

Written Brief to the
Standing Committee on Justice and Human Rights
House of Commons
Canada

Submitted by Dr. Edward Weiss

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Honourable Committee Members:

Thank you for taking on the monumental task of updating Canada's MAID legislation.

By way of introduction, I am a family physician in Ontario who has been involved in the delivery of MAID assessments and provisions since early 2016. By all accounts, I was among the first clinicians in Ontario to provide MAID-related services to patients and I have developed a significant level of expertise in the years since. I have also contributed to the greater community of MAID clinicians in the Greater Toronto Area by creating an online mailing list for like-minded colleagues to discuss, troubleshoot, and obtain support in the delivery of MAID services.

In my work as a MAID provider, I have been fortunate to be able to help scores of Canadians achieve their final wish: to end their period of intolerable suffering and advanced decline in capability with a peaceful and painless death in the company of their loved ones. While I do not – and should not – advocate for patients to choose MAID over a natural death, I do support the right of Canadians to choose the manner of death that best suits their particular values and priorities, and I also support the right of all Canadians to access high quality palliative care delivered in the setting of their choice.

The proposed changes to Canada's MAID legislation, as embodied in Bill C-7, are an important step towards ensuring equity of access to MAID for those competent Canadian adults with intolerable suffering whose death is not reasonably foreseeable, as well as those who have already been approved for MAID, but who have lost the capacity to consent immediately prior to their assisted death.

With respect, I would like to issue the following comments and suggestions on some of the proposed changes to our existing law.

Multiple streams for MAID eligibility and corresponding reflection periods

Bill C-7 proposes creating separate streams, with respective sets of safeguards, for those whose natural deaths are reasonably foreseeable and for those whose deaths are not reasonably foreseeable. As you may be aware, the requirement in the original MAID legislation for a reasonably foreseeable death did not specifically require the diagnosis of a terminal illness, or a particular prognosis of expected time until natural death. In the years since the passage of C-14, there has been a growing consensus, both among MAID providers and medical regulators and oversight bodies, that a reasonably foreseeable natural death can be interpreted as a patient being temporally close to natural death, or on a trajectory towards a natural death due to their identified underlying medical conditions or impairments.

Statistics to date suggest that the majority of patients receiving MAID in Canada have a cancer

diagnosis,¹ and as such, their natural deaths were likely to occur in the very near future at the time of MAID. This is borne out by my own clinical experience, where I have found that most patients with advanced cancer who request MAID are severely incapacitated, frequently bedbound, and usually wish to proceed with assisted death at the first possible opportunity. It is in this population that the MAID clinicians involved often agree to waive the mandatory 10 day reflection period, due to concerns for imminent death or loss of capacity, and it is in this population that the 10 day reflection period only serves to prolong the already-intolerable suffering that patients experience due to their debilitated state.

For the subset of Canadians with other underlying medical conditions, though, many may yet have several years to live at the time of their assisted deaths. In this population, the 10 day reflection period, while sometimes onerous and difficult to bear, would seem to be a reasonable safeguard in order to ensure that patients have given their decision adequate consideration, and that other options for alleviating suffering can be explored.

For the newly proposed category of patients without a reasonable foreseeable death, the requirement for ninety days of reflection appears to be an adequate safeguard to allow time for consideration of alternative methods to alleviate one's suffering.

Thus, I propose that three categories of eligibility be established, with an escalating requirement for more reflection as expected time to natural death increases:

- Imminent death expected (e.g. within 90 days): no reflection period necessary.
- Death is not imminent, but is reasonable foreseeable (as per the current legislation): 10 day reflection period
- Death is neither imminent, nor reasonably foreseeable: 90 day reflection period.

Requirement for expert consultation

I applaud the committee for amending the text of C-7 to reflect the reality of clinical practice in Canada, namely that MAID assessors and providers may not have the necessary expertise in every particular medical condition or impairment to be confident that patients seeking MAID have explored all reasonable options. The requirement to seek expert advice in consultation (but not necessarily as part of an eligibility assessment) is sound and fair.

Waiver of final consent

I strongly agree with the proposed measures to allow for waiver of the final consent before MAID in the circumstance of loss of capacity, however the requirement for entering into a written arrangement to undergo MAID on a particular day appears arbitrary and unnecessarily demanding. Many patients are not in a position to choose a particular day for their MAID procedure at the time of their assessments, owing to their clinical circumstances, the requirement for transport elsewhere, uncertain travel plans on the part of family members, or myriad other reasons. In addition, this safeguard would likely become meaningless in short order, as a patient could simply enter into a written agreement to have MAID on a date in the distant future, far

1 <https://www.canada.ca/en/health-canada/services/publications/health-system-services/medical-assistance-dying-interim-report-april-2019.html>

beyond their actual anticipated date, and then verbally change their chosen date to suit their own needs as long as they are still capable of consent, while still maintaining the possibility of proceeding with MAID if capacity is lost.

Rather, I would recommend the following simple change to the relevant clause:

(ii) they entered into an arrangement in writing with the medical practitioner or nurse practitioner that the medical practitioner or nurse practitioner would administer a substance to cause their death ~~on a specified day~~ within ninety days,

Summary of Recommendations

1. Allow for three levels of proximity to natural death, with proportionately longer reflection periods:
 - a) No reflection period for those imminently dying (e.g. expected natural death within 90 days)
 - b) Ten day reflection period for those whose natural death is reasonably foreseeable, but not imminent
 - c) Ninety day reflection period for all others
2. For those patients whose death is not reasonably foreseeable, ensure that the expert in the patient's medical condition is not required to be an assessor of their eligibility.
3. In the case of waiving final consent, eliminate the requirement for a specific date to be scheduled in the written agreement, and instead require that the parties agree to MAID within ninety days.

Thank you again for your tireless work on behalf of all Canadians.

Respectfully yours,

A handwritten signature in dark ink, appearing to read 'Edward Weiss', with a stylized flourish at the end.

Dr. Edward S. Weiss