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Rapid Normalization of Death as Therapy in Canada's Medical Assistance in Dying Regime: Lessons for the UK

Introduction

- **Situating myself**; from arguing against legalization (1995: 'devaluing of life w disability') to fence-sitting, to supporting first Canadian end-of-life focused law, to serious reservations and concerns
- **Outline of this presentation:**
 - 1) 3 reasons why Canada has bypassed most liberal jurisdictions with is 'Medical Assisted Dying Regime & Practice
 - 2) Data: increase in numbers + reasons of 'unbearable suffering'
 - 3) Individual case reports
 - 4) What can we learn from Canadian development?

Canada's Medical Assistance in Dying Regime

- 2015 Quebec law 'mourir dans la dignité': legalizes 'aide à mourir' (only euthanasia) for 'fin de vie'
- 2016 Supreme Court *Carter v. Canada (Attorney General)*
 - **Absolute prohibition** assisted suicide & homicide = **unjustifiable infringement right to life, liberty & security of the person (s.7 Charter)**
 - **Person who** (1) **clearly consents** ; and (2) has a **grievous and irremediable medical condition** (illness, disease or disability) that causes (3) **enduring suffering**, should be allowed to have physician assistance
 - Invitation to Fed Parliament to work with provinces & professions on "strict regulatory regime"
 - Ruling restricted to the circumstances of the case' = patient with ALS
 - Parliament can adopt regime w 'less discretion' than Belgian euthanasia regime
 - 'euthanasia for minors or for psychiatric disorders or minor conditions' not within parameters of ruling

2016 “Medical Assistance in Dying” MAiD Law

- Goal: Balancing **autonomy w need to protect persons in situations of vulnerability + societal values and interests, incl. equal value of life: avoiding negative stereotypes of elderly, ill or disabled; suicide as public health goal**
- **Creates Exemption to Criminal Code for MAiD:** direct injection or prescription lethal meds by physician or nurse practitioner in specific circumstances
- Criteria from **Carter** with definition of **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
 - d) Natural death has become reasonably foreseeable**

2021 MAID Law : 2-Track System

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

- Wait period abolished
- Loss of capacity post approval: MAID via **waiver of consent**

TRACK 2: People not 'RFND': *de facto* Disabled Persons

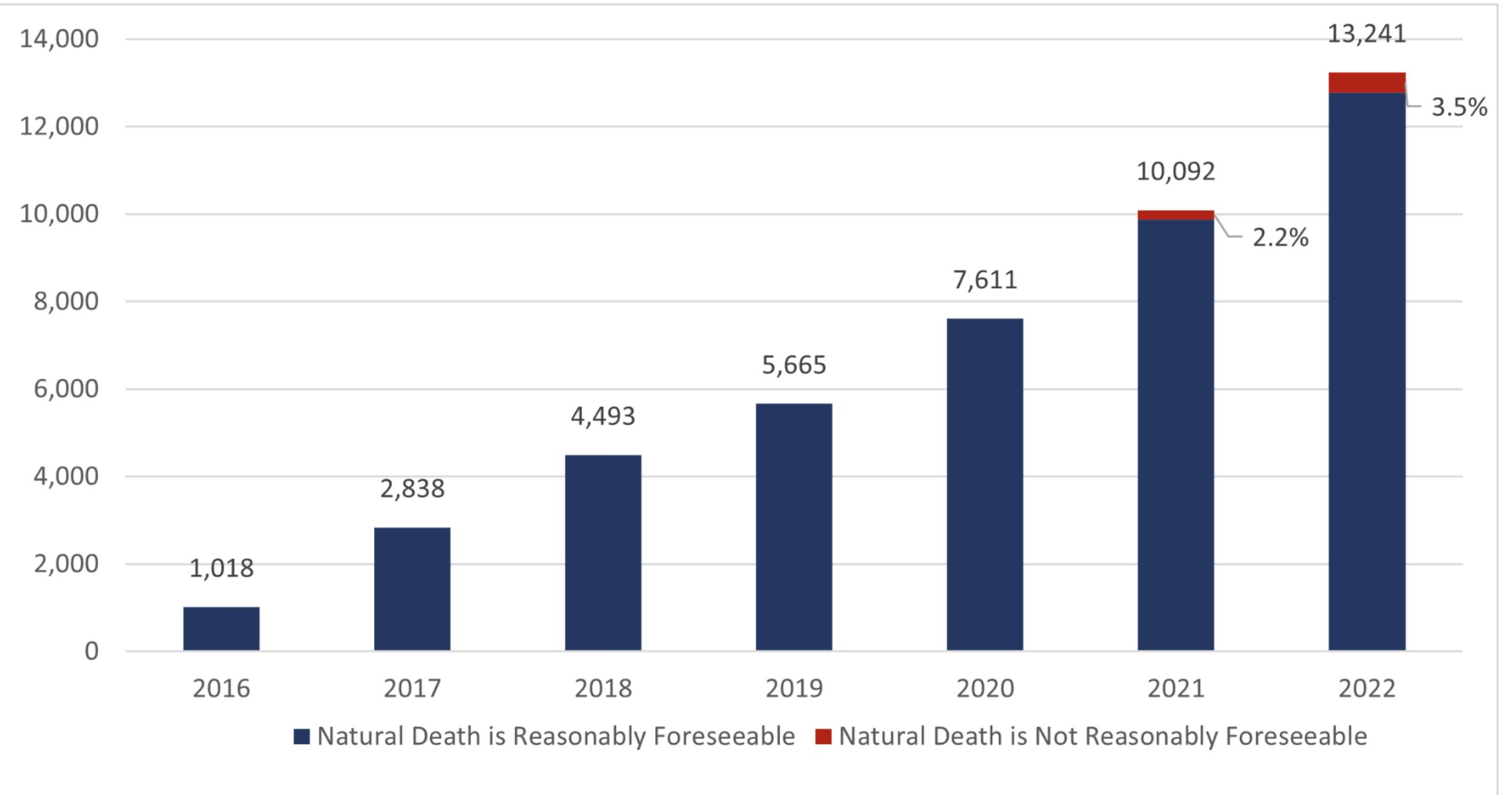
- 90-day assessment period (can be shortened)
- 1 assessor w **expertise** in medical condition that causes suffering
- Additional informed consent measures
 - Offer of counselling
 - Information about other options
 - Confirmation of 'serious consideration' of other options

Mental Illness as Sole Underlying Condition: 2 year Sunshine Provision for introduction; 3x prolonged: now March 2027?

Supreme Court in *Carter v. Canada (AG)*

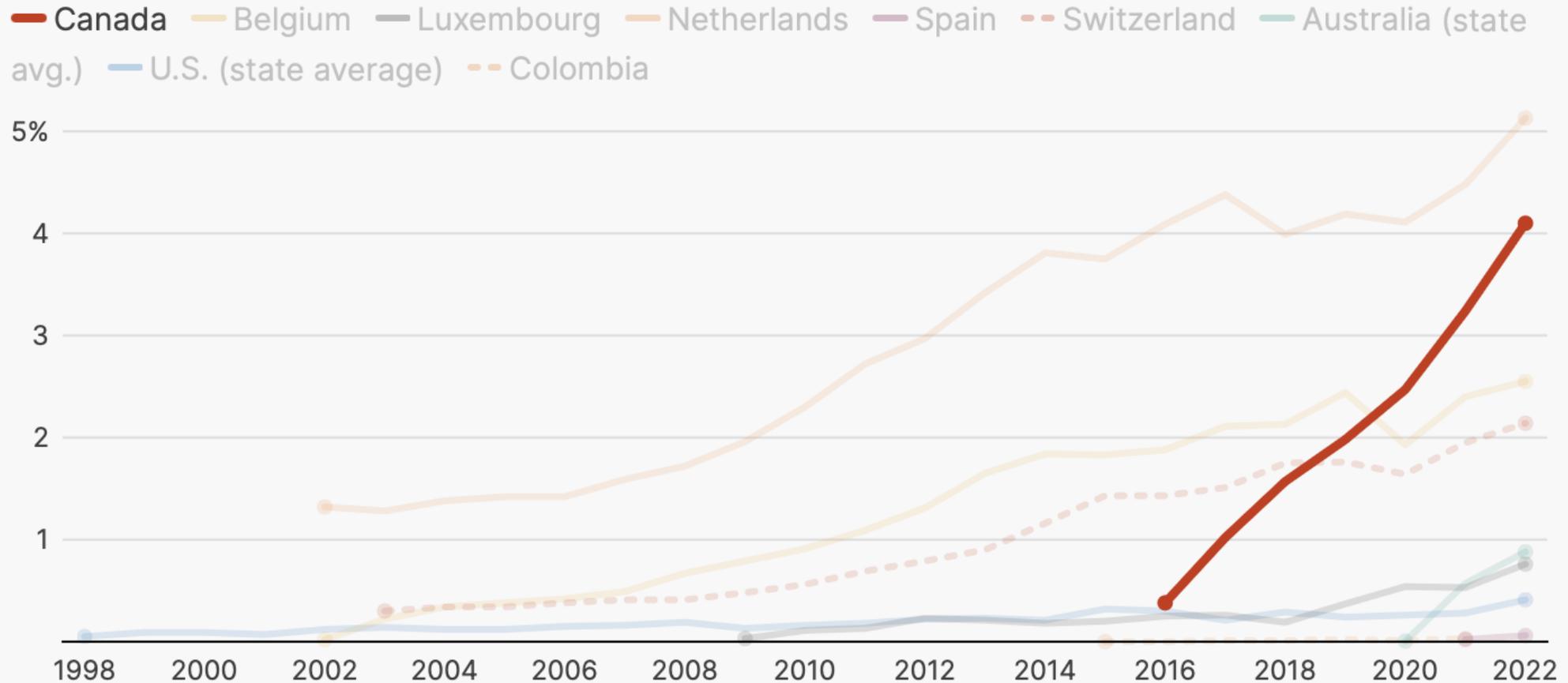
“The trial judge, after an exhaustive review of the evidence, rejected the argument that adoption of a regulatory regime would initiate a descent down a slippery slope into homicide. We should not lightly assume that the regulatory regime will function defectively **[effectively?]**, nor should we assume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

Chart 3.1: Total MAID Deaths in Canada, 2016 to 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.

Chart 3.2: Percentage of Total Deaths Attributed to MAID by Jurisdiction, 2019–2022

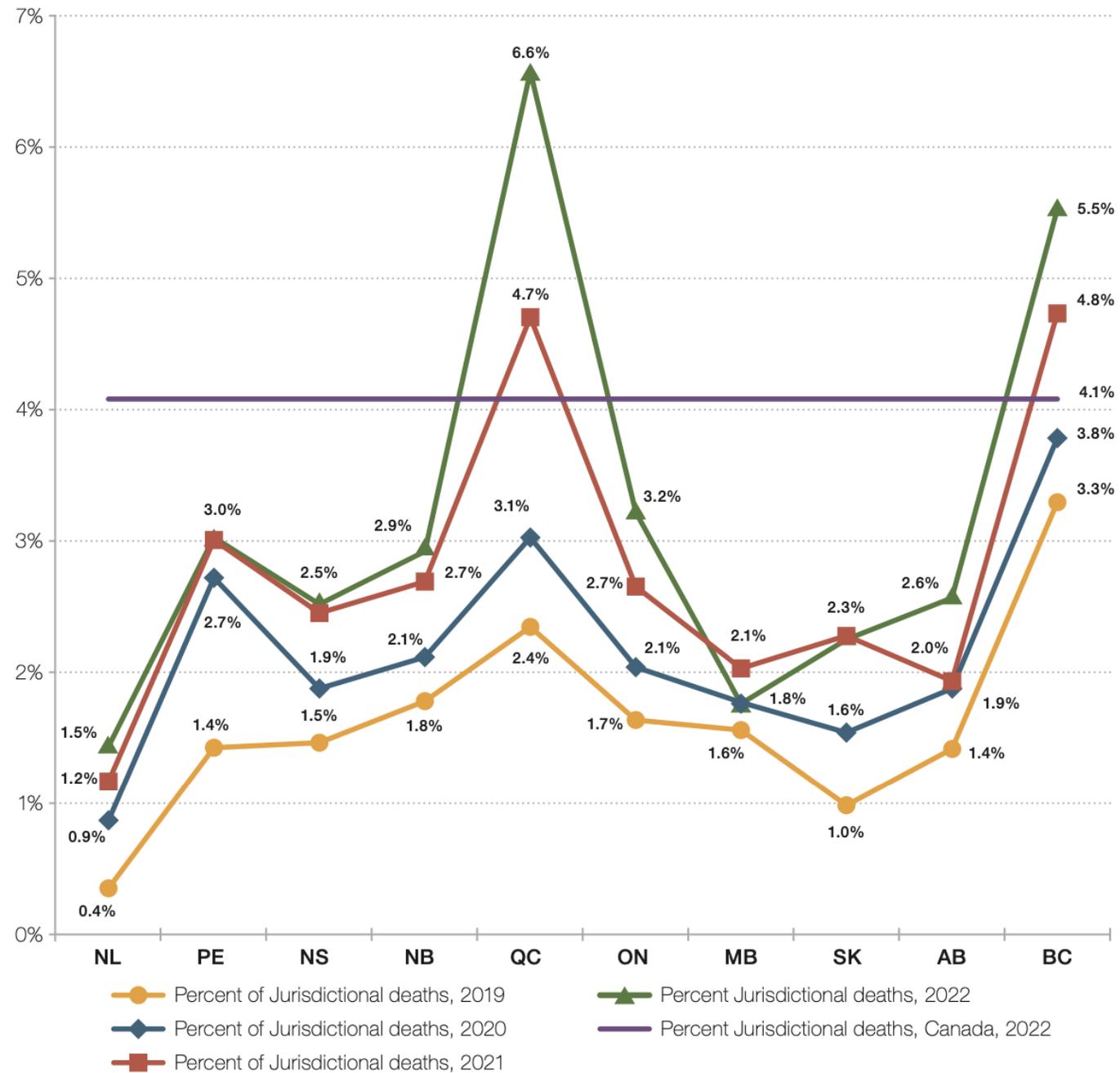
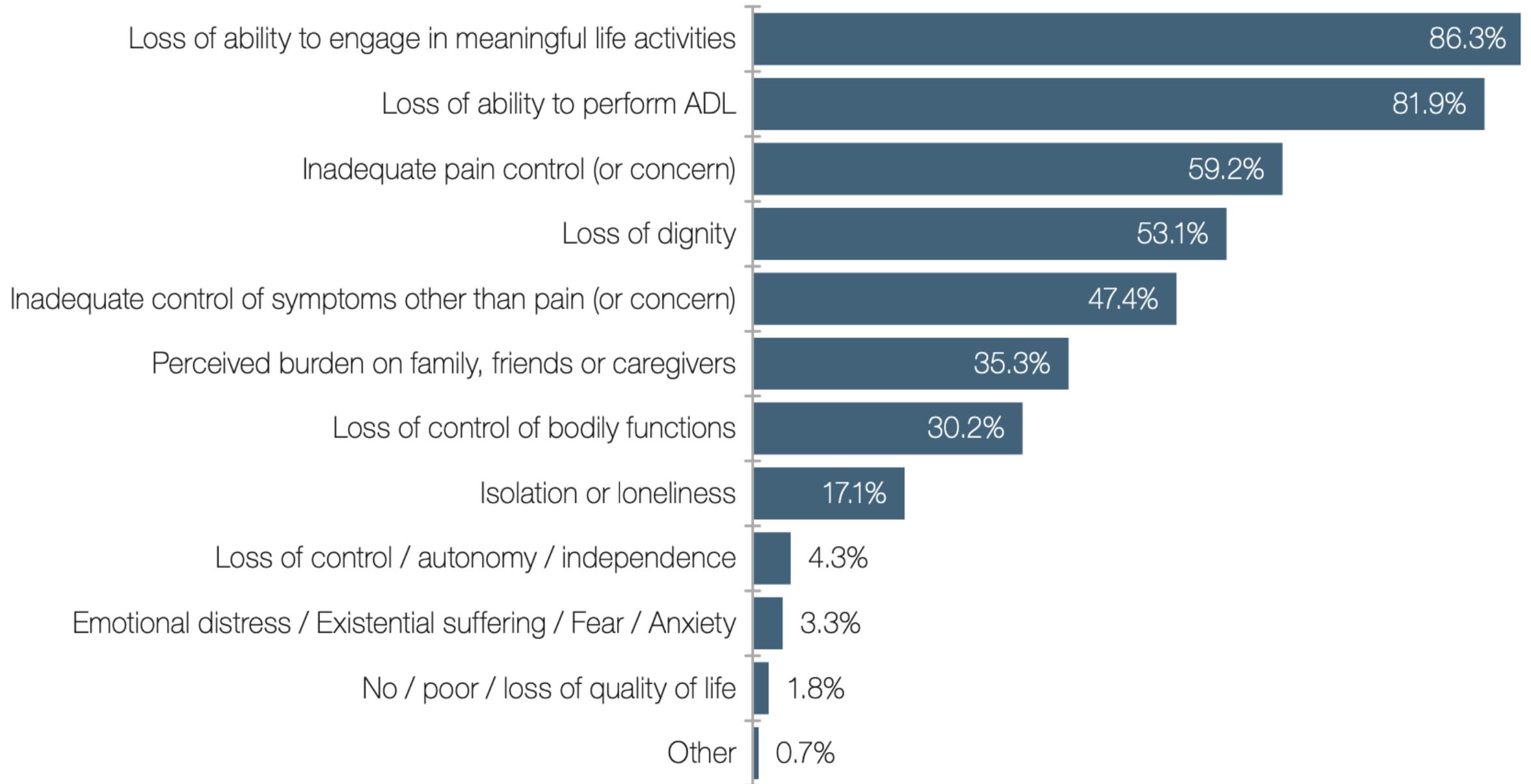


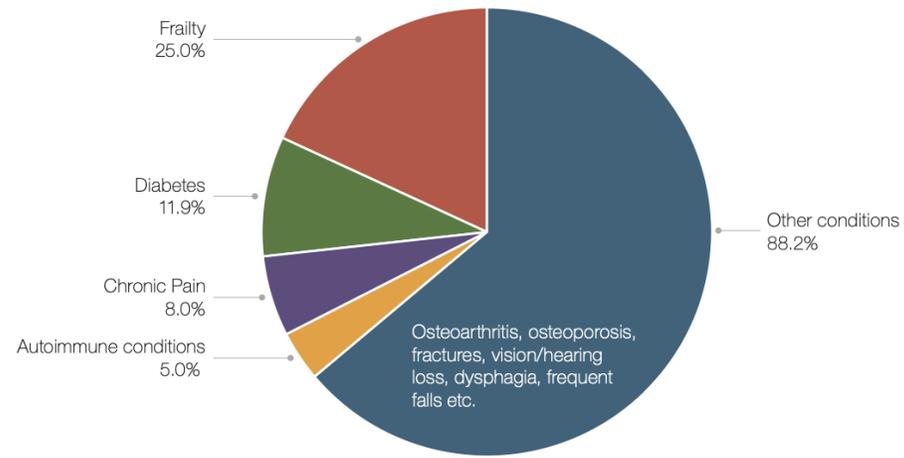
Chart 4.3: Nature of Suffering of Those Who Received MAID, 2022



MAID for solving “suffering in life” rather than avoiding “suffering in dying”?

- Already prior to expansion: many persons with co-morbidities, including mental illness
- Since mid-2021: persons not even remotely approaching their natural death: > 700
- Increase of ‘multiple comorbidities’: 12%

Chart 4.1D: MAID by Other Condition / Multiple Comorbidities, 2022



EXPLANATORY NOTES:

1. This chart represents MAID deaths where the report was received by Health Canada by January 31, 2023. For 2022, this represents 13,102 MAID deaths.
2. Providers were able to select more than one 'other' condition when reporting; therefore, the total exceeds 100%.
3. The denominator in this chart represents individuals with a condition reported under 'other condition' and 'multiple co-morbidities' (2,964 individuals). For this chart, these two categories were consolidated, as there were many common conditions listed across both these categories.

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%
2 weeks to under 1 month	1,848	18.2%	6 months or longer	1655	38.4%
1 month or more	5,071	49.9%	Unknown	944	21.9%
Unknown	901	8.9%			

Some MAID choices clearly driven by poverty, failures in 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.

VANCOUVER | News

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

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Ethics of medically-assisted death questioned as



some turn to it as an alternative to poverty

2024: Canadian Human Rights Commissioner

Canadian
human rights
commission

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Ending one's life must be a true and informed choice



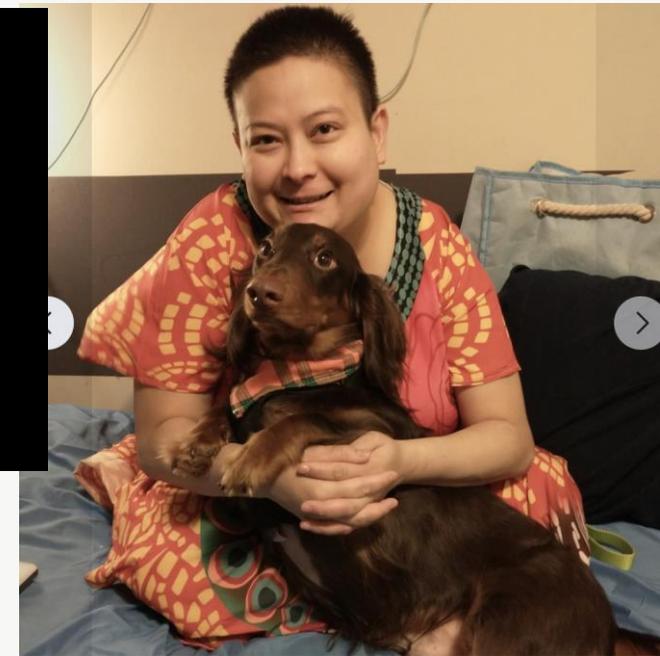
February 23, 2024 – Ottawa, Ontario – Canadian Human Rights Commission

In response to the Government's intention to pause on the expansion of medical assistance in dying, Charlotte-Anne Malischewski, Interim Chief Commissioner of the Canadian Human Rights Commission, issues the following statement:

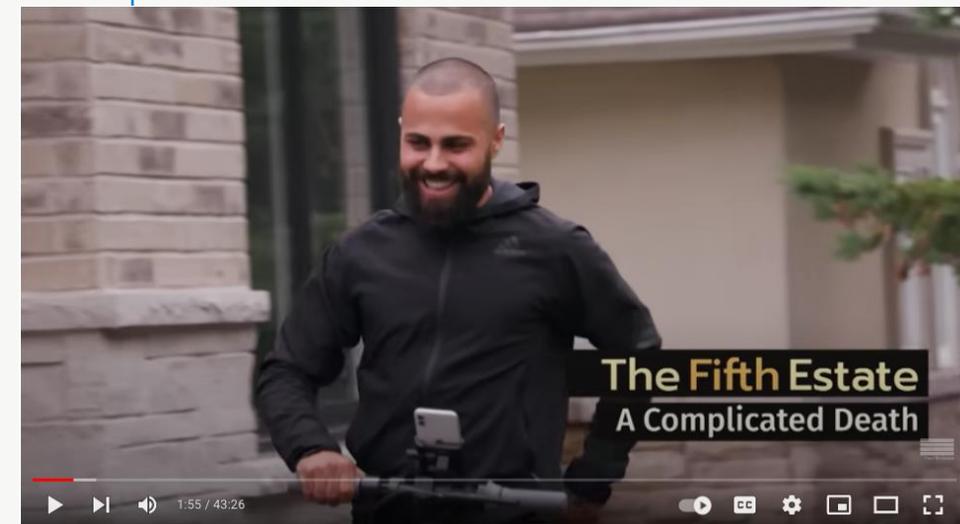
The Canadian Human Rights Commission remains deeply concerned by reports that people with disabilities are choosing medical assistance in dying (MAiD) because they cannot access the basic supports and services they need to live with dignity.

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](#)



Rosina Kanis' death featured in <https://www.aljazeera.com/program/fault-lines/2023/11/17/do-you-want-to-die-today-inside-canadas-euthanasia-program>



Kiano Vafeian (23): loss of vision due to diabetes. Approved for MAiD; alive because of mother's public campaign to stop Euthanasia procedure

Talk to someone today
Talk Suicide Canada ☑
Free · Confidential · Hours: Available 24 hours
833-456-4566

Montreal

Quadriplegic Quebec man chooses assisted dying after 4-day ER stay leaves horrific bedsore

'Whole story is a crying shame,' says advocate



[Rachel Watts](#) · CBC News · Posted: Apr 12, 2024 4:00 AM EDT | Last Updated: April 12



Calgary

Calgary judge rules 27-year-old can go ahead with MAID death despite father's concerns

'Dignity and right to self-determination' outweigh parent's concerns, judge says



[Meghan Grant](#) · CBC News · Posted: Mar 25, 2024 2:16 PM EDT | Last Updated: March 25

What explains steep increase and controversial applications?

- 1) Rhetoric of a “Constitutional Right to MAID” and ‘Die with Dignity”
- 2) Specific Components of Canada’s MAID Law
- 3) Emphasis in Law, Policy, Practice, on Access to, not Protection Against Death
- 4) Powerful Lobby with Impact on Media Discourse & Law/Policy Making

1) Rhetoric of a Constitutional Right to Die

- **2015: *Carter v Canada (AG)* (Supreme C): rejects claim right to die includes right to die with dignity**
 - **BUT: 2016 End-of-Life focused Law criticized by advocates for broad legalization as 'violating constitutional right recognized by Supreme Court'**
- **2019: *Truchon v Canada*** (Que. Superior Court): restriction to 'reasonable foreseeable natural death = discriminatory + violation of right to life, liberty, security'
 - Government fails to appeal (**political factors** contributing to this decision)
 - **Law 2021: expansion, de facto to persons with disability**
- **2024: parliament suspends introduction of MAID mental illness until 2027**
 - **Fierce debate, with medical professionals invoking 'constitutional right' while recognizing that expansion in mental illness context may not be safe**
- **Recommendation Parliament 2022: expansion advance requests + mature minors**

2) Specific Components of Canada's MAID law

- Terminology : Medical Assistance in Dying: confusion with broad end-of-life care, palliative care
- > 99.9 % cases = **euthanasia by physicians & nurse practitioners (2022: 7 assisted suicide)**
- **Access criteria: vague, subjective, and open to interpretation**
 - “**physical or psychological suffering** that cannot be alleviated in circumstances the applicant finds acceptable”
 - “Advanced state of **irreversible decline of capability**”
 - “**reasonably foreseeable natural death**”
- **MAID NOT a last resort:** No need for health care providers to agree w patient that there are no other options left

3) Policy: Access to Death > Protection Against It

- **Canadian Association of MAID Assessors and Providers (CAMAP):**

- Obligation to introduce MAID to every person who might qualify
- Recommends how to transfer patient eligible under 'track 2' (with longer review) to track 1:

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.

- **Model Practice Standard** Health Canada: physicians who object to providing MAID—even only in specific situation (e.g. standard of care opinion)--become 'conscientious objector', with a duty of “effective referral”

Conclusion

- Explosion of cases in Canada result of judicial source of legalization; particularities Canadian MAID law; flaws in health care system; impact dominant advocacy broad MAID
- **Idea of 'exceptional practice' and 'balancing of rights' largely abandoned: Focus on ensuring access to, *not protection against premature death***
- **Death turned into universal therapy for 'suffering'**, regardless of other options, source of suffering, and potential impact on perceptions & self-perceptions
- **Concern for disabled persons and elderly often ignored, or to be addressed by measures which will always be incomplete, more expensive, easily de-prioritized in times of cost constraints**
- **Initial hesitation med professionals made place for enthusiastic embracing by some doctors of additional powers & ability to provide 'solution' in complex cases where medicine may have no other immediate, technical solution**