

IT'S YOUR LIFE. IT'S YOUR CHOICE.



SUBMISSION TO THE SPECIAL JOINT COMMITTEE ON
MEDICAL ASSISTANCE IN DYING
RE: MD-SUMC

Dying With Dignity Canada

November 16, 2023

The Special Joint Committee on Medical Assistance in Dying, has been tasked with verifying the degree of preparedness for applying medical assistance in dying (MAID) where a mental disorder is the sole underlying medical condition (MD-SUMC). We write to express our deep conviction and earnest hope the committee will stick closely to its stated mandate, reaffirming that the issue under examination involves the commitments made by the Government to:

- Establish an Expert Panel on MAID and Mental Illness
- Establish a Special Joint Committee
- Enhance data collection and reporting
- Support the development of an accredited MAID curriculum, and
- Develop MAID Practice Standards

Inextricably linked to this are the Charter rights of a very small group of potential applicants who have, for almost three years now, and one could argue since 2015, been denied these rights.

Out of an abundance of caution, several years ago the Federal government sought the advice of experts in the mental health field to determine the modalities of assessment for applicants with a mental disorder and the necessary safeguards to protect the vulnerable. DWDC commends this diligent preparatory work undertaken by a compassionate group of clinicians and researchers and believes that their professionalism is embodied in the prudent, exhaustive, and detailed clinical recommendations contained in various reports and guidance documents issued since 2021.

The practice of medicine is an inherently cautious and risk-averse activity with good reason. As each phase of medical assistance in dying in Canada has been proposed, debated, scrutinized, adopted, and disseminated, the professional bodies in each jurisdiction have exercised a watchful eye on the welfare of patients. It is why, when we contemplate changes to our MAID laws, we must take their official pronouncements seriously. To that end, the Federation of Medical Regulatory Authorities of Canada, which represents the P/T Colleges, appeared before the AMAD Committee, and had the following to say about MD-SUMC:

“Regulators are ready for this. We don’t need any more time...In March 2024, all medical regulators will have guidance in place, professional standards in place that are built from or informed by the Model Practice Standards developed by the Health Canada Working Group... But the second reason why the regulators will be ready in March is that we have a solemn and legal duty to be ready.”

--Dr. Douglas Grant, Registrar and CEO

We endorse the coming into force of MD-SUMC because we have a sacred duty to safeguard the rights of all Canadians, in this case a small group of people tragically afflicted with acute, treatment-resistant mental disorders, who despite many interventions over long periods of time, have experienced unremitting suffering in their lives, which cannot be relieved. At DWDC we often hear from these individuals who, for reasons of fear, embarrassment, or stigma, are reluctant to speak publicly about their afflictions, but who know only too well what deep, unrelenting suffering means to them. And

even more regrettably, we hear from those who will not speak publicly for fear of being ostracized within their own communities. Often their voices are drowned out by those purporting to speak for them.

Every year Dying With Dignity Canada hears from thousands of people across Canada who are seeking information or navigating the MAID coordination programs across the country. Since Bill C-7 passed, the proportion of those individuals who identify as having a mental disorder as either a sole underlying medical condition or a co-morbidity, continues to rise. We anticipate that many of these individuals will likely never be found eligible for MAID MD-SUMC, but we cannot continue to deny them the right to apply – doing so only serves to create further distress and angst. They have been left in an untenable position; unable to apply and suffering grievously.

Canada, regrettably, has a long and sad history of paternalism and arbitrary denial of rights of those with mental disorders. For much of the twentieth century, we institutionalized the mentally ill, ghettoized them, subjected them to non-consensual treatments and involuntary interventions such as repeated electric shock therapy or experimental drugs. Often, we have unfairly conflated mental illness with a lack of capacity. In *Starson v. Swayze*, the Supreme Court of Canada, discussing the need to redress decades of unfair presumption of incapacity in relation to the mentally ill, wrote:

For this reason, it is particularly important that autonomy and self-determination be given priority when assessing individuals in this group. (Justice Major writing for the majority, SCC, 2003)

Anecdotally, we know that clinicians are already experienced in assessing patients with mental disorders (as a co-morbidity). They are experienced in assessing capacity as it relates to complex cases. There have been no criminal charges nor revocation of medical licenses since the introduction of MAID in 2016. This group of compassionate, educated, and professional clinicians is well-prepared to assess and provide MAID MD-SUMC.

It is imperative that we no longer deny those afflicted with mental disorders the free will - subject to prudent, existing safeguards - to make autonomous decisions about their own bodily integrity and to exercise their right to an assessment for MAID. As the Supreme Court wrote most powerfully in the unanimous *Carter vs Canada* decision:

This right to decide one's own fate... underlies the concept of informed consent and is protected by S.7's guarantee of liberty and security of the person...(T)he right of medical self-determination is not vitiated by the fact that serious risks or consequences, including death, may flow from the patient's decision. (SCC, 2015)

We urge the Committee to heed the words of an interview subject in a recent academic study on MD-SUMC:

I can't say to someone who is telling me that they've been suffering all their life and things aren't getting better, I can't say "sorry you got to stick around because I'm not morally comfortable with this." (Anonymous)¹

¹ Bastidas-Bilbao et.al., "Searching for relief from suffering: A patient-oriented qualitative study on medical assistance in dying for mental illness as the sole underlying medical condition" in Social Science & Medicine, 2023.