



Canadian Psychiatric Association

Dedicated to quality care

Association des psychiatres du Canada

Dévouée aux soins de qualité

141 Laurier Avenue West 141, avenue Laurier Ouest
Suite 701 Bureau 701
Ottawa, ON K1P 5J3 Ottawa (Ontario) K1P 5J3
Tel: (613) 234-2815 tél : (613) 234-2815
Fax: (613) 234-9857 téléc : (613) 234-9857

www.cpa-apc.org
cpa@cpa-apc.org

April 11, 2016

SENT BY EMAIL: jody.wilson-raybould@parl.gc.ca

The Honourable Jody Wilson-Raybould, PC, MP
Minister of Justice and Attorney General of Canada
House of Commons
Ottawa ON K1A 0A6

Dear Minister Wilson-Raybould,

RE: CPA interim response to Report of the Special Joint Committee on PAD

It was a pleasure meeting you last month. The Canadian Psychiatric Association (CPA) Board of Directors and Executive Committee have had a chance to review the February 2016 Report of the Special Joint Committee on Physician-Assisted Dying. I am writing to provide additional specific feedback on the evolving Physician-Assisted Dying/Medical Assistance in Dying (PAD/MAID) framework to augment our previous January 27 presentation to the Special Joint Committee on PAD and February 17 followup letter.

The CPA recognizes that the Supreme Court has clearly articulated psychological suffering must be considered along with physical suffering in PAD decisions, and that more recently the Special Joint Committee Report explicitly recommended psychiatric illnesses not be excluded from the PAD/MAID framework. The CPA Board has established a time limited Task Force on PAD to facilitate development of appropriate standards and guidelines regarding psychiatric illnesses and PAD/MAID. For reasons outlined more fully below, **if psychiatric illnesses are included in a PAD/MAID framework, prior to considering potential PAD/MAID applications on the grounds of a mental illness the CPA recommends a twelve-month period beyond the June 2016 legislative implementation deadline to allow the development of proper standards, guidelines and recommendations regarding how psychiatric illnesses are considered in a PAD/MAID framework.**

Rationale for Extension Request

While the *Carter v Canada* decision clearly articulates psychological suffering must be considered in PAD requests, none of the cases before the Court involved actual psychiatric illnesses. The particular specifics and challenges of addressing the relationship between psychiatric illness and a PAD/MAID framework were therefore not reviewed by the Court. With Recommendation 3 in the February 2016 Special Joint Committee Report specifically recommending that "individuals not be excluded from eligibility for medical assistance in dying based on the fact that they have a psychiatric condition," we felt it important to highlight the need for additional time to allow the development of proper standards and guidelines regarding consideration of psychiatric illnesses in a PAD/MAID framework.

It is important to make the distinction between cases of irremediable physical illness leading to grievous and intolerable suffering concurrent with psychiatric illness, versus situations where the person applies for PAD/MAID on the grounds of an irremediable psychiatric illness. In the former situation, established principles of capacity assessment would apply as they do already; in the latter situation, there are currently no established standards of care to guide clinical assessment and decision-making.

As discussed below, several of the key concepts informing the *Carter v Canada* ruling are far better defined, with established standards, for physical illnesses than they are for psychiatric illnesses. The Special Joint Committee Report acknowledges that “Cases involving mental illness may prove challenging to address for health care practitioners, but the Committee has faith in the expertise of Canadian health care professionals to develop and apply appropriate guidelines for such cases.” As the national professional association for psychiatry, the CPA is appreciative of the trust placed in the profession; **at the same time we must emphasize the need for additional time to develop such appropriate guidelines as they do not currently exist.**

Lack of Standard for Irremediability in Psychiatric Conditions

Key amongst guidelines needing development in any PAD/MAID framework is establishing a standard of care for the concept of irremediability in cases of psychiatric illness. In degenerative physical illnesses, such as in ALS as was before the Court, predictions of significant certainty can be made regarding the progression, or at least lack of improvement, of physical symptoms leading to grievous suffering. The Special Joint Committee Report concludes the term “irremediable,” along with other terms relating to PAD/MAID, do not require further statutory definition, citing existing definitions of irremediability from the Canadian Medical Association, the Ontario College of Physicians and Surgeons, and the Alberta and Manitoba colleges of physicians and surgeons. The determination of irremediability in such situations of physical illness can be made according to established standards and clinical assessments.

The same does not hold true for psychiatric illness. As outlined in previous correspondence, beyond the uncertainty of predicting amelioration or deterioration of future psychiatric symptoms and suffering, remediability in the vast majority of psychiatric conditions involves consideration of multiple psychosocial factors. ***There is no established standard of care in Canada, or as far as CPA is aware of in the world, for defining the threshold when typical psychiatric conditions should be considered irremediable.***

Treatment and Irremediability

In the Special Joint Committee Report, in response to the challenges of defining the threshold of irremediability in psychiatric conditions, the Report cites testimony from Professor Downie “[reminding] the Committee of the following aspect of the *Carter* judgment: ‘Irremediable’, it should be added, does not require the patient to undertake treatments that are not acceptable to the individual.” Once again, I must emphasize that *Carter v Canada* did not consider cases of psychiatric illness, and the entire framework envisioned by the Court seems predicated on the person having full capacity for all their decisions. Presumably this would include full capacity regarding the person’s decision *not* to undertake treatments that might remediate their suffering, which is not always the case when cognitive distortions of mental illness are present.

Decisional capacity is specific to the decision being made. There is a difference between capacity for a decision to undertake or decline a treatment for an illness, versus capacity to request PAD/MAID. The Court did not examine the situation where a person may decline treatment options because of the impact of cognitive distortions of mental illness on their decisional capacity, thereby ostensibly rendering the situation “irremediable,” and thus allowing entry into the PAD/MAID process.

The challenges posed by this potential situation may extend beyond guideline development. In most jurisdictions, mental health legislation is implemented so that if a person declines treatment, even if their decision is influenced by cognitive distortions (for example, common depressive cognitive distortions of hopelessness or the inability to see a future), they do not receive treatment. In most jurisdictions a person's refusal of treatment, regardless of reason, can typically only be overridden if the person's mental illness symptoms lead to them being a physical risk to themselves or others.

Thus if a framework were implemented now allowing for application of PAD/MAID on grounds of psychiatric illness, not only do the standards for defining irremediability not exist, with current jurisdictional mental health legislations ***there is also the risk of individuals declining potentially remediating treatments because of cognitive distortions of illness, but being able to access the PAD/MAID framework on the grounds that their symptoms are irremediable given the lack of treatment.***

Again, guidelines do not yet exist to assist clinicians or policy makers on how to deal with this situation, and we do not think this is a situation that was envisioned by the Court.

Court's Concern About "Time of Weakness"

As indicated in our prior submissions, the CPA recognizes that the Court was clear that the determination of whether suffering is intolerable is a subjective decision made by the patient. Furthermore we are fully aware that mental illnesses can lead to significant suffering, this is precisely what draws our members to our profession to care for those suffering from mental illness.

However, given the current lack of standards and guidelines in key areas identified above, the CPA must express its concern to ensure the Court's wish "to protect vulnerable persons from being induced to commit suicide at a time of weakness" is properly addressed. ***In the absence of established standards and guidelines, there is a significant risk that persons with psychiatric illness access the PAD/MAID framework, despite being in potentially remediable situations where their future suffering could be addressed and no longer be subjectively intolerable.***

In conclusion, we are aware the Court requires a legislative framework in place by June 2016, and that the Court cited numerous Section 7 infringements based on the cases before it.

Regarding psychiatric illness, I would first point out again that the Court ruling was based on physical illnesses with progressive impairment or predictable irremediability.

- It is unclear whether the Section 7 infringements found by the Court would apply similarly to the vast majority of psychiatric illnesses that do not lead to such progressive physical incapacity.
- Unlike with physical illnesses that were considered by the Court, there is a lack of established standards of care (nationally and globally) for key issues regarding PAD/MAID and psychiatric illnesses (in preliminary results of a recent survey of Canadian psychiatrists reviewed by the CPA Board, this may be part of the reason why the majority of psychiatrists surveyed supported the legalization of PAD/MAID in some circumstances, but the majority were not supportive of PAD/MAID for patients with psychiatric illness).
- The Special Joint Committee Report recommendations already suggest a deferral for implementation of the "mature minor" issue in a PAD framework, due to lack of existing standards and guidelines regarding how to deal with that particular issue. The situation is not dissimilar to the lack of standards and guidelines for defining irremediability in mental illness, and other key considerations requiring further elucidation regarding psychiatric illnesses in a PAD/MAID framework.

- Finally, as mentioned above, following the Special Joint Committee Report recommendation that psychiatric illnesses not be excluded from the PAD/MAID framework, the CPA Board has struck a time limited Task Force on PAD to facilitate development of appropriate standards and guidelines regarding psychiatric illnesses and PAD/MAID. We would welcome the opportunity for that group to have a chance to do its important work and help inform considered policy development on this issue.

For these reasons, and given the lack of existing standards of care regarding key issues related to psychiatric illnesses and PAD/MAID, the CPA requests a twelve-month period beyond the June 2016 legislative implementation deadline to allow the development of proper standards, guidelines and recommendations regarding how psychiatric illnesses are considered in a PAD/MAID framework.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'KSG', with a long horizontal flourish extending to the right.

K. Sonu Gaiind, MD, FRCPC, FCPA
President

Cc The Honourable Jane Philpott, PC, MP, Minister of Health