Bill C-7.

In closing it is the understanding of the Wabanaki Council on Disability that the current parliamentary work to amend the MAID may actually be unnecessary as the rulings by the Quebec courts may not readily require federal legislative amendment. This as well needs to be clarified.

Advancing the proposed amendments contained in Bill C-7 are not congruent with Indigenous traditional, ancestral values, beliefs and cultural perspectives of life and living or of persons with disabilities and special needs. Moving forward with them poses several concerns to the Wabanaki Council on Disability – concerns that we need to discuss with our people.

Wela'lin, Woliwon to the Committee for accepting this Brief and for due considerations of our positions and perspectives regarding this highly sensitive matter.

Respectfully,

Wabanaki Council on Disability

“From Isolation to Self-Determination”