Protecting Canadians With Capacity-Limiting Illness

A submission from the Association for Reformed Political Action (ARPA) Canada

to

The Standing Committee on Justice and Human Rights

Regarding

Bill C-41, *Medical Assistance in Dying Safeguards Act*

November 20, 2026

ARPA is grateful for the opportunity to submit a brief to this Committee regarding Bill C-41. While we support excluding mental illness alone as a basis for MAID, we are troubled that Bill C-41 would permit MAID via "advance request" for persons who become mentally disabled.

It is not simply that the safeguards in Bill C-41 are inadequate, though they are. Rather, like with MAID for mental illness, advance MAID requests involve intractable problems that cannot be fully resolved even with the most rigorous safeguards.

Devaluing the Lives of Vulnerable Canadians

ARPA Canada believes in the dignity and worth of every human life, regardless of physical or mental capacity.

During debate on Bill C-41 in the House of Commons, Minister Fraser said that this bill "is born out of the strong desire to give agency to people who are losing capacity to make decisions for themselves, so we no longer condemn people to a death that is certain and that will involve, by definition, intolerable suffering."

There are two obvious problems with this statement. First, death is certain for everyone – not just dementia patients. Second, dementia patients are not condemned to inevitable, intolerable suffering.

"Intolerable suffering" is a key criterion to access MAID in Canada. But in Bill C-41 it appears to be a doubly subjective and speculative standard: based on particular doctors' interpretation of a particular patient's written description of what that patient thinks will cause them intolerable suffering in the future.

The Minister's comments also indicate that dementia (or any other mental capacity-limiting illness) inevitably causes intolerable suffering. This mindset devalues the lives of Canadians with capacity-limiting illnesses.

In fact, people with advanced dementia tend to rate their quality of life higher than their proxies rate it. Many Canadians know and love people with dementia or other illnesses and see them living happily despite their illness and mental decline. Canada must not promote the idea that life is not worth living

once a person has reached a certain degree of decline in mental capacity. All people are worthy of care and support to help them live well through their illness.

Inadequate Safeguards

Proponents of advance requests claim that MAID by advance request is consensual, autonomous, and will not be provided for patients who have no desire to die. But advance MAID requests are far too complex and murky to ensure that will be true in every case.[1]

Advance Requests – MAID without Consent

Advance consent is not real, informed consent. In 2011, the Supreme Court of Canada ruled that a person cannot consent in advance to engage in sexual activity when they become unconscious.[2] Such a ruling makes sense to most Canadians. Yet while Canadians cannot consent in advance to sexual activity, Bill C-41 would allow Canadians to "consent" in advance to being killed. And unlike in sexual assault cases, a person who has been euthanized cannot later dispute whether they consented.

Subsection 5(8)(h)(ii) of Bill C-41 notes that the person who makes an advance request must describe the observable clinical manifestations "that they *anticipated* would cause them enduring and intolerable suffering." A person making an advance MAID request does so based on their present fear of a future condition they have never experienced. As a result, the person might not wish to die when that condition and its pre-identified clinical manifestations arrive but be unable to communicate his or her wishes.

Of course, subsections 5(5) through 5(7) clarify when a medical professional may or may not lethally inject a person who refuses or resists the procedure. If the medical professional is in doubt about whether the patient resisted, then he may try again in 30 days. And only voluntary resistance counts as a refusal of MAID, not involuntary resistance.

However, in a state of mental decline, a patient may have no idea what is about to happen to them. Notably, there is no requirement for the practitioner to even try to tell the patient that he is about to euthanize her. Additionally, dementia patients who have lost capacity will often resist any procedure. That's why some doctors in the Netherlands sedate their patients before causing their death.[3] But Bill C-41 includes no prohibition on using sedation as part of the process.

Once a patient has lost the capacity to consent, there is no way for them to effectively withdraw their request for MAID. The line between voluntary and involuntary refusal for someone who has lost capacity is impossible to determine reliably.

Advance Requests – a License to Kill

An advance request gives a medical practitioner a license to kill a patient at the time he or she sees fit. There are, of course, important limitations to this including the opinion of a second practitioner. Nonetheless, it is ultimately up to the doctors (who self-select to work as MAID assessors and providers), not the patient, to determine when a patient should be euthanized.

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[1] Many gray areas were noted in the Council of Canadian Academies report on advance requests in 2018 and these gray areas remain unresolved. See "The State of Knowledge on Advance Requests for Medical Assistance in Dying," *Council of Canadian Academies,* 2018.

[2] *R. v. J.A.*, 2011 SCC 28, [2011] 2 S.C.R. 440.

[3] Djura O Coers, et al., "Euthanasia in advance dementia: an empirical study of the decision-making process based on advance directives," *Age and Ageing* 55(6), June 2026.

What the patient wrote in the advance request is important, but it's the medical practitioners who must determine when the conditions described have manifested and whether the patient is therefore "suffering intolerably." Doctors will have widely varying views on whether advanced dementia constitutes intolerable suffering.

Ultimately, an advance request gives third parties the discretion to determine when a person should die by MAID.

Coercion and Undue Influence

Advance requests raise concerns around coercion or undue influence of vulnerable patients who are at risk of losing capacity. Canadians with dementia who die by MAID cite higher rates of isolation, loneliness, and feeling like a burden on those around them. On the other hand, they report suffering from inadequate pain control less frequently than people with other conditions.[4]

Sadly, elder abuse is common in Canada. Seniors often experience social and economic vulnerability, and caregivers may experience burnout or stress.

Even where abuse is absent, caring for a person with dementia can be challenging for family members, loved ones, and caregivers. Subsection 5(8)(a) of Bill C-41 states that for an advance request, the person must make the request "voluntarily and, in particular, not as a result of external pressure." But external pressures may be widespread, subtle, and hard to detect.

These challenges show the need for care, not death. Allowing advance euthanasia requests promotes the false notion that it is better to be dead than live with dementia or a similar illness. Canada must support and care for those with capacity-limiting illnesses rather than devalue their lives.

Advance Requests in Other Jurisdictions

The Netherlands is one of the very few jurisdictions that permits advance euthanasia requests. However, doctors are often unwilling to act on them because of the moral burden of ending the life of someone who lacks capacity to confirm their desire to die. In the Netherlands, just six or seven euthanasia deaths each year are due to an advance euthanasia directive, after the patient has lost mental capacity.[5]

In Quebec, by contrast, which has roughly half the population of the Netherlands, around 30 people have died by MAID due to an advance request within a year and a half of the province allowing it.[6]

The United Nations Committee on the Rights of Persons with Disabilities urged Canada to repeal MAID for persons who are not nearing natural death, and to not expand MAID to mental illness, mature minors, *or advance requests*.[7] Parliament would do well to heed these warnings.

Recommendations

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[4] "MAiD Death Review Committee (MDRC) Report: 2025 – 2," *Ministry of the Solicitor General,* 9.
[5] Stephanie Nolen, "She's Trying to Stay Ahead of Alzheimer's, in a Race to the Death," *New York Times,* Feb. 16, 2025.
[6] Jennifer La Grassa, "This is why Quebec is the only province where you can pre-approve your death," *CBC News,* July 9, 2026.
[7] "Concluding observations on the combined second and third periodic reports of Canada," *United Nations,* April 15, 2025.

ARPA Canada calls on members of this Committee to seriously consider the problems with and risks of permitting advance euthanasia requests.

MAID in Canada already accounts for more than 1 in 20 deaths, a rate that continues to grow annually. Parliament rigorously debated MAID for mental illness for years, concluding that issues around irremediability and suicidality were impossible to resolve. Advance MAID requests likewise create a host of problems that cannot be adequately resolved or mitigated. Parliament must not rush advance requests through the legislative process. Doing so recklessly endangers the lives of vulnerable persons.

Recommendation #1: This Committee should oppose advance MAID requests and negative all clauses in Bill C-41 which would permit them, but leave the mental illness exclusion intact.

The problems with advance MAID requests are intractable and impossible to resolve even through rigorous safeguards. In any event, this Committee and Parliament should not be rushed into legalizing MAID via advance request.

Recommendation #2: In the alternative of Recommendation #1, amend Bill C-41 to delay the legalization of advance MAID requests.

Clause 4(2) of Bill C-41, the mental illness exclusion, should come into effect when the Bill receives Royal Assent. However, the coming into force of the remainder of the legislation should be delayed to allow further in-depth study and analysis of the impact of legalizing advance MAID requests. Parliament moved too quickly with legalizing MAID for mental illness, which is now being repealed. Canada cannot afford to move too quickly with advance MAID requests. A new clause 16 should state: "Other than Clause 4(2), which comes into force immediately upon receiving royal assent, this bill comes into force on the second anniversary of the day it receives royal assent."

Recommendation #3: If Recommendations #1 is not implemented, amend Bill C-41 to incorporate better safeguards.

Additional safeguards must be incorporated into Bill C-41 to better protect vulnerable Canadians.

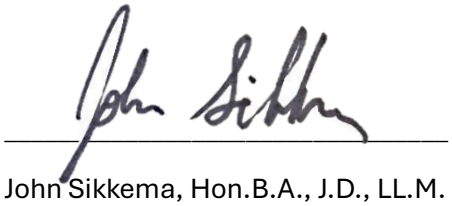
- **Require advance requests to be renewed annually while a patient maintains the capacity to consent.** If a patient is unwilling to renew the request, it will be considered void. Such a requirement will allow patients to actively reconsider their wishes as their illness progresses. This can be done by adding a new clause 5(3)(f), which states: "ensure that the request was renewed or revised annually, with a new signature affixed, while the person retained capacity to consent."
- **Ensure that advance MAID requests only apply when a patient has irreversibly lost consciousness.** This is required in Belgium's euthanasia law to avoid ambiguity.[8] Add a new clause 5(2)(f) which states: "They have irreversibly lost consciousness, as a result of the serious and incurable illness or disease with which they were diagnosed and in respect of which they made the request."

[8] Kristof van Assche et al., "The regulation of euthanasia in Belgium," *Journal de droit de la santé et de l'assurance maladie*, 2026.

- **Require witnesses to be present at the time of death to ensure that a person is not resisting the procedure.** Add a new clause 5(3)(g) which states: “ensure that at least one family member, caregiver, or legal representative is present at the time the lethal substance is administered.”
- **Prohibit sedation prior to administering a lethal injection.** Amend clause (5)(7) to include a new section (b) which states: “For greater certainty, a medical practitioner may not sedate a patient who has lost mental capacity for the purpose of administering MAID.

Respectfully submitted on behalf of ARPA Canada,





Daniel Zekveld, Hon.B.A., M.P.A.
Policy Analyst
647-909-5177 | Daniel@ARPACanada.ca

John Sikkema, Hon.B.A., J.D., LL.M.
Director of Law & Public Policy
289-228-8775 | John@ARPACanada.ca