

## **Submission to the Special Joint Committee on Medical Assistance in Dying**

**May 9, 2022**

Issues related to medical assistance in dying (MAID) directly affect the lives of many Canadians. Please take the time to consider these complex issues carefully, to hear Canadians' concerns and to study the evidence. Don't rush to expand MAID.

The EFC remains firmly opposed to hastened death, but we offer recommendations to minimize the harm and risk to vulnerable Canadians.

### **Current MAID regime**

It should be unthinkable that any patient would request MAID because they are unable to access the supports and care required to live. However, there are increasing media reports that people are requesting MAID due to food and housing insecurity or inability to access medical care.

It should not be easier to obtain MAID than it is to obtain good quality palliative care, mental health care or other needed medical or social supports.

MAID must not serve as Canada's response to poverty or lack of essential supports.

- The EFC urges the committee to recommend the government pause MAID for those whose death is not reasonably foreseeable until it can properly assess what is happening and ensure people's lives aren't being ended due to a lack of financial or medical support.

### **Mature minors**

In *Carter*, the Supreme Court chose to restrict the exemption to 'competent adult person' rather than 'competent person.'

Across provincial and territorial jurisdictions, the standard age of consent for medical treatment varies. There is not unanimity about whether minors have a capacity to consent for MAID.<sup>1</sup>

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<sup>1</sup> Note Salter's discussion of adolescent decision-making: "We haven't yet agreed on a stable definition of capacity in this population, much less a reliable instrument for measuring capacity"  
<https://jamanetwork.com/journals/jama/fullarticle/193281>

Canadian laws set the minimum age at which Canadians may make significant decisions, such as voting. It is appropriate and reasonable to set a minimum age for the decision to end life.

In general, the less weighty the outcome, the greater the role a minor plays in the decision. MAID cannot be undone or mitigated. It is intended to end life and is fundamentally different from any other type of medical treatment over which minors may have legal decision-making power.

Canadian jurisprudence reveals that courts will override a minor's refusal if the odds of survival are good with treatment.

- The EFC strongly urges this committee to reject the idea that MAID should be made available to minors.

### **Advance requests**

It is a critical safeguard that a person must be able to consent at the time their life is ended through MAID.

Advance directives are very complex and difficult to carry out because of the nuances and specifics of complicated medical conditions and interventions. Further, predictions about future suffering are speculative, both in terms of how the disease will progress and the person's future desires.

Advance requests put significant additional responsibility on the physician, who must decide at what point a patient's life will end. It is both an interpretive role and a progression in role. The doctor goes beyond carrying out the patient's request to interpreting the request, possibly in the midst of unforeseen circumstances and complications, and deciding on the timing.

The data indicate that people change their minds after requesting MAID.<sup>2</sup>

- The EFC recommends this committee oppose MAID by advance request.

### **State of palliative care**

Few Canadians have access to high quality specialist palliative care or publicly funded palliative home care.<sup>3</sup>

It is lamentable that we as a country allow assisted suicide in response to suffering when most Canadians do not have access to high quality palliative care and related support systems.

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<sup>2</sup> <https://jamanetwork.com/journals/jama/fullarticle/193281>

<sup>3</sup> <https://www.cihi.ca/sites/default/files/document/access-palliative-care-2018-en-web.pdf>

Palliative care is distinct in approach and philosophy from the provision of MAID. Palliative care practitioners and institutions should not be forced to incorporate a procedure antithetical to its core principles.

- Data on the state of palliative care in Canada must be collected to determine Canadians' access to palliative care and gaps in services. This data collection should inform the development of needed minimum standards for access and quality of palliative care for all Canadians.

### **Protection of people with disabilities**

Canadians living with disabilities are communicating that the MAID laws put their lives at risk.

It is unconscionable that we would make it easier for individuals living with disabilities to access MAID than to access the medical and social supports they need to enjoy living on an equal basis with other Canadians.

- The government must pause access to MAID by those whose death is not reasonably foreseeable while it works to ensure Canadians have timely access to essential social and medical supports and services.

### **Mental illness**

Mental illness is experienced by many in Canada, but many Canadians are unable to access treatment and support.<sup>4</sup>

Canada must ensure Canadians with mental illness get timely, adequate support and treatment, not assisted suicide.

Persons experiencing mental illness can be particularly vulnerable to suicidal ideation.<sup>5</sup>

Capacity can be difficult to assess.<sup>6</sup> Research and resources on evaluating capacity are lacking.<sup>7</sup>

The preservation of hope is absolutely paramount.<sup>8</sup> However, extending the option of MAID implies there is no hope of recovery.

Mental illness may not follow a predictable progression. There is currently not enough evidence to determine whether a particular individual has an irremediable mental illness.<sup>9</sup>

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<sup>4</sup> <https://cmha.ca/wp-content/uploads/2018/09/CMHA-Parity-Paper-Full-Report-EN.pdf>

<sup>5</sup> <https://jme.bmj.com/content/41/8/586>

<sup>6</sup> <https://jamanetwork.com/journals/jamapsychiatry/fullarticle/2491354>

<sup>7</sup> <https://www.cmaj.ca/content/188/14/E337>

<sup>8</sup> <https://psycnet.apa.org/record/2016-34415-005>

<sup>9</sup> <https://www.camh.ca/-/media/files/pdfs---public-policy-submissions/camh-position-on-mi-maid-oct2017-pdf.pdf>

- The EFC strongly urges the committee to call for a pause in the expansion of MAID to Canadians with mental illness alone. Allowing this expansion to proceed in the absence of necessary supports and treatment puts Canadians' lives at risk.

### **Conscience Protection**

As the trial judge in *Carter* stated, "The evidence shows that thoughtful and well-motivated people can and have come to different conclusions about whether physician-assisted death can be ethically justifiable." More health care professionals may feel they cannot end a patient's life in particular circumstances as MAID expands, in addition to those who feel they cannot participate in ending the life of any patient.

Conscience protection is already a concern for many.<sup>10</sup> The lack of protection should be rectified by adding specific *Criminal Code* offences related to coercion to participate in MAID.

The rights of patients and physicians can be reconciled. Conscientious objection can be accommodated without impeding patient access to MAID.

- We recommend the committee support strong, clear conscience protection for healthcare professionals.

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<sup>10</sup> <https://collectifmedecins.org/en/declaration/signatories/>