



Canadian Psychiatric Association  
Association des psychiatres du Canada

**Brief to the  
Standing Committee on Justice and Human Rights  
Bill C-7, An Act to amend the Criminal Code  
(medical assistance in dying)**

**Canadian Psychiatric Association  
Nov. 12, 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), and on Mar. 13, 2020, CPA published a [position statement](#) on this topic.<sup>1</sup> The existing CPA statement was written in the context of the current legislation, bill C-14, and says that people who qualify under the existing legislation should not be excluded solely because they may also have a mental illness.

We have engaged members on this issue since 2016, through surveys, a time-limited task force and symposia at annual conferences. Most recently we have been gathering information about the range of opinion among members through a new survey, member town halls and a call for written comments. 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 and Professional Standards and Practice Committee. 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 decisional capacity, informed consent and appropriate safeguards in the context of available evidence.

Within psychiatry there are divergent opinions on MAiD, as well as whether access to MAiD should be permitted solely on the basis of a mental disorder. 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 supports equality and dignity for persons with psychiatric disabilities, and is committed to safeguarding the rights and interests of patients with psychiatric conditions at all times. This includes the equal availability of, and access to, appropriate treatment, supports and services to ensure that MAiD is not requested as a means to escape social exclusion or a dearth of appropriate treatment or community support.

## **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).

### Inaccurate and Stigmatizing

As has been submitted to the Standing Committee on Justice and Human Rights by the Canadian Medical Association (CMA) and others, this definition is both inaccurate and stigmatizing. It suggests that those 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. It also minimizes the devastating impact that mental illness can have on their lives.

To enshrine a definition of mental illness that distinguishes psychiatric illness from other types of illnesses is at odds with decades of public health work to destigmatize mental illness. The current proposed definition propagates a false distinction between mental health and physical health, and the impact will be increased stigma for those who live with psychiatric illnesses.

### Vague, Arbitrary and Overbroad

Under the Canadian Charter of Rights and Freedoms,<sup>2</sup> a statutory provision is unconstitutional if it is vague, arbitrary or overbroad. The exclusion of those with a mental illness from being assessed for MAiD is problematic because the term "mental illness" is vague; and there is no justification for applying the exclusion only to all persons who suffer only from mental illness.

The distinction drawn between “mental illness” and other “medical” illnesses is impermissibly vague as there is strong overlap between physical and mental illnesses. Mental illness occurs in the brain, which is a physical organ in the body. The DSM-5 includes illnesses that are considered “physical” or “neurological,” such as dementia and Huntington’s Disease. Diagnosis of functional syndromes such as fibromyalgia, chronic pain and irritable bowel syndrome involves self-reported symptoms and there are no reliable diagnostic tests to confirm whether the origin is physical, psychological, or both.<sup>3,4</sup>

#### Discriminatory

A provision that applies only to persons with mental illness, without appropriate justification, is discriminatory in nature because it is arbitrary. A provision that applies to all persons with mental illness, without appropriate justification, is unconstitutional because it is overbroad.

Canada is a signatory to the United Nations Convention on the Rights of Persons with Disabilities (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.”<sup>5</sup> CPA supports these principles and believes that no person with a mental disorder or other disability should be discriminated against based on his or her disability.<sup>6</sup>

The proposed exclusion of mental illness from the bill would appear to be at odds with Canada being a party to the CRPD.

#### Equity in Access to Care

The proposed legislation speaks of requirements of informed consent which include that “reasonable and available means of alleviating the person’s suffering has been discussed and seriously considered before MAiD could be provided.” This clause is a major problem with regard to inequity of service provision and funding inequities for all types of conditions, not solely mental illnesses. These inequities are further exacerbated for people who live in rural or remote areas, or who must also contend with culturally unsafe care.

With regard to mental illness, no other area of medicine experiences such significant obstacles to access to care for those who are ill. On a structural level, stigma and discrimination result in lower research funding for mental health, poorer and less organized clinical services than in other areas of health care, and the devaluation of those involved with these areas.<sup>7</sup> Stigma and discrimination are well-documented obstacles to people with lived experience of mental illness receiving adequate general medical care<sup>8</sup> and combined are one factor in diminished life expectancy.<sup>7</sup> 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.<sup>9</sup>

#### 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. Regardless of opinions on MAiD, what any psychiatrist or health-care professional wants for their patients is timely access to appropriate treatment and services.

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.

Vulnerability is not limited to those with mental illnesses: many people with non-psychiatric illnesses are also vulnerable due to 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 also be unpredictable, demoralization and loss of hope can occur, as can spontaneous remission.<sup>10</sup>

Under bill C-7, a vulnerable patient who has advanced type I diabetes as well as a severe, treatment refractory mental illness would be eligible to be assessed for MAiD. The same patient without type I diabetes would not be eligible.

The Supreme Court has established that the mere presence of a mental disorder is not, *ipso facto*, proof of incapacity.<sup>11</sup> 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](http://cpa-apc.org).

## References

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