THE CANADIAN BAR ASSOCIATION
L'ASSOCIATION DU BARREAU CANADIEN

Medical Assistance in Dying

END OF LIFE WORKING GROUP
CANADIAN BAR ASSOCIATION

February 2022

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PREFACE

The Canadian Bar Association is a national association representing 36,000 jurists, including lawyers, notaries, law teachers and students across Canada. The Association's primary objectives include improvement in the law and in the administration of justice.

This submission was prepared by the CBA End of Life Working Group with assistance from the Advocacy Department at the CBA office. The submission has been reviewed by the Law Reform Subcommittee and approved as a public statement of the CBA End of Life Working Group.

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I. INTRODUCTION

The End of Life Working Group of the Canadian Bar Association (CBA Working Group) is pleased to comment on medical assistance in dying (MAiD) for persons with mental illnesses, mature minors and advance requests for MAiD.

The Canadian Bar Association is a national association of 36,000 lawyers, Québec notaries, law teachers and students, with a mandate to promote improvements in the law and the administration of justice. The CBA Working Group comprises a cross-section of members drawn from diverse areas of expertise, including constitutional and human rights law, criminal justice, health law, wills, estates and trusts law, elder law, child and youth law, privacy and access to information law, and dispute resolution.

The CBA has demonstrated an abiding commitment to clarifying the law about end-of-life decision-making and stressing the importance of a pan-Canadian approach. We acknowledge that MAiD is complex and raises important issues and diverse views. The CBA Working Group has consistently recommended that amendments to the *Criminal Code* for MAiD align with the criteria established by the Supreme Court of Canada in *Carter.*[1]

The CBA has adopted resolutions supporting MAiD for persons with mental illnesses, mature minors and advance requests for MAiD, with appropriate safeguards.[2] We prepared these submissions to assist the review of these three areas, consistent with these policy resolutions.

II. ADVANCE REQUESTS

A. Clarification

We use the term "Advance Request" to mean a request for MAiD by a capable person (Applicant) who has been diagnosed with a grievous and irremediable medical condition, where the request

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1 *Carter* v. *Canada (Attorney General),* [2015] 1 SCR 331 [Carter].

2 See CBA Resolutions on Advance Requests, Psychiatric Conditions and Competent Minors.

is triggered in the event of the Applicant's subsequent incapacity and on the occurrence of specified future circumstances detailed in a written document (Triggering Conditions).

This concept is distinct from the circumstances addressed in section 241.2(3.2) of the *Criminal Code* where a qualifying individual has already requested and given consent to MAiD, but loses capacity before it can be administered.[3] An Advance Request can be viewed as an independent step in planning for incapacity by a capable person following a qualifying diagnosis, since it offers a mechanism to defer MAiD until the occurrence of future Triggering Conditions, without risking the inability to proceed at that time should the Applicant lose capacity in the interim.

B. Support for Advance Requests

We believe that Advance Requests respect the fundamental *Charter* principle of security of the person, and the sanctity of personal autonomy. Advance Requests allow an individual to access MAiD later (in accordance with their prior capable wishes) and addresses existing concerns that the risk of future incapacity may make MAiD inaccessible, resulting in a person accessing MAiD earlier than he or she might want. In other words, if a person must have capacity at the time of requesting MAiD, then a person must access MAiD while still capable even if the person is not yet ready to die. If they wait and risk incapacity, they will not be able to access MAiD at all (unless there is a framework for Advance Requests).

Recent surveys demonstrate an overwhelming support for Advance Requests. For example, 79% of respondents to the 2020 federal government's questionnaire on MAiD were in favour of Advance Requests.[4] Further, 83% of respondents in a 2021 Ipsos poll supported Advance Requests for persons with a diagnosis of a grievous and irremediable condition.[5]

Also, most members of the Canadian Association of MAiD Assessors and Providers (CAMAP) were open to Advance Requests. In a member survey, 82% stated that they would be willing to assess patients who had made an Advance Request but had since lost the capacity to make their

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3 Although not defined in the *Criminal Code*, this approach is referenced in the headings to sections 241.2(3.4) and (3.5), where it is labelled "Advance Consent". We use the term "Advance Request" to avoid confusion.

4 What We Heard Report: A Public Consultation on Medical Assistance in Dying (March 2020). The online questionnaire was open to the public in January 2020.

5 Ipsos Poll conducted on behalf of Dying with Dignity Canada (February 2021).

own healthcare decisions. And 76% of members would be willing to provide MAiD to an eligible patient who lacked capacity but had made an Advance Request.[6]

C. Legislative Framework

In our view, Advance Requests for MAiD can best be achieved by setting out a specific framework in the *Criminal Code*. This framework should address all requirements including the necessary documentation to establish and trigger an Advance Request. The regime should also address the protections, indemnification and release of liability for all parties acting in good faith. These protections would be especially important for the MAiD Agent (discussed in Section G below).

The existing *Criminal Code* criteria for MAiD, as applicable, should be part of Advance Requests, namely the capacity to make an Advance Request and informed consent requirements.

D. Only After Diagnosis

A person should be eligible to make an Advance Request only *after* a diagnosis of a grievous and irremediable medical condition, but *before* their suffering becomes intolerable. This safeguard permits a fully informed consent – requiring discussion on the condition's trajectory, treatment risks and benefits, and means to relieve suffering.

E. Declaration (prescribed form)

Given the critical nature of Advance Requests, we recommend using a prescribed form (Declaration). The contents of the Declaration should be specifically mandated in the *Criminal Code* (or regulations) and include:

- naming a person (MAiD Agent), including an alternate, where possible, who would initiate an assessment of whether the Applicant's Triggering Conditions for an Advance Request have been met. The MAiD Agent would then make treatment decisions on the Applicant's behalf in accordance with the terms of the Declaration and applicable law;
- delineating the Triggering Conditions that would constitute intolerable suffering for the Applicant and would require the MAiD Agent to act on the Advance Request;
- signature of the Applicant;

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6 The State of Knowledge on Advance Requests for Medical-Assistance in Dying Report of the Expert Panel Working Group, (Council of Canadian Academies) (2018) at p. 143.

- signature of the named MAiD Agent (and alternate, if applicable) acknowledging a willingness to act;
- signature of the Applicant's physician attesting to the communication of the diagnosis and the requisite discussions for informed consent; and
- witness requirements and instructions.

For the witness requirements, we recommend requiring two witnesses and that they be of the age of majority. We also recommend adding restrictions on who can be a witness. For example, we do not believe that the following individuals should be witnesses: i) MAiD Agent; ii) spouse, partner or child of the MAiD Agent; and iii) spouse, partner or child of the Applicant.

Consideration should also be given to which parties (including institutions, such as a long-term care or retirement facility) should be entitled to a receive or request a copy of the Advance Request (and any Revocation by the Applicant or Renunciation by the MAiD Agent).

We also recommend that the Declaration include suggestions on the following points to ensure they are considered by the Applicant when making an Advance Request:

- whether to consult a lawyer; and
- whether to inform relevant parties (such as family) that an Advance Request has been created and where the document is located.

F. Revocation of Declaration (prescribed form)

A Declaration should be revocable by using a prescribed form (Revocation). The requirements for a Revocation should be included in the governing framework in the *Criminal Code* (or regulations). We recommend that a lower level of capacity be required to revoke an Advance Request than the level of capacity required to *make* an Advance Request.

G. MAiD Agent

We contemplate a process where the Applicant names a MAiD Agent (including an alternate whenever possible), who would initiate an assessment of whether the Applicant's Triggering Conditions for an Advance Request have been met. When an Applicant has lost capacity and it appears the Triggering Conditions *may* have been met, the MAiD Agent would initiate an assessment to determine if the Triggering Conditions are *in fact* satisfied.

For consistency with the existing MAiD qualification process, the assessment should be conducted by two physicians or nurse practitioners (their qualifications mirroring existing

requirements). A key question in framing a regime for Advance Requests is, once these assessments have been made, who can then request that MAiD be administered? In our view, it should be the MAiD Agent.

If the assessing physicians or nurse practitioners determine that the Applicant is refusing MAiD or may have changed their mind (see Section J below), even in the absence of a formal Revocation, there must be safeguards to ensure that the MAiD Agent does not proceed with a request for MAiD.

Consideration should also be given to the situation where the Triggering Conditions are determined to be satisfied but a MAiD Agent refuses to make the request for MAiD, and whether this should trigger a right of review (see Section K below).

To prevent abuse, we recommend adding restrictions on who can be a MAiD Agent, for example, a minimum age and a prohibition against naming a paid caregiver or other person providing health care services to the Applicant. These limitations could be similar to existing restrictions on the appointment of an attorney for personal care in certain jurisdictions.

Consideration should also be given to other restrictions. For example, should entitlement to inherit on the Applicant's death disqualify someone from being a MAiD Agent? If so, could there be exceptions (with or without additional safeguards) for the Applicant's spouse, child or other person?

We also recommend permitting a MAiD Agent to renounce the appointment and suggest a prescribed form (Renunciation) that would include related requirements.

H. Independent of Existing Legislative Regimes for Substitute Decision-making

Most provinces and territories have a legislative regime for substitute decision-making about health care. Given that an Advance Request would name a MAiD Agent with a specific and narrow mandate, we propose that the MAiD process for Advance Requests be outside the existing legislative regimes for health care decisions (which typically have default provisions for substitute decision-makers). However, a MAiD Agent could be the same individual as the Applicant's named substitute decision-maker.

I. Triggering Conditions

The Triggering Conditions constituting intolerable suffering to the Applicant would be subjective – as is the case in the existing *Criminal Code* MAiD regime. However, for Advance Requests, the conditions must be described with sufficient clarity and specificity to allow an objective assessment of whether the Triggering Conditions have been met, underscoring the need for a full discussion as an essential part of the Applicant's prior informed consent. While Triggering Conditions will be very personal, examples could include:

- inability to recognize family or friends consistently for a defined period;
- inability to speak or to communicate by any other means;
- permanent confinement to bed;
- inability to attend to one's activities of daily living (as specified) with no reasonable prospect of a reversal of this condition.

J. Demonstration of Refusal by Applicant

The *Criminal Code* prohibitions on administering MAiD to an individual who demonstrates refusal or resistance by words, sounds or gestures should also apply to MAiD by Advance Requests, despite a determination that the Triggering Conditions have been satisfied. In other words, current wishes of the Applicant (whether capable or incapable) should prevail over the Advance Request.

K. Rights of Review

The legislative framework should address rights of review for the MAiD Agent and other persons in any of the following situations:

- whether the Triggering Conditions have been satisfied;
- whether the circumstances dictate that the MAiD Agent is required to request MAiD;
- whether the Applicant has demonstrated refusal or resistance by words, sounds or gestures

If rights of review are granted, the appropriate process and forum must also be determined.

L. Default Authority

If a MAiD Agent is unable or unwilling to act, there should be a default authority (such as a legislative appointee or government body) empowered to act as a last resort to give effect to an

Applicant's Advance Request. Consideration could also be given to having this appointee or body also serve as the review body discussed in Section K above.

III. MENTAL ILLNESS

A. Guiding Principles

The Supreme Court of Canada in *Carter* did not define "medical condition" in the context of MAiD. Subsequently, the Alberta Court of Appeal in *Canada (Attorney General) v E.F.*[7] held that the *Carter* decision should be interpreted as including persons with a psychiatric condition if they otherwise fit the criteria for MAiD.

People living with mental illnesses are entitled to autonomy and self-determination about their health, without discrimination, and their suffering is no less real than those of individuals affected by a physical illness. At the same time, researchers have acknowledged that individuals suffering from mental illness experience increased and intersecting levels of vulnerability in health care contexts, particularly in the case of MAiD,[8] hence the need for appropriate safeguards.

Appropriate safeguards are found through informed consent and good professional health care. In *Carter*, the Supreme Court of Canada accepted evidence that vulnerability can be assessed on an individual basis by physicians. The Court pointed out that concerns about "decisionally vulnerable" patients "are already part and parcel of our medical system"[9], and related issues are resolved through the assessment of informed consent and decisional capacity.

In the same vein, the Quebec Superior Court in *Truchon* stated that vulnerability in the context of MAiD must be assessed from an individual perspective rather than inferred on a collective basis, in reference to a group of so-called vulnerable persons which may not adequately reflect the diversity of circumstances amongst that group.[10]

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7 *Canada (Attorney General)* v. *E.F.*, 2016 ABCA 155, at para. 59.

8 The State of Knowledge on Medical Assistance in Dying Where a Mental Disorder is the Sole Underlying Medical Condition Report of the Expert Panel Working Group, (Council of Canadian Academies) (2018). See, for example, at pp. 47-48 and 68. [CCA Report on Mental Disorders).

9 *Carter*, at para. 115.

10 *Truchon v. Procureur général du Canada*, 2019 QCCS 3792 (Truchon), at para. 466.

That said, neither *Carter* or *Truchon* dealt explicitly with a factual matrix involving MAiD and mental illness as a sole underlying medical condition (MI-SUMC).

While issues related to MAiD MI-SUMC are complex, a general exclusion of all persons suffering from mental illness is likely to be constitutionally challenged. The CBA Working Group supports a patient-centric approach to capacity and consent with appropriate safeguards.

B. Legislative Approach

The current MAiD regime in the *Criminal Code* includes two sets of safeguards, depending on whether natural death is reasonably foreseeable or not. As mental illnesses do not likely translate into situations nearing death, MAiD MI-SUMC is likely to be approached through the lens and safeguards associated when "natural death is *not* reasonably foreseeable". However, Parliament should carefully define the scope of MAiD MI-SUMC to avoid ambiguity on the applicable protocols and safeguards.

While some aspects of MAiD MI-SUMC are appropriately dealt within the *Criminal Code*, other aspects should be handled by the provinces and territories (e.g., specifics of consent laws).

C. Potential Safeguards for MAiD MI-SUMC

The Supreme Court of Canada in *Carter* recognized MAiD for competent adults clearly requesting it, when affected by a "grievous and irremediable medical condition" that causes "intolerable suffering." The CBA Working Group believes that eligibility for MAiD MI-SUMC should be aligned with the criteria developed in *Carter* and recognize the specificity of mental illnesses and the individual's circumstances (as is the case for physical illnesses).

Here are key considerations to establish safeguards for MAiD MI-SUMC:

1. **Expertise of MAiD assessor**. Section 241.2(3.1)(e.1) of the *Criminal Code* states that one of the MAiD assessors should have "expertise in the condition that is causing the person's suffering" or consult with someone with that expertise. Given the complexity of mental illnesses, we support this position. Parliament may consider specifying that the expert must be a psychiatrist or another mental illness specialist. However, it is also important to consider actual access to these specialists, which

could be limited in some communities. Undue delays to see specialists could prolong suffering for patients applying for MAiD MI-SUMC.[11]

2. **Assessment of capacity.** Mental illnesses do not necessarily compromise capacity to make health care decisions, including MAiD. However, because mental illnesses could manifest in suicidal ideation, and because the decision-making capacity of the individual can be impacted by mental illness in certain contexts,[12] Parliament may consider if MAiD MI-SUMC assessment should be longitudinal and not based on a single meeting with the patient. In *Truchon*, the Quebec Superior Court held that physicians can distinguish between suicidal ideation and MAiD.[13] Psychiatrists are trained to assess this dimension and there is evidence in other jurisdictions that MAiD MI-SUMC and suicide prevention strategies could coexist.[14] However, education and proper communications are necessary to avoid confounding the two.
3. **Time limits.** It has been suggested that, once a person receives a diagnosis of mental illness, there should be an initial period before the person could file a request for MAiD, to permit the time to explore alternative means to alleviate their suffering, given the trajectory of the disease.[15] While this may appear as a protective factor, Parliamaent should be aware of the risk of arbitrariness in setting this time limit, irrespective of the nature of the medical disorder.[16] Parliament should consider whether existing requirements for informed consent may be a sufficient safeguard. Currently, no minimum period is required for MAiD eligibility for physical illnesses.
4. **Informed consent.** Before being eligible for MAiD MI-SUMC, a person should be presented with reasonable therapeutic options, whether these options involve medication or psychotherapy. While the way informed consent is applied by health care professionals may vary across Canada, the process is meant to ensure MAiD is consciously chosen over other alternatives. The *Criminal Code* states that the person requesting MAiD should be informed of "means to relieve (their) suffering," offered various consultations with relevant professionals[17] and that the MAiD assessor be satisfied that the person has given "serious consideration to those means." [s. 241.2 (3.1)(h)]

   Some suggest that this requirement be complemented by an additional criterion, based on the international experience. For instance, the Halifax Group suggested a

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11 Association des médecins psychiatres du Québec report "Access to medical assistance in dying for people with mental disorders" [AMPQ Report] (Nov. 2020), suggested establishing a provincial agency dedicated to mental health and MAiD, see p. 41. This agency would ensure appropriate access to independent psychiatrists, coordinate care and foster consistency in MAiD MI-SUMC. This option would require coordination between the federal and provincial governments.

12 See note 8 CCA Report on Mental Disorders, pp. 64-65 and 68.

13 *Truchon*, at para. 466. The CCA Report on Mental Disorders also commented that there is no evidence of any association between the legal status of assisted dying in a country and its suicide rate: p. 96.

14 AMPQ Report, p. 37-38.

15 According to the AMPQ, a majority of Quebec psychiatrists (71%) believe that a minimum amount of time living with the disease must be more than 5 years before a request for MAiD MI-SUMC can be made: AMPQ Report, p. 28.

16 AMPQ Report p. 29.

17 *Criminal Code*, s. 241.2 (3.1) g).

criterion that the decision be "well-considered."[18] The EAG Group suggested a "non-ambivalence" criterion.[19] While the necessity of additional criteria can be debated, we do not believe these concepts are relevant to the *Criminal Code*. Altering consent laws may raise jurisdictional issues, as they are normally considered a matter of provincial or territorial jurisdiction.

5. **Irremediable medical condition.** The views of medical experts on what is considered an "irremediable" mental illness may vary depending on the type of mental illness and other circumstances. While a fully informed consent requires that the patient is presented with all treatments available, the Supreme Court in *Carter* specified that "irremediable" does not require individuals to undertake treatments that are not acceptable to them.[20] Parliament should ensure that any expansion of MAiD to include MI-SUMC aligns with current best practices in mental health care.
6. **Assessment of suffering.** To be eligible for MAiD, the Supreme Court in *Carter* stated that the suffering should be "intolerable to the individual in the circumstances of his or her condition". This remains a subjective standard, viewed from the patient's perspective.
7. **Delay before MAiD administration**. Currently, for situations where "natural death is not foreseeable," at least 90 days must elapse between the initial MAiD assessment and the administration of MAiD.[21] Consideration should be given to the appropriate period to enable the MAiD assessors to conduct a full review of the patient's condition, given the type of mental illness, and to ensure informed consent, as well as to allow the patient to explore treatment options.
8. **Conscience rights.** As recognized in *Carter* and by the current federal MAiD regime,[22] MAiD assessors should not be forced to deliver MAiD MI-SUMC if it is contrary to their conscience or religion. However, adequate access to MAiD for eligible patients must not be compromised as a result of conscience rights.

In addition to requirements for MAiD MI-SUMC that could be integrated in the *Criminal Code*, other measures, including health care standards and guidelines, might be relevant to complete appropriate safeguards. For instance, multi-disciplinary teams exploring the dynamic between

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18 The Halifax Group, 2020, MAiD Legislation at a Crossroads: Persons with Mental Disorders as Their Sole Underlying Medical Condition, IRPP Report, (January). Montreal: Institute for Research on Public Policy, p. 26-27.

19 "Canada at a Crossroads: Recommendations on MAiD and Persons with a Mental Disorder – An Evidence-Based Critique of the Halifax Group IRPP Report", Expert Advisory Group on Medical Assistance in Dying (February 2020), p. 19-21. [EAG Report]

20 *Carter*, at para. 127. The Alberta Court of Appeal in *Canada (Attorney General) v. E.F* (2016 ABCA 155) also recognized evidence that mental illness may be "irremediable": at para. 65-66.

21 *Criminal Code*, s. 241.2(3.1)(i).

22 *Carter*, at para. 132, and *Criminal Code* section 241.2(9), which states: "For greater certainty, nothing in this section compels an individual to provide or assist in providing medical assistance in dying."

patients, their community and health care team, might be useful. However, these guidelines should be developed by the provinces and territories and the relevant professional regulators.[23]

D. Balancing Safeguards and Supports

We recognize the importance of appropriate health care services and social support for people living with mental illnesses. The MAiD framework should contain safeguards to mitigate the risk of vulnerable individuals choosing MAiD because of external factors, including lack of access to adequate health care.

At the same time, we must recognize the suffering of these individuals – which is no less real than those of individuals affected by a physical illness. As such, the framework must recognize their right to make their own health care decisions, including MAiD, in a manner compatible with the *Carter* decision and that balances autonomy and appropriate safeguards.[24]

IV. MATURE MINORS

A. Decisional Capacity

In *A.C. v. Manitoba (Director of Child and Family Services),*[25] the Supreme Court of Canada made it clear that mature minors can make informed decisions about their life and death. As such, persons under the age of 18 have the right to demonstrate mature medical decisional capacity, or the statute that precludes it will be found unconstitutional. This restriction would also fail to comply with Canada's obligations under article 12 of the *United Nations Convention on the Rights of the Child*, which requires that the views of children in all matters affecting them be given due weight in accordance with their age and maturity.[26]

In addition, the Expert Panel Working Group on MAiD for Mature Minors' review of the research demonstrates that the "cognitive foundations for decisional capacity are in place in early

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23 *Criminal Code* s. 241.2(7) recognizes that "[m]edical assistance in dying must be provided with reasonable knowledge, care and skill and in accordance with any applicable provincial laws, rules or standards."

24 Consideration could be given to the United Nations *Convention on the Rights of Persons with Disabilities* for guidance on ensuring both autonomy in health care decisions and appropriate safeguards.

25 [2009] 2 S.C.R. 181 (*A.C.*).

26 United Nations. *Convention on the Rights of the Child*, 7 March 1990, article 12.

adolescence" and that they may be able "to make an informed decision requesting MAID, particularly in a supportive environment."[27]

However, the Supreme Court of Canada noted in *A.C.* that these are complex situations requiring a careful assessment of the young person's individual capacity for autonomous choice. In the most serious of cases, where refusal of treatment carries a significant risk of death or permanent physical or mental impairment, a careful evaluation of the maturity of the adolescent must be undertaken to determine if their decision is genuinely independent, reflecting a real understanding and appreciation of the decision and its potential consequences.[28]

Consequently, appropriate tools to assess and confirm consent and capacity of minors need to be refined and developed. Clear guidelines and requirements to determine whether a minor has a mature medical decisional capacity for MAID or is adequately consenting to MAID are imperative. The Expert Panel Working Group on MAiD for Mature Minors noted that "while capacity assessments are complex, tools are available or are under development to help clinicians assess adolescent capacity for health care decisions and the capacity of patients requesting MAID."[29] Tools specific to adolescents should be prioritized to facilitate access to MAID for mature minors.

B. Constitutional Rights of Minors

The CBA Working Group believes that the *Criminal Code* should be amended to respect the constitutional rights of mature minors. Mature minors are a disenfranchised group with limited agency to retain legal counsel. Mature minors who are ill are even less able to engage counsel to argue their position. Given their vulnerability, we reiterate the importance of proceeding with a constitutionally-grounded perspective on the right of mature minors to make medical decisions about their life and death.

The Expert Panel Working Group on MAID for Mature Minors found that "while adolescents may face some unique psychosocial issues, their physical and emotional suffering at end of life is

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27 The State of Knowledge on Medical Assistance in Dying for Mature Minors Report of the Expert Panel Working Group (Council of Canadian Academies) (2018), p. 68. [CCA Report on Mature Minors]

28 *A.C.* at para. 95.

29 See note 27 CCA Report on Mature Minors, p. 68.

similar to that of adults."[30] The denial of equal access to the alleviation of suffering impacts the rights of young people under sections 7 and 15 of the *Charter.*

V. SUMMARY OF RECOMMENDATIONS

We appreciate the opportunity to address these important matters and would be pleased to elaborate on any of the foregoing, or offer further input.

The CBA Working Group recommends:

Advance Requests

1. **Advance Requests be authorized through a framework set out in the *Criminal Code*. The legislative framework for Advance Requests should address all requirements including documentation, protection and release of liability for all parties acting in good faith.**

2. **Include the existing *Criminal Code* criteria for MAiD, namely the capacity and informed consent requirements, in the Advance Requests framework.**

3. **Individuals should be eligible to make an Advance Request only *after* a diagnosis of a grievous and irremediable medical condition, but *before* their suffering becomes intolerable.**

4. **Develop a prescribed form (Declaration), its contents specifically mandated in the *Criminal Code* and include naming a MAiD Agent, delineating the Triggering Conditions, signatures and witness requirements.**

5. **Allow a Declaration to be revocable by using a prescribed form (Revocation). The requirements for a Revocation should be included in the *Criminal Code* and specify that a lower level of capacity is required to *revoke* an Advance Request than the level of capacity required to *make* an Advance Request.**

6. **Name a MAiD Agent who would initiate an assessment of whether the Triggering Conditions for an Advance Request have been met. Restrictions should be imposed on who can be a MAiD Agent (e.g., minimum age, prohibition for paid caregivers or**

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30 See note 27 CCA Report on Mature Minors, p. 120.

other persons providing health care services to the Applicant), clarifying and specifying the Triggering Conditions constituting intolerable suffering to the Applicant to allow an objective assessment of whether they have been met.

7. **Apply the *Criminal Code* prohibitions on administering MAiD to an individual who demonstrates refusal or resistance by words, sounds or gestures to Advance Requests, despite a determination that the Triggering Conditions have been satisfied.**

8. **Address rights of review for the MAiD Agent and other persons to determine whether: a) Triggering Conditions have been satisfied; b) circumstances dictate that the MAiD Agent is required to request MAiD; c) the Applicant has demonstrated refusal or resistance by words, sounds or gestures.**

9. **Empower a default authority (such as a legislative appointee or government body) to act as a last resort to give effect to an Applicant's Advance Request if a MAiD Agent is unable or unwilling to act.**

MAiD MI-SUMC

10. **Parliament authorize MAiD MI-SUMC in the *Criminal Code* with appropriate safeguards.**

11. **Parliament carefully define the scope of MAiD MI-SUMC to avoid ambiguity on the applicable protocols and safeguards.**

12. **Parliament be mindful that any additional safeguards do not unduly prolong the sufferings of individuals who would otherwise be eligible to MAiD, taking into account access to relevant medical resources.**

13. **Parliament be aware of the risk of arbitrariness in setting time limits, irrespective of the nature of the medical disorder, and consider whether existing requirements for informed consent may be a sufficient safeguard.**

14. **Parliament ensure that MAiD MI-SUMC aligns with current best practices in mental health care.**

Mature Minors

15. **Amend the *Criminal Code* to respect the constitutional rights of mature minors to make medical decisions about their life and death, including MAiD.**

16. **Refine and develop appropriate tools to assess and confirm consent and capacity of minors.**