OPINION EDITORIAL

Navigating the Next Chapter in Mental Health And Medical Assistance in Dying Laws in Canada

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Medical Assistance in Dying (MAiD): A Brief Introduction

Medical Assistance in Dying (MAiD) occurs when an authorized healthcare professional administers medication that deliberately ends a patient's life, at that patient's request. This article provides a brief overview of Canada's MAiD law and discusses continued controversies and next steps.

Legalizing MAID

In February 2015, the Supreme Court of Canada concluded that the criminal ban on physician-assisted suicide violated the Canadian Charter of Rights and Freedoms under certain circumstances [1-2]. Shortly afterwards, on June 17, 2016, Bill C-14 was enacted, providing a legal structure for MAiD and enabling doctors to prescribe (i.e., physician-assisted suicide) or administer (i.e., voluntary euthanasia) life-ending medications when indicated [2-3].

The cases before the Supreme Court were ones of severe disabling or terminal illness; however, the Court's ruling that persons facing grievous and irremediable suffering on the basis of a serious medical condition should be able to seek MAiD was not exclusive to terminal illnesses [1-3]. Although the Joint Parliamentary Committee recommended including non-terminal disorders, Bill C-14 limits MAiD to situations where death is "reasonably foreseeable," making it a possibility in end-of-life decision-making but not necessarily beforehand [2-5].

The Immediate Response To MAiD Legalization

Since its legalization, MAiD has been quickly adopted and the number of medically-assisted deaths across Canada are steadily increasing [2-3]. In 2019, there were 5,631 cases of MAiD nation-wide, accounting for 2% of all deaths in Canada [3]. Case numbers in 2019 represented an increase of 26.1% over 2018 numbers, with all provinces reporting a steady year over year growth in the number of MAiD cases [3].

Continued Controversies Post-Legalization

Despite rising demand, MAiD remains a controversial practice. One area of political and public discussion and debate concerns the issue of whether patients whose sole underlying medical condition is mental illness should be able to access MAiD in situations where they are not nearing a natural death [2, 6]. MAiD is not like other healthcare treatments, as it involves deliberately ending a life [6]. Even when such a procedure is requested by someone who is suffering, universal availability and accessibility raises a number of ethical and moral questions [6].

Arguments in favour of offering MAiD for individuals whose sole underlying medical condition is mental illness tend to focus on concepts of undue harm and personal autonomy. Many forms of mental illness may never fully abate and hence, can be considered incurable [6]. Consequently, prohibitions on assisted suicide for mental illness may subject some people to chronic and recurrent conditions that cause, what for them is unbearable suffering, significantly reducing quality of life [2,6-7].

In these cases, some individuals may feel forced to take their own lives prematurely, for fear they may be unable to do so when their suffering reaches a point of intolerability [2,6]. Additionally, forbidding MAiD in cases of mental illness prevents Canadians from making decisions about their bodily integrity, infringing on personal liberty [6-7].

There are also several reasons against allowing MAiD for people with mental illness as their only medical condition. First, as emphasized by both the Centre for Addiction and Mental Health and the Canadian Mental Health Association, there is a lack of evidence that mental illness is an irremediable medical condition and hence, MAiD would not constitute the best evidence-informed care for these patients [6, 8]. Second, mental illnesses are diverse and develop as a result of complex biological, psychological, and social factors [6]. Satisfactory treatment requires timely, comprehensive, and multifactorial health and social supports, which are not yet available in Canada to the degree they should be [6-7,9]. Consequently, there is considerable risk that broadening MAiD access, without simultaneously increasing accessibility of and investment in mental health services along with addressing shortcomings of current treatments and supports, may reduce cultural and political urgency of improving mental healthcare accessibility and relevant preventative measures [8-9]. This, in turn, may lead patients to see MAiD as the most accessible option for them, rather than a last resort [8-9]. What is even more alarming is that this phenomenon may disproportionately affect marginalized populations [10]. Other jurisdictions have shown that groups who have been impacted by colonialism and racism, and women who have experienced sexual abuse and trauma are more likely to be recipients of MAiD for mental illness, perpetuating systemic disparities [10-11]. Finally, increasing access to MAiD may reveal higher levels of indecisiveness among some individuals with mental illness [7]. The Criminal Code mandates a ten-day waiting period between the date that MAiD is requested and the date that it is received, and requires that, MAID is requested and the date that it is received, and requires that, immediately before receiving MAiD, patients be given an additional opportunity to either reiterate or withdraw their consent [7]. In Canada, it has been found that less than 10% of requests are withdrawn during this waiting period by people with a physical illness [7]. In Belgium, where a small number of jurisdictions where mental illness may qualify for MAiD, it has been shown that 49% of requests are withdrawn by individuals with a mental illness [7]. The large number of withdrawals, albeit in a single study, suggests that assessing eligibility for MAiD in patients with a mental illness may be especially difficult and indicates that, with additional support and time, a patient who has requested MAiD may ultimately retract their request [6-7,11]. Further research on MAiD withdrawals is warranted.

Revising MAiD and Ongoing Considerations

On March 17, 2021, among heated discourse and after a year of delays, Parliament passed Bill C-7, which came into effect immediately [8]. The bill revised MAiD eligibility criteria such that "reasonable foreseeability of natural death" is no longer a requirement [8]. Additionally, it altered procedural safeguards, creating a two-track approach for healthcare professionals to follow, based on whether or not a patient's death is reasonably foreseeable [8]. A major distinction between the two tracks is that individuals whose natural death is reasonably foreseeable no longer have to wait ten days between approval of their MAiD request and receiving MAiD, while those whose natural death is not reasonably foreseeable do [8]. Although these amendments will give some previously ineligible Canadians access to MAiD immediately, those suffering solely from irremediable mental illness will be required to wait for two years (i.e., until March 17, 2023) before applying, as per Bill C-7's 18-month sunset clause [8].The federal government's decision on Bill C-7 has been met with mixed reactions. Some groups and organizations have applauded it as a triumph of compassion and choice, while others have deemed it "an affront to equality" and a mistake [8,11].

Over the next two years, it is imperative that a panel of expert stakeholders be assembled and consulted as Parliament works to finalize safeguards and protocols related to mental illness and MAiD [6-7, 11-13]. Additionally, more funding should be allocated to support the scaling-up of timely, accessible, and cost-effective service delivery interventions, including psychotherapy and mental health technologies, and to strengthen management and evaluation of new and established programs and strategies [6, 13]. These steps will help ensure that this controversial move by the Government of Canada does not undermine efforts to help people who are suffering greatly with mental illness, and inadvertently do more harm than good.

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