



May 9, 2022

Via email: AMAD@parl.gc.ca

The Honourable Yonah Martin, Senator
The Honourable Marc Garneau, P.C., M.P.
Joint Chairs, Special Joint Committee on Medical Assistance in Dying
House of Commons
Sixth Floor, 131 Queen Street
Ottawa, ON K1A 0A6

Dear Senator Martin and Mr. Garneau:

Re: Medical Assistance in Dying

The End of Life Working Group of the Canadian Bar Association (CBA Working Group) is pleased to comment on medical assistance in dying (MAiD) for persons with mental illnesses, mature minors and advance requests for MAiD.

The Canadian Bar Association is a national association of 36,000 lawyers, Québec notaries, law teachers and students, with a mandate to promote improvements in the law and the administration of justice. The CBA Working Group comprises a cross-section of members drawn from diverse areas of expertise, including constitutional and human rights law, criminal justice, health law, wills, estates and trusts law, elder law, child and youth law, privacy and access to information law, and dispute resolution.

The CBA has demonstrated an abiding commitment to clarifying the law about end-of-life decision-making and stressing the importance of a pan-Canadian approach. We acknowledge that MAiD is complex and raises important issues and diverse views. The CBA Working Group has consistently recommended that amendments to the *Criminal Code* for MAiD align with the criteria established by the Supreme Court of Canada in *Carter*.¹

CBA Submissions

The CBA has adopted resolutions supporting MAiD for persons with mental illnesses, mature minors and advance requests for MAiD, with appropriate safeguards.²

¹ *Carter v. Canada (Attorney General)*, [2015] 1 SCR 331 [Carter].

² See CBA Resolutions on [Advance Requests](#), [Psychiatric Conditions](#) and [Competent Minors](#).

The CBA Working Group has prepared detailed [submissions on MAiD for persons with mental illnesses, mature minors and advance requests for MAiD](#). We invite the Joint Committee members to refer to these submissions to understand the context of our recommendations.

Summary of recommendations

The CBA Working Group recommends:

Advance Requests

1. Advance Requests be authorized through a framework set out in the *Criminal Code*. The legislative framework for Advance Requests should address all requirements including documentation, protection and release of liability for all parties acting in good faith.
2. Include the existing *Criminal Code* criteria for MAiD, namely the capacity and informed consent requirements, in the Advance Requests framework.
3. Individuals should be eligible to make an Advance Request only *after* a diagnosis of a grievous and irremediable medical condition, but *before* their suffering becomes intolerable.
4. Develop a prescribed form (Declaration), its contents specifically mandated in the *Criminal Code* and include naming a MAiD Agent, delineating the Triggering Conditions, signatures and witness requirements.
5. Allow a Declaration to be revocable by using a prescribed form (Revocation). The requirements for a Revocation should be included in the *Criminal Code* and specify that a lower level of capacity is required to *revoke* an Advance Request than the level of capacity required to *make* an Advance Request.
6. Name a MAiD Agent who would initiate an assessment of whether the Triggering Conditions for an Advance Request have been met. Restrictions should be imposed on who can be a MAiD Agent (e.g., minimum age, prohibition for paid caregivers or other persons providing health care services to the Applicant), clarifying and specifying the Triggering Conditions constituting intolerable suffering to the Applicant to allow an objective assessment of whether they have been met.
7. Apply the *Criminal Code* prohibitions on administering MAiD to an individual who demonstrates refusal or resistance by words, sounds or gestures to Advance Requests, despite a determination that the Triggering Conditions have been satisfied.
8. Address rights of review for the MAiD Agent and other persons to determine whether: a) Triggering Conditions have been satisfied; b) circumstances dictate that the MAiD Agent is required to request MAiD; c) the Applicant has demonstrated refusal or resistance by words, sounds or gestures.
9. Empower a default authority (such as a legislative appointee or government body) to act as a last resort to give effect to an Applicant's Advance Request if a MAiD Agent is unable or unwilling to act.

MAiD Mental Illness Sole Underlying Medical Condition (MI-SUMC)

10. Parliament authorize MAiD MI-SUMC in the *Criminal Code* with appropriate safeguards.
11. Parliament carefully define the scope of MAiD MI-SUMC to avoid ambiguity on the applicable protocols and safeguards.
12. Parliament be mindful that any additional safeguards do not unduly prolong the sufferings of individuals who would otherwise be eligible to MAiD, taking into account access to relevant medical resources.
13. Parliament be aware of the risk of arbitrariness in setting time limits, irrespective of the nature of the medical disorder, and consider whether existing requirements for informed consent may be a sufficient safeguard.
14. Parliament ensure that MAiD MI-SUMC aligns with current best practices in mental health care.

Mature Minors

15. Amend the *Criminal Code* to respect the constitutional rights of mature minors to make medical decisions about their life and death, including MAiD.
16. Refine and develop appropriate tools to assess and confirm consent and capacity of minors.

Conclusion

We appreciate the opportunity to address these important matters and would be pleased to elaborate on any of the foregoing or offer further input.

Yours truly,

(original letter signed by Marc-André O'Rourke for Kimberly Jakeman)

Kimberly Jakeman
Chair, CBA End of Life Working Group