



Canadian Psychiatric Association
Association des psychiatres du Canada

**Brief to the
Senate of Canada
Standing Committee on Legal and Constitutional Affairs
Bill C-7, An Act to amend the Criminal Code
(medical assistance in dying)**

**Canadian Psychiatric Association
Nov. 23, 2020**

Criminal Code Amendments: Medical Assistance in Dying

The Canadian Psychiatric Association (CPA) has previously made submissions to the federal government or appeared before government committees regarding medical assistance in dying (MAiD). On Mar. 13, 2020, CPA published a [position statement](#) on this topic.¹ The existing CPA position statement was written in the context of the current legislation, Bill C-14, and was not referencing the current amendments as proposed by bill C-7. The CPA position statement said that “patients with a psychiatric illness should not be discriminated against *solely on the basis of their disability*, and should have available the same options regarding MAiD as available to all patients” [emphasis added]. Any new legislation on MAiD must protect the rights of all vulnerable Canadians without unduly stigmatizing and discriminating against those with mental disorders.

The CPA supports equality and dignity for all persons. In the context of any proposed amendment to legislation related to MAiD we are strongly advocating for the equal availability of, and access to, appropriate treatment, supports and services for all Canadians to ensure that MAiD is not requested as a means to escape social exclusion or a dearth of appropriate treatment or community support. Appropriate safeguards for all vulnerable individuals must also be in place, not just for those who have mental illness.

It is important to note that within Canadian psychiatry there are divergent opinions with respect to the provision of MAiD, as well as whether access to MAiD should be permitted solely on the basis of a mental disorder. There are compelling legal, clinical, ethical, moral and philosophical questions that make this issue particularly challenging, not just for Canadians and parliamentarians, but also for us as psychiatrists. As such at this time, the CPA has not taken a position on whether MAiD should be available in situations where mental illness is the sole underlying medical condition.

The CPA has engaged members on this issue since 2016, through surveys, a time-limited task force, and symposia at annual conferences. Most recently as the result of changing societal opinion regarding the acceptability of MAiD as a medical intervention, we have been gathering information about the range of opinion among CPA members through a new survey, member town halls, and a call for written comments from our members. This member consultation has been bolstered by feedback from members of the provincial psychiatric associations, as well as the psychiatry subspecialty academies of child and adolescent, geriatric, forensic, and consultation-liaison psychiatry.

This most recent consultation work has been led by a group co-chaired by the CPA’s Public Policy Committee (Dr. Manon Charbonneau) and Professional Standards and Practice Committee (Dr. Alison Freeland). The working group, which is nationally-representative, includes psychiatrists with a cross-section of expertise such as provision of MAiD in Canada, epidemiology and/or research in MAiD, health-care policy regarding MAiD, and ethics. The working group also includes a member with lived experience of mental illness. The working group is finalizing a discussion paper examining several aspects related to MAiD including decisional capacity, informed consent, and appropriate safeguards in the context of available medical evidence. The CPA anticipates that the discussion paper on MAiD will be published by the end of 2020.

Comments Regarding Proposed Exclusion of Mental Illness

Bill C-7 proposes that a mental illness would not be considered an illness, disease or disability for the purpose of paragraph 241.2(2)(a).

As has already been submitted to the House of Commons Standing Committee on Justice and Human Rights by the Canadian Medical Association (CMA) and others, this exclusion criterion is stigmatizing and does little to further the conversation about how to protect vulnerable individuals from accessing MAiD. It suggests that people with mental disorders do not suffer from a recognized illness, disease or disability, and/or that they would recover if they simply adhered to therapy and tried harder. This is not in keeping with the available medical evidence, nor is it in keeping with the guiding principles of the United Nations Convention on the Rights of Persons with Disabilities (CRPD).² It also minimizes the devastating impact

that mental illness can have on the lives of people who experience mental illness and is at odds with decades of public health work to destigmatize mental illness.

The distinction drawn between “mental illness” and “physical illness” is incorrect and inconsistent with the available medical evidence. In fact, there is a strong overlap between physical and mental illnesses: mental illness occurs in the brain, which is a physical organ in the body. Certain mental illnesses like dementia can have physical manifestations, and certain physical illnesses like Huntington’s Disease can have mental manifestations. The current proposed definition propagates a false dichotomy between mental health and physical health, and the impact will be increased stigma for those who live with psychiatric illnesses.

Vulnerability is not limited to those with mental illnesses: many people with non-psychiatric illnesses are also vulnerable because of psychosocial circumstances such as isolation or poverty, cognitive distortions and demoralization due to failed treatment attempts or difficulty in adjusting to life with their illnesses. The trajectory of physical illness can be as unpredictable as that of mental illness; demoralization and loss of hope can occur, as can spontaneous remission.³ The prediction of treatment outcomes remains as significant a challenge for psychiatry, as it does for the rest of medicine.

Canada is a signatory to the United Nations CRPD, which has the primary purpose “to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.”² CPA supports these principles and believes that the proposed exclusion of mental illness from bill C-7 is at odds with our understanding of the Convention. The CPA also affirms its position that legal capacity must remain contingent on mental capacity and continues to support the government of Canada’s reservation to article 12 of the CRPD.⁴

Comments Regarding the Proposed Safeguards

The CPA supports the need for careful safeguards in the assessment of eligibility requirements.

The CPA has published a position paper on Informed Consent to Treatment in Psychiatry.⁵ Psychiatrists have specialized training and expertise in the assessment, diagnosis and treatment of mental illnesses including the assessment of decisional capacity and the durability, stability, and coherence of a person’s expressed will and preferences. Psychiatrists are well-versed in taking into consideration any external constraints or internal psychopathology that may impact these issues.⁵

In terms of proposed changes regarding the requirements of informed consent, bill C-7 speaks of the requirement that “reasonable and available means of alleviating the person’s suffering has been discussed and seriously considered before MAiD could be provided.” While the CPA is supportive of this clause, we note that it fails to address inequities of service provision and funding for all types of conditions, and is an area that is particularly problematic for people living with mental illness. Such inequities are further exacerbated for people who live in rural or remote areas, or who must also contend with culturally unsafe care. The currently proposed safeguards are hollow if they are not practically available to all Canadians. The CPA believes Canadians should have timely access to integrated, team-based care that is evidence-based and commensurate with the severity and duration of their medical condition.⁶

Conclusions

Whether the illness is physical, mental or a combination of both, equitable access to clinical services is an essential safeguard to ensure that people do not request MAiD due to a lack of available treatments, supports or services. Regardless of opinions on MAiD, what any psychiatrist or health-care professional wants for their patients is timely access to appropriate treatment and services. The CPA notes that psychiatrists have expertise in assessing decisional capacity, and in the determination of whether external constraints or psychopathology are affecting decisional capacity.

While CPA does not take a position on whether MAiD should be accessible solely on the basis of a mental disorder, explicitly stating that mental illness is not an illness, disease or disability for the purposes of C-7 as the government is proposing is inaccurate, stigmatizing, arbitrary and discriminatory.

The CPA urges the government ensure that this legislation will protect the rights of vulnerable Canadians without unduly stigmatizing and discriminating against people with mental disorders.

About the CPA

Founded in 1951, the Canadian Psychiatric Association (CPA) is the national voice of Canada's 4,800 psychiatrists and 900 residents, and is the leading authority on psychiatric matters in Canada.

Psychiatrists are medical doctors who provide psychiatric assessment, treatment and rehabilitation care to people with psychiatric disorders in order to prevent, reduce and eliminate the symptoms and subsequent disabilities resulting from mental illness or disorder. Psychiatrists provide direct care to patients and often act as consultants to other health professionals such as family doctors. They work in a range of settings including psychiatric and general hospitals, private offices, research units, community health centres, social agencies or in government. Psychiatrists use a mix of treatment options, including medications and psychotherapy, depending on the psychiatric condition. Often part of the treatment or rehabilitation plan will include referral to or collaboration with a range of social and support services.

As an evidence-based profession, CPA provides advice on the most effective programs, services and policies to achieve the best possible mental health care for Canadians and seeks to work collaboratively with governments and stakeholders to find solutions.

For more information, visit cpa-apc.org.

References

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