



**Response to the Final Report of the
Expert Panel on MAiD and Mental Illness**

**from the
Canadian Psychological Association (CPA)**

June 9, 2022

Background on the Canadian Psychological Association and Medical Assistance in Dying (MAiD)

The Canadian Psychological Association (CPA) was pleased to review the Final Report of the Expert Panel on MAiD and Mental Illness released in May of 2022. The CPA is the national voice of psychology researchers, educators and practitioners in Canada. In 2016, we presented to the Standing Committee on Justice and Human Rights on Bill C-14.¹ Our chief recommendation, subsequently recognized in the law, was to create exemptions in the Criminal Code of Canada for regulated health providers, like psychologists, who may be consulted by persons considering an end-of-life decision.

The CPA subsequently released two reports: one on medical assistance in dying and end of life care² and one with guidelines for psychologists involved in end-of-life decisions of their patients³ which collectively address the many psychological issues attendant on the MAiD process.

In 2021, we wrote to Ministers Lametti and Hajdu about the Expert Panel.⁴ As discussed in that letter, psychologists across the country have played important roles in the end-of-life decisions faced by people seeking MAiD since Bill C-14 was passed.

Psychologists are the country's largest group of regulated mental health care providers, able to assess, diagnose and treat mental disorders. Psychologists in Canada outnumber psychiatrists about 4:1. In addition, most unique among our scope of practice is the assessment, psychometric measurement and diagnosis of cognitive and emotional functioning and disorders. We believe fully that it is our responsibility to contribute our expertise to the development of sound and effective policy that will govern access to MAiD by people with mental disorders and guide the practice of regulated health providers involved in the MAiD process of whom psychologists are part.

Feedback on the Expert Panel's May 2022 Report

The CPA commends the Panel's report and its coverage of the central issues involved in considering MAiD and mental disorders. We agree that given the federal government's intention to consider mental disorders as a sole condition in the eligibility for MAiD as of March 2023, the development of standards to guide assessment of eligibility is of paramount importance.

We further concur with the report's recommendation that 'mental disorder' be used in place of 'mental illness' since 'mental disorders' have standardized definitions in the taxonomies that psychologists and physicians use to diagnose them. We also agree, as pointed out in the report, that all illness has its biopsychosocial factors – those implicated in the cause of the illness and in the management of its symptoms. We agree that safeguards, protocols, and guidance need to be in place for the assessment of all conditions for which MAiD is sought.

The report makes a few points upon which we would like to offer further comment:

- **Incurability and irreversibility:** Many mental disorders are managed, not cured. Medications for mental disorders are largely palliative. While it is possible that medications and psychotherapy may successfully treat an episode which then doesn't recur, it is often the case that mental disorders require management across a lifetime.
- In assessing whether a condition is incurable and irreversible, consideration must be given to equity of access to interventions. Wait lists for publicly funded services are long. Services, like psychotherapy offered in communities by psychologists, are not funded by Medicare. Needed

services are not always available in rural or remote communities. To fully address whether a condition is resistant to intervention, that intervention must be accessible.

- The mental functions required to give consent to MAiD are the very ones sometimes impaired with a serious mental disorder, despite the grievous and irremediable suffering the disorder imposes. Consideration must be given to how to assess capacity despite the impairment in thinking that can accompany serious mental disorders. We note, however, that if a person does not have the cognitive capacity to consent to MAiD, they may not have the cognitive capacity to consent to any treatment or service.
- Professional standards to guide the assessment of eligibility for MAiD must address distinctions, if any, between suicidality and end of life requests. Both can mask structural or other vulnerabilities.

We would also like to suggest some revisions to the report's many and sound recommendations.

1. **Recommendation 1:** *“Development of MAiD Practice Standard. The federal, provincial and territorial governments should facilitate the collaboration of physician and nurse regulatory bodies in the development of Standards of Practice for physicians and nurse practitioners for the assessment of MAiD requests in situations that raise questions about incurability, irreversibility, capacity, suicidality, and the impact of structural vulnerabilities. These standards should elaborate upon the subject matter of recommendations 2-13.”*

We strongly recommend that the collaboration of psychologist regulatory bodies be included in the development of standards of practice which should apply equally to physicians, nurse practitioners and psychologists. As articulated earlier, not only do psychologists diagnose and treat mental disorders, but our unique expertise is also assessment of mental functioning. Further, including psychologists, who greatly outnumber psychiatrists, expands the pool of regulated health providers with the expertise to do this work.

2. **Recommendation 2:** *“MAiD assessors should establish incurability with reference to treatment attempts made up to that point, outcomes of those treatments, and severity and duration of illness, disease or disability. It is not possible to provide fixed rules for how many treatment attempts, how many kinds of treatments, and over what period of time as this will vary according to the nature and severity of medical conditions the person has and their overall health status. This must be assessed on a case-by-case basis. The Panel is of the view that the requester and assessors must come to a shared understanding that the person has a serious and incurable illness, disease or disability. As with many chronic conditions, the incurability of a mental disorder cannot be established in the absence of multiple attempts at interventions with therapeutic aims.”*

Although “it is not possible to provide fixed rules for *how many* treatment attempts, how many *kinds* of treatments, and over what period of time”, the person should have received treatment from a regulated mental health professional employing an evidence-based treatment or an accepted traditional healing practice. It is not sufficient that they saw 10 successive service providers that employed an unknown form of treatment or a treatment that has never been subjected to research that supports its efficacy. This is especially important given the degree to which mental health services have mushroomed in the past few years with an ever-expanding number of unqualified providers purportedly offering treatment.

3. **Recommendation 5:** *“MAiD assessors should undertake thorough and, where appropriate, serial assessments of a requester’s decision-making capacity in accordance with clinical standards and legal criteria. These assessments should be consistent with approaches laid out in standardized capacity evaluation tools.”*

We entirely support this recommendation but suggest an important addition. There should be a commitment to support research on the assessment and measurement of suffering. This is essential and relevant to all cases of MAiD. Although some measures exist, further development and understanding of their use is needed.

4. **Recommendation 9:** *“Persons in situations of involuntariness for periods shorter than six months should be assessed following this period to minimize the potential contribution of the involuntariness on the request for MAiD. For those who are repeatedly or continuously in situations of involuntariness, (e.g., six months or longer, or repeated periods of less than six months), the institutions responsible for the person should ensure that assessments for MAiD are performed by assessors who do not work within or are associated with the institution.”*

This recommendation could also include persons whose custodial care has been assumed by the family. That said, safeguards need to be articulated to ensure the request for MAiD has not been unduly influenced by the family who may be feeling burdened by the person’s care.

Another issue related to involuntariness is incarceration. Requests for MAiD may come from prison inmates. It is well established that individuals with mental disorders are overrepresented in Canadian prisons. Some may request MAiD legitimately and others may do so for reasons that may not be in keeping with the intended purpose.

5. **Recommendation 10:** *“Independent Assessor With Expertise. The requester should be assessed by at least one assessor with expertise in the condition(s). In cases involving MAiD MD-SUMC, the assessor with expertise in the condition should be a psychiatrist independent from the treating team/provider. Assessors with expertise in the person’s condition(s) should review the diagnosis, and ensure the requester is aware of all reasonable options for treatment and has given them serious consideration.”*

We strongly recommend that the recommendation be revised to allow “...a psychiatrist or psychologist independent from the treating...” for the reasons articulated earlier. The assessment and diagnosis of mental disorders are core to the regulated scope of practice of psychologists. We can perform this function and including us expands the systems capacity to do so.

6. **Recommendations 13 and 14** speak to the need to create practice standards in consultation with First Nations, Inuit and Metis Peoples as well as ones which are culturally sensitive. We entirely agree. We also suggest that consideration be given to the importance of supporting the training of a diverse and inclusive cohort of assessors. It is important that assessors as a group are competent in the issues that impact all marginalized groups, not just those marginalized by culture.

7. **Recommendation 15.** *“Training of Assessors and Providers in Specialized Topics. To support consistent application of the law and to ensure high quality and culturally sensitive care, assessors and providers should participate in training opportunities that address topics of particular salience to MAiD MD-SUMC. These include, but are not limited to: capacity assessment, trauma-informed care and cultural safety.”*

Recommendation 17. *“The federal government should play an active role in supporting the development of provincial/territorial systems of MAiD case review for educational and quality improvement purposes.”*

Psychologists can be of key assistance in training MAiD assessors in relevant topic areas to help ensure a high quality of education and training. Consideration should be given to requiring that MAiD assessors complete a minimum number of Continuing Education credits relevant to MAiD in a given time frame. Relatedly, in Ontario, health providers who are capacity assessors are required to complete a minimum number of assessments every 5 years to continue to be considered qualified to provide that service. There may be value in forming dedicated MAiD assessment teams as has been done for those who carry out MAiD in some jurisdictions.

8. **Recommendation 19.** *“Periodic, Federally Funded Research. The federal government should fund both targeted and investigator-initiated periodic research on questions relating to the practice of MAiD (including but not only MAiD MD-SUMC).”*

Psychologists have extensive training in research methods and can help advance the body of knowledge related to MAiD. Psychologists can take an active role in developing and/or evaluating the reliability and validity of objective measures and subjective reports of suffering, amongst other relevant MAiD research questions for both end-of-life care issues and mental disorders as a sole underlying condition. As noted in point 3 above, research that addresses the development of models and measures of suffering is critical.

Finally, we would like to recommend that registered psychologists be designated assessors in Track 1 cases where death is “reasonably foreseeable” when there may or may not be a mental disorder present. Registered psychologists are also qualified to assess the mental capacity of a person with a terminal illness to consent to MAiD.

In most jurisdictions, very few individuals who request MAiD receive referrals for formal mental health assessments (Oregon Public Health Division Center for Health Statistics, 2018). Depression is very common in individuals with terminal illness. Anywhere from 8% to 47% of people who request MAiD in Netherlands and Oregon experience symptoms of depression (Levene and Parker, 2011).

Depression in and of itself does not automatically mean that a person is incapable of decision making. When assessing depression, the issue is not whether the person is depressed but whether the extent or nature of the depression precludes the ability to make an informed decision about MAiD. Registered psychologists can assist in the assessment of MAiD decisions for both Track 1 (where death is “reasonably foreseeable”) and Track 2 cases (where death is not “reasonably foreseeable”).

End Notes

¹ <https://cpa.ca/docs/File/Government%20Relations/Bill%20C14%20submission%20April%2028FINAL.pdf>.

² https://cpa.ca/docs/File/Task_Forces/Medical%20Assistance%20in%20Dying%20and%20End%20of%20Life%20Care_FINAL.pdf.

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https://cpa.ca/docs/File/Task_Forces/Practice_Guidelines_End_of_Life_Decisions_CPATaskforceReport_BoardApproved_March12020.pdf.

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<https://cpa.ca/docs/File/Advocacy/Attachment%206%20CPA%20Letter%20to%20Lametti%20Hajdu%20March%2030%202021.pdf>