

MAiD for Mental Illness Matters for Consideration

*Submitted to the Special Joint Committee on
Medical Assistance in Dying
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1. What are we talking about?

- 1.1. Medical Assistance in Dying (“MAiD”) is legal in Canada if certain tests are met as set out in the Criminal Code of Canada. Originally MAiD required a reasonably foreseeability of natural death, but that was changed by the courts. At the time that the new MAiD legislation was approved, it also allowed for the potential of MAiD for a person whose sole underlying condition is a mental disorder.
- 1.2. When considering MAiD in the context of someone who is not dying as a result of their particular condition, we are talking about suicide. By the very definition of suicide, i.e. the act of killing oneself, if the condition from which they are suffering is not killing them then the act of providing MAiD is doctor-assisted suicide.

2. Context – Status of MAiD Legislation in Canada

- 2.1. Prior to 2019, the Criminal Code of Canada allowed for medical assistance in dying (“MAiD”) provided that to be approved to receive MAiD a person must have:
 - (a) a grievous and irremediable medical condition; and
 - (b) a reasonable foreseeability of natural death from said condition.
- 2.2. In 2019, the Superior Court of Québec’s decision in *Truchon v. Attorney General of Canada* (2019 QCCS 3792) dispensed with the reasonable foreseeability of natural death previously required under the law. This, of course, potentially left the door wide open for possible interpretation of any number of non-life-threatening afflictions, including mental illness, as grievous and irremediable and, therefore, eligible to seek MAiD. A stay in removing “reasonable foreseeability of natural death” was granted in order to give the federal government opportunity to make changes to the legislation.
- 2.3. In early 2021, the federal government adopted revisions to MAiD legislation, which included changes proposed by the Senate, that allowed mental disorder to be a condition for which MAiD

could be approved but put a 2-year moratorium on MAiD for mental disorders in order for a panel of qualified experts to bring recommendations forward to ensure proper protective measures are in place.

- 2.4. Now the primary test to be used in determining whether one can be approved for MAiD is that person must have a grievous and irremediable medical condition.

3. **CASP's Position on MAiD for Mental Illness**

- 3.1. Using science and evidence as our guide, mental illness can be grievous but is never irremediable, and therefore cannot meet the test for MAiD.

“There is simply not enough evidence available in the mental health field ... to ascertain whether a particular individual has an irremediable mental illness.”

Centre for Addiction and Mental Health. Policy Advice on Medical Assistance in Dying and Mental Illness October 2017. <https://www.camh.ca/-/media/files/pdfs---public-policy-submissions/camh-position-on-mi-maid-oct2017-pdf.pdf>.

- 3.2. Full disclosure to the patient suffering solely from a mental disorder must be required as part of the discussion around MAiD. Such disclosure should include:
- (a) according to the best available science, the chance that the patient's suffering is actually “irremediable” lies between 0 and 100%;
 - (b) it may be that with more aggressive, intensive, and/or individualized care, the patient's suffering could be alleviated and, therefore, could live a life that meets or exceeds what the patient may consider to be a worthwhile existence for many years or decades to come; and
 - (c) based upon the above, it is impossible to grant MAiD to anyone suffering solely from mental disorder as the legal test set out in the legislation cannot be satisfied.
- 3.3. MAiD for mental illness will result in a pre-mature death that could have been avoided with adequate treatment and care.
- 3.4. Extreme caution needs to be taken with MAiD and a thought-out, failproof, measured system of safeguards needs to be in place so that those most vulnerable will be protected in order that MAiD does not become doctor-assisted suicide.

4. **Helping the Patient with Mental Illness Seeking MAiD**

- 4.1. Recognizing that there is a possibility that the grievous suffering by the patient may be remediable to the point where MAiD is no longer sought, keep in mind the testimony of others with lived experience who have lived worthwhile lives after treatment of their condition resulted in a more livable life.
- 4.2. Tools should be made available to healthcare providers, especially MAiD decision makers, on how to move forward with providing the patient with support in order to avoid pre-mature death.

5. Recommendations

- 5.1. MAiD should not be provided to patients suffering from a condition that does not have a reasonable foreseeability of death unless there is clear scientific evidence that the condition is irremediable. Irremediability must always be objective and never subjective.
- 5.2. Increased funding should be available for healthcare to ensure that treatments are available to patients so that lack of access to treatment does not cause the condition to be deemed irremediable. A patient's refusal to receive treatment does not equate irremediability.
- 5.3. Extreme caution needs to be taken with MAiD and a thought-out, failproof, measured system of safeguards needs to be in place so that those most vulnerable will be protected in order that MAiD does not become doctor-assisted suicide.
- 5.4. Tools should be made available to healthcare providers, especially MAiD decision makers, on how to move forward with providing the patient with support in order to avoid pre-mature death.