



THE CANADIAN
BAR ASSOCIATION
L'ASSOCIATION DU
BARREAU CANADIEN

April 6, 2023

Via email: mcu@justice.gc.ca, hcminister.ministresc@hc-sc.gc.ca

The Honourable David Lametti, P.C., M.P.
Minister of Justice and Attorney General of
Canada
284 Wellington Street
Ottawa ON K1A 0H8

The Honourable Jean-Yves Duclos, P.C., M.P.
Minister of Health
Health Canada
Address Locator 1801B
Ottawa ON K1A 0K9

Dear Ministers:

Re: Delay for Medical Assistance in Dying Where Sole Underlying Condition is a Mental Illness

The Canadian Bar Association End of Life Working Group is deeply concerned with further delays (until March 2024) to the eligibility for medical assistance in dying (MAiD) in circumstances where the sole underlying medical condition is a mental illness (MI-SUMC).¹ We urge the Government to ensure there are no more delays and commit to eligibility no later than March 2024.

The CBA is a national association of 37,000 lawyers, Québec notaries, law teachers and students, with a mandate to promote improvements in the law and the administration of justice. The CBA Working Group comprises a cross-section of members drawn from diverse areas of expertise, including constitutional and human rights law, criminal justice, health law, wills, estates and trusts law, elder law, child and youth law, privacy and access to information law, and dispute resolution.

The CBA has demonstrated an abiding commitment to clarifying the law about end-of-life decision-making and stressing the importance of a pan-Canadian approach. The CBA supports MAiD for persons with mental illnesses **and** mature minors, and supports advance requests for MAiD, with appropriate safeguards. The CBA Working Group has consistently recommended that amendments to the *Criminal Code* for MAiD align with the criteria established by the Supreme Court of Canada in *Carter*.²

¹ *Bill C-39, An Act to amend An Act to amend the Criminal Code (medical assistance in dying)* amended the *Criminal Code* to delay by one year (until March 17, 2024) eligibility for receiving medical assistance in dying in circumstances where the sole underlying medical condition is a mental illness. Bill C-39 received Royal Assent on March 9, 2023, now S.C. 2023, c. 1.

² *Carter v. Canada (Attorney General)*, 2015 SCC 5.

Unconstitutionality of Exclusion of MI-SUMC from eligibility for MAiD

The CBA Working Group presented a detailed submission³ to the Special Joint Committee on Medical Assistance in Dying. Given further delays to the eligibility for MAiD in circumstances where the sole underlying medical condition is a mental illness, we feel compelled to reiterate that denying MAiD for MI-SUMC likely violates the *Canadian Charter of Rights and Freedoms*.

People living with mental illness are entitled to autonomy and self-determination about their health, without discrimination, and to recognition that their suffering is no less real than that of individuals affected by a physical illness.

While issues related to MAiD and mental illness are complex, a general exclusion of all persons suffering from mental illness is likely to be constitutionally challenged. Further, requiring an individual to challenge the constitutionality of this exclusion and delay imposes an unreasonable burden that is inconsistent with the fundamental principle of equal access to justice.

Increased and Prolonged Suffering

Individuals suffering from mental illnesses have already had to wait two years for the recognition of their right to seek MAiD. These individuals relied on the Government's declarations for their eligibility in March 2023 and now face further suffering.

Dying With Dignity Canada, the national human rights organization committed to improving quality of dying and helping people across Canada avoid unwanted suffering, reports that 35.6% of calls fielded by their support team in 2022 were related to psychiatric disorders, several among them confirming that the delay in the implementation of MAiD has further increased their suffering and desperation.⁴

It would be naïve to think that some people, facing an uncertain period of continued suffering, will not be inclined to pursue other options including taking their own lives in a dangerous and undignified manner or travelling to other jurisdictions that permit MAiD for MI-SUMC.

Discrimination and Stigmatization of Mental Disorders

The exclusion discriminates against individuals suffering from mental illnesses, perpetuating the stigma and widely held erroneous belief that physical conditions are more serious than mental disorders.

Clear and Accountable Timelines

The Government must commit the time and resources necessary to ensure no further delay to the eligibility for medical assistance in dying in circumstances where the sole underlying medical condition is a mental illness. Clear and accountable timelines must be established to ensure that the necessary safeguards are developed to ensure no further delays in implementation of MAiD for MI-SUMC. The Government must be accountable for ensuring this process is completed by March 2024.

³ [CBA Working Group submission on MAiD, February 2022.](#)

⁴ Information received from Dying with Dignity Canada on February 17, 2023.

Responsibility of Regulatory Authorities and Professional Colleges

The Government, in partnership with provinces and territories, must ensure the collaboration of regulatory authorities, medical practitioners and nurse practitioners to establish standards and safeguards for assessing MAiD requests. The CBA proposed some safeguards in its February 2022 submission to the Special Joint Committee on Medical Assistance in Dying.⁵

In particular, the Government should work with the Canadian Association of MAiD Assessors and Providers (CAMAP) to ensure MAiD training materials for healthcare professionals are developed.

Conclusion

We must recognize the suffering of individuals with a mental illness – which is no less real than of those affected by a physical illness. The legislative framework must recognize their right to make their own health care decisions, including MAiD.

The Government must take the lead and responsibility to ensure that safeguards are developed for implementation of MAiD for MI-SUMC in the provinces and territories.

We appreciate the opportunity to address these important matters and would be pleased to elaborate on any of the foregoing or offer further input.

Yours truly,

(original letter signed by Marc-André O'Rourke for Kimberly Jakeman)

Kimberly Jakeman
Chair, End of Life Working Group

- c.c. Dr. Stefanie Green, President, Canadian Association of MAiD Assessors and Providers, (info@camapcanada.ca)
Dr. Alika Lafontaine, President, Canadian Medical Association, (alika.lafontaine@cma.ca)
Lisa Jorgensen, Director of Policy, Office of the Minister of Justice and Attorney General of Canada, (Lisa.Jorgensen@justice.gc.ca)

⁵ [CBA Working Group submission on MAiD, February 2022](#)