

Alberta Doctors' Digest

Medical assistance in dying and mental illness

In our May-June 2021 article, [Medical assistance in dying](#), we summarized *Bill C-7*, a piece of controversial legislation surrounding Canada's administration of medical assistance in dying (MAID), its legal history and subsequent amendments to the *Criminal Code* to remove requirements regarding the reasonable foreseeability of the patient's death.

As previously explained, to be eligible for MAID, an adult with decision-making capacity must be suffering from an incurable illness, disease or disability and have enduring or intolerable physical or psychological suffering that cannot be alleviated under conditions the individual considers acceptable.

Bill C-7, however, amended the *Criminal Code* to specifically exclude individuals whose sole medical condition was a mental illness. The bill did, however, incorporate a sunset clause which stated that the exclusion would be removed after two years to allow the minister of justice and the minister of health to initiate a review with experts regarding recommended protocols, guidance and safety surrounding medical assistance in dying by persons who have a mental illness.

In June 2022, the parliamentary Special Joint Committee on Medical Assistance in Dying released an interim report titled [Medical assistance in dying and mental disorder as the sole underlying condition](#). In publishing the report, the committee heard from various witnesses and experts regarding irremediability of mental disorders.

Various experts spoke about the treatment of some psychiatric disorders, diagnostic issues, the differences between suicidal patients and those with mental illness, and issues surrounding ensuring MAID requests did not just relate to poverty, social exclusion or lack of housing. Unfortunately, the committee deferred reaching a conclusion due to the complexity of the topic.

Likely because the Special Joint Committee report was inconclusive, in December 2022, the Government of Canada introduced legislation to extend the temporary exclusion of eligibility for patients suffering solely from mental illness. In February 2023, *Bill C-39* extended this prohibition to March 17, 2024.

On January 29, 2024, a new report titled [MAID and mental disorders: The road ahead](#) was presented to the House of Commons by the committee. The report was compiled after the committee heard testimony from more witnesses, including legal and medical experts, practitioners, representatives of professional associations, mental health organizations, regulators, and representatives of Health Canada and the Department of Justice.

Overall, the committee reviewed various opinions and concluded that Canada's medical system was not prepared for medical assistance in dying where a mental disorder was the sole underlying condition due to concerns that the program could not be provided "safely and adequately." The committee specifically highlighted the lack of protections for vulnerable Canadians, the lack of trained practitioners to provide assessments and

the issue of whether mental disorders were in fact irremediable. The committee received specific evidence highlighting the considerable challenge, if not impossibility, of accurately assessing the long-term remediation of mental illnesses, thereby questioning whether mental illnesses even fit the eligibility requirements for MAID. Interestingly, the committee noted that many psychiatrists did not support the expansion of MAID to encompass mental disorders.

Three days after the report was presented, the federal government kicked the can even further down the road by introducing *Bill C-62*, which delayed the topic of MAID's extension to mental disorders until 2027, after the next federal election.

MAID is naturally a sensitive topic and, given its ethical and moral implications, it has ignited controversy and political fervour throughout the country. Conservative political commentator Tucker Carlson even visited Alberta in February citing MAID as evidence of Canada's descent into totalitarianism.

The federal government's decision to extend the exclusion also raises additional legal questions. As noted by the committee, constitutional questions arise on whether the government's decision to exclude mental disorders from MAID infringes individuals' rights to equality, liberty and security of the person, or whether the exclusion should remain in place in order to protect vulnerable Canadians against death. In *Carter v Canada (2015)*, the Supreme Court of Canada explained that the government's prohibition on MAID breached individuals' *Charter* rights under section 7 (the right to life, liberty, and security of person) and section 15 (the right to equality) as the prohibition interfered with people's ability to make decisions about their own bodily integrity, thereby leading to suffering.

However, the argument can seemingly extend further, as those with a severe mental illness may also face intolerable suffering by being excluded from MAID, thereby setting up the opportunity for another court challenge, similar to Quebec's 2019 decision [*Truchon c. Procureur général du Canada*](#).

That being said, it appears the committee clearly saw substantial risks and complexities present in removing the mental disorder exclusion. Given the irreversible ramifications associated with MAID, and the equivocal evidence heard by the committee, the government can argue that they had proper reasons for delaying MAID's further expansion. Hopefully, the next three years will provide medical and legal experts the additional time needed to install proper safeguards to those requiring MAID.

Alternatively, it is entirely likely that legal challenges will be launched in the intervening time frame which will force the government's hand. All of this begs the question as to how many mentally ill individuals will continue to suffer in that time frame and how many may succumb to their illness by taking matters into their own hands.

Editor's note: The views, perspectives and opinions in this article are solely the author's and do not necessarily represent those of the AMA.