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Membership Advisory

Medical Assistance In Dying and Psychologist Participation – Legal Opinion

In June of 2016, the Canadian Federal Government passed Bill C-14 which is an Act amending the Criminal Code of Canada to allow for *Medical Assistance in Dying* (MAID). In the legislative preamble the objectives of the legislation are identified as:

- *recognizing the autonomy of persons who have a grievous and irremediable medical condition that causes them enduring and intolerable suffering to seek medical assistance in dying;*
- *recognizing that robust safeguards, which reflect the irrevocable nature of ending a life, are essential to prevent error and abuse in the provision of medical assistance in dying;*
- *affirming the inherent and equal value of every person's life and avoiding encouraging negative perceptions of the quality of life of persons who are elderly, ill or disabled;*
- *protecting vulnerable persons from being induced, in moments of weakness, to end their lives;*
- *recognizing that suicide is a significant public health issue that can have lasting and harmful effects on individuals, families and communities;*
- *recognizing that permitting access to medical assistance in dying for competent adults whose deaths are reasonably foreseeable strikes the most appropriate balance between the autonomy of persons who seek medical assistance in dying, on one hand, and the interests of vulnerable persons in need of protection and those of society, on the other;*
- *recognizing that a consistent approach to medical assistance in dying across Canada is desirable, while recognizing the provinces' jurisdiction over various matters related to medical assistance in dying, including the delivery of health care services and the regulation of health care professionals, as well as insurance contracts, coroners and medical examiners;*
- *recognizing that those who wish to access medical assistance in dying should be able to do so without adverse legal consequences on their families;*
- *recognizing that everyone has freedom of conscience and religion under section 2 of the Canadian Charter of Rights and Freedoms and that nothing in the Bill affects those freedoms (as amended by the House of Commons Standing Committee on Justice and Human Rights);*
- *recognizing the Government of Canada's commitment to working with provinces, territories and civil society to facilitate access to palliative and end-of-life care, care and services for individuals living with Alzheimer's and dementia, appropriate mental health supports and services and culturally and spiritually appropriate end-of-life care for Indigenous patients (as amended by the House of Commons Standing Committee on Justice and Human Rights).*

Government of Canada: Legislative Background: Medical Assistance in Dying
(Bill C-14, as Assented to on June 17, 2016); June 2016

The legislation seeks to strike a balance between allowing self-determination for those who are facing intolerable suffering due to an *irremediable medical condition*, and protection for those who are considered to be vulnerable (e.g. minors, the disabled). The Supreme Court of Canada in the Carter v. Canada ruling which led to the legislative amendment to the Criminal Code, made a clear statement that an irremediable medical condition “does not require the patient to undertake treatments that are not acceptable to the individual.”¹ Suffering as a result of mental illness or a mental health condition is not at this time covered under the MAID legislation.

The term MAID is used to describe both “voluntary euthanasia” and “assisted suicide”. The former action refers to a qualified medical practitioner or nurse practitioner administering medication to a patient who is eligible for, and freely consents to MAID, and that action brings about their death. The latter action refers to the provision of medication by a qualified medical practitioner or nurse practitioner to a patient who is eligible for, and freely consents to MAID, and that the patient uses to end his own life. It is important to stress that only those circumstances outlined within the MAID legislation are exempted from criminal prosecution under the Criminal Code. Thus “a person’s consent to die is not a defense for someone who inflicts death on them”.² The exception to the Criminal Code prohibition is when a medical practitioner or nurse practitioner exempted under the legislation to provide MAID services, provides that service, AND the patient is eligible for, and has freely consented to receive MAID.

Under the Criminal Code, it remains a crime to assist someone to commit suicide or to counsel them to commit suicide (paragraph 241(b) of the Criminal Code). The MAID legislation contains an exemption in regard to assisted suicide which exempts from prosecution designated medical practitioners or nurse practitioners, and people who would assist them in providing or dispensing medication to eligible patients to allow them to end their lives.

Only physicians and nurse practitioners are specifically identified within the legislation as legally allowed to administer MAID services to eligible patients. In the legislation physicians are referred to as “medical practitioners”. Indemnification from prosecution is extended to those in allied professions who may be engaged by eligible physicians or nurse practitioners to assist them in the provision of MAID e.g. Psychologists, Social Workers, and Pharmacists. The important issue to remember is that as a Psychologist one must be engaged by a qualified medical practitioner or nurse practitioner to participate in MAID and cannot initiate involvement independently.

It is important to be clear that legal counsel’s opinion is that a Psychologist should not, and legally cannot initiate a discussion with a patient in regard to whether MAID may be a reasonable alternative for them, or encourage and/or persuade a patient to seek MAID. These actions could potentially be viewed as a breach of the Criminal Code section 241 which pertains to counselling one to commit suicide. Psychologists however, may be asked to assist in the determination of patient capacity to make the decision to end their life and their freedom from duress in making the decision. Psychologists are cautioned to be careful to not go beyond these bounds as they may be subject to a complaint to the College or criminal prosecution. This is not

¹ Carter v. Canada Feb 6, 2015

² Government of Canada - Legislative Background: Medical Assistance in Dying June 2016

to suggest that one cannot or should not address client suicidality should this issue come up in the process of providing a therapeutic service.

Psychologists are advised MAID is a complex issue that requires not only consideration of one's competency in dealing with issues relating to end of life, and competency in the assessment of capacity to make such decisions, but also one's personal beliefs about the right of patients to make such a decision. Psychologists are reminded that it is important to be clear with themselves and others about the legal limits of their participation in MAID, as well as any personal limits and the limits of their professional competency, which may apply.

It is important to state that involvement in MAID provides indemnification from criminal prosecution for those professionals who fall under the exemption. However, the exemption under the Criminal Code does not provide indemnification from civil action or complaint to the College by others such as family members who may not have agreed with their loved one's decision. It is important to stress that the College legally is compelled to accept and consider all complaints it receives in regard to the practice or conduct of its members.

References:

- Merrilee Rasmussen, Q.C. Legal Counsel
- Government of Canada - Legislative Background: Medical Assistance in Dying June 2016
- Carter v. Canada February 6, 2015