

Human Rights Triage Protocol Coalition

Statement of Guiding Principles and Recommendations

PREAMBLE

WHEREAS dignity reflects the recognition of the inherent value, autonomy and equality of each and every human person and without regard to any utility which a human person might create for others;

AND WHEREAS the *Universal Declaration of Human Rights* (UDHR) recognizes that: “the inherent dignity” and the “equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”;

AND WHEREAS the *Universal Declaration of Human Rights* further recognizes that “disregard and contempt for human rights have resulted in barbarous acts”; and that it is “essential” for human rights to be “protected by the rule of law”;

AND WHEREAS disability is a human rights issue. Persons with disability, including Indigenous and older persons who are disproportionately represented in disability populations, experience barriers and inequalities including being denied equal access to health care and are subject to violations of dignity. This includes being subjected to prejudice and disrespect and being denied autonomy because of their disability;

AND WHEREAS the *Convention on the Rights of Persons with Disabilities* (CRPD) applies human rights to disability to clarify existing international law regarding disabilities and obligates ratifying states to, among other things: “modify or repeal laws, customs or practices that discriminate directly or indirectly; include disability in all relevant policies and programmes; refrain from any act or practice inconsistent with the CRPD; and take all appropriate measures to eliminate discrimination against persons with disabilities by any person, organization or private enterprise”;

AND WHEREAS the *Convention on the Rights of Persons with Disabilities* recognizes that “disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others”, that “discrimination against any person on the basis of disability is a violation of the inherent dignity and worth of the human person” and furthermore recognizes “the need to promote and protect the human rights of all persons with disabilities including those who require more intensive support”;

AND WHEREAS Canada is a signatory to the UDHR and has ratified the CRPD and recognizes its obligations under the CRPD;

AND WHEREAS under the *Canadian Charter of Rights and Freedoms* every individual has the right to life, liberty and security of the person without being deprived of these rights except in accordance with the principles of fundamental justice and every individual has the right to the equal protection and equal benefit of the law without discrimination;

AND WHEREAS the Parliament of Canada has affirmed “the inherent and equal value of every person’s life and the importance of taking a human rights-based approach to disability inclusion”;¹

AND WHEREAS *The Human Rights Code of Manitoba* defines discrimination as the differential treatment (whether in the form of an act or omission, whether intended or not intended) of an individual or group on the basis of particular characteristics including “physical or mental disability or related characteristics or circumstances” and “age” and furthermore recognizes that because much discrimination is rooted in ignorance, education is essential to its eradication;

AND WHEREAS *The Human Rights Code of Manitoba* recognizes that its “various protections for the human rights of Manitobans are of such fundamental importance that they merit paramount status over all other laws of the province”;

AND WHEREAS *The Accessibility for Manitobans Act* complements *The Human Rights Code of Manitoba* to ensure accessibility for Manitobans proactively, consistent with the principles of access, equality, universal design and systemic responsibility;

AND WHEREAS *The Accessibility for Manitobans Act* complements *The Human Rights Code of Manitoba* to ensure accessibility for Manitobans by preventing and removing “barriers” - including information, communication, and attitudinal barriers as well as barriers “established or perpetuated by an enactment, a policy or a practice” - with respect to accommodation and the delivery and receipt of goods, services or information;

AND WHEREAS failure to abide by the rule of law - which amongst other things requires accountability, participation, legal certainty, non-arbitrariness, and transparency - will serve to further institutionalize (whether intentionally or unintentionally) ableism, ageism, structural discrimination and discriminatory impacts and in turn undermine inclusion, dignity and equality in contravention of human rights law, norms and standards;

AND WHEREAS in light of the foregoing, any question of rationing or allocating limited resources requires a human rights informed response and more specifically, a disability rights informed response, notwithstanding that a rationing or allocation question may arise out of a pandemic or other health care context involving additional societal, ethical and clinical considerations;

AND WHEREAS persons with disabilities are “more vulnerable to the impact of low quality or inaccessible health-care services than others”² and are at “greater risk of discrimination in accessing healthcare and life saving procedures during the Covid-19 outbreak”³;

¹ [An Act to amend the Criminal Code \(medical assistance in dying\), S.C. 2021, c.2, Preamble.](#)

AND WHEREAS Canada has already experienced and/or witnessed pandemic responses and provincial iterations of Covid-19 triage protocols that have been challenged as ableist, ageist and discriminatory;

ACCORDINGLY, this document sets out the following **Guiding Principles and Recommendations to support discussion and decision-making in the development and implementation of triage policies, protocols, directives, priority-setting and resource rationing and allocation in relation to the Covid-19 Pandemic.**

GUIDING PRINCIPLES AND RECOMMENDATIONS

1. DEVELOPMENT OF A TRIAGE PROTOCOL

a. Guiding Principles: Non-discrimination, Constitutionality

Recommendation 1: The development of a triage protocol is essential to help safeguard against persons with disability and older persons being subject to the very real risk of arbitrary and discriminatory decision-making.

Recommendation 2: The development of a triage protocol should be guided by the constitutional and human rights of all patients, including persons with disabilities and older persons.

2. PROCESS FOR DEVELOPING A TRIAGE PROTOCOL

a. Guiding Principles: Inclusion and Consultation

Recommendation 3: In order to guarantee the equal rights of persons with disabilities and older persons to fully participate on an equal basis with others and to access healthcare and lifesaving procedures during the pandemic, the discussion and development of response efforts including triage, priority setting and resource rationing and allocation must include substantive and meaningful consultation and engagement with persons with disabilities, older persons, their families and caregivers as well as representative communities.

b. Guiding Principles: Transparency, Communication and Due Process

Recommendation 4: The process leading to the development of a triage protocol must be transparent. All stages of the discussion should be made public and accessible with due notice to ensure inclusion and substantive, meaningful consultation.

Recommendation 5: The results of the discussions at relevant stages of protocol development should provide opportunity for stakeholder input to be incorporated.

² [United Nations, "Covid-19 Outbreak and Persons with Disabilities" \(21 March 2020\).](#)

³ [United Nations, Policy Brief: A Disability-Inclusive Response to Covid-19 \(May 2020\), page 5.](#)

c. Guiding Principles: Constitutionality and Rule of Law

Recommendation 6: The draft triage protocol should be assessed and screened to ensure its lawfulness, constitutionality, and compliance with human rights obligations.

3. TRIAGE PROTOCOL

a. Guiding Principles: Clarity, Understandability and Transparency

Recommendation 7: A protocol should articulate and distinguish between substantive elements (i.e. the criteria used to make resource allocation decisions) and procedural elements (i.e. the processes within which the substantive criteria are applied and may include safeguards).

Recommendation 8: Both substantive and procedural elements should be anti-ableist and anti-ageist.

b. Guiding Principles - Substantive: Constitutionality, Non-discrimination and Equality

Recommendation 9: While certain disabling or age-related conditions can involve health issues that are relevant to recovery from Covid-19, in order to not create, perpetuate or exacerbate institutionalized ableism, ageism, structural discrimination or discriminatory impacts, it is imperative to clearly distinguish disabling condition(s) from Covid-19 survivability. In other words, patients with similar health conditions must receive equal treatment and care. A person's disability, age or attendant aspects of a disability or older age (accommodation, public funding, etc.) should never be a factor in determining whether an individual should or should not receive a lifesaving medical treatment.

Accordingly, a protocol should include:

- i. affirmation of the inherent dignity, right to life and equality of all persons;
- ii. affirmation that all measures will be taken to enable persons with disabilities and older persons to fully participate on an equal basis with others;
- iii. express commitment to ensuring care, support as well as accommodations for persons with disabilities and older persons regardless of whether their disability or condition is stable or progressive; and
- iv. ethical principles that "prioritize treatment for persons in situations of particular vulnerability, including persons with disabilities"⁴ and older persons.

⁴ [United Nations, Policy Brief: A Disability-Inclusive Response to Covid-19 \(May 2020\), page 11.](#)

A protocol should exclude:

- i. resource rationing or allocation decisions based on assessment of disabling conditions, age or conditions associated with aging;
- ii. resource rationing or allocation decisions based on assumptions about quality or value of life based on disabling conditions, age or conditions associated with aging;
- iii. the use of clinical tools or metrics whereby resource rationing or allocation decisions are based on assessment of disabling conditions, age or conditions associated with aging which are or can be addressed by treatment, care, support and accommodations; and
- iv. resource rationing or allocation decisions based on the costs (real or perceived) associated with treatment, care, support and accommodations for persons with disabilities or older persons.

c. Guiding Principles – Procedural: Equal Moral Respect, Non-Abandonment

Recommendation 10: Patients and their family, friends or caregivers, in accordance with the patient’s wishes, should be involved in decision-making. This should include the communication of information regarding critical care, options, the triage process, as well as how to appeal an allocation decision.

Recommendation 11: Accommodation and support to enable full participation by persons with disabilities and older persons must also be provided. Accommodation and support should be human rights-based and should therefore include supported decision-making realized to the fullest extent possible and where competency may be at issue, substitute decision-making should be utilized (e.g., SDM, proxy, trustee) in accordance with the law and the individual’s known wishes and values.

Recommendation 12: A provincial assessment team should be established consisting of health care professionals and at least one member of the public with lived experience, all of whom must have expertise or training in disability rights, ageism and human rights.

4. ACCOUNTABILITY

a. Guiding Principles: Justice, Transparency and Responsiveness

Recommendation 13: Triage policy, protocols and guidelines should be made public and accessible to ensure transparency between the government and the public.

Recommendation 14: All resource rationing or allocation decisions should be documented and where permissible, data, in the appropriate form, should be

reported to the public particularly with respect to decisions where critical care was denied.

Recommendation 15: Triage policy, protocols and guidelines should be reviewed, assessed and revised to ensure adherence to human rights obligations, to protect individual human rights and to guard against structural and systemic discrimination.

5. TRAINING AND EDUCATION

a. Guiding Principles: Clarity, Non-discrimination, Justice and Equality

Recommendation 16: All health care personnel must be made alert to human rights and the realities of disability discrimination, ageism and bias.

Recommendation 17: Health care professionals, particularly those involved in resource rationing or allocation policy, assessment and decision-making must be educated on the triage protocol and the human rights implications of triage protocols.