

Medical Assistance in Dying for Persons Suffering Solely from Mental Illness in Canada: Is it Ethically Acceptable?

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Abstract

While Medical Assistance in Dying (MAiD) has been legalized in Canada since 2016, it still excludes eligibility for persons who have mental illness as a sole underlying medical condition. This temporary exclusion was set to expire on March 17th, 2024, but was set 3 years further back by the Government of Canada to March 17th, 2027. This paper presents a critical appraisal of the case of MAiD for individuals with mental illness as the sole underlying medical condition through the analysis of three ethical theories: principlism, deontology, and utilitarianism. Through evidence and discussion, it will be demonstrated that MAiD, in this context, may be ethically justifiable on the grounds of upholding human rights, protecting dignity, and minimizing suffering.

Keywords: Medical Assistance in Dying (MAiD), Mental Health, Capacity, Dying with Dignity

Introduction

In June of 2016, Medical Assistance in Dying (MAiD) was legalized in Canada.¹ Throughout the first six years, a temporary exclusion of eligibility for persons suffering solely from mental illness was extended.² The exclusion of

¹ Jaro Kotalik and David W. Shannon, *Medical Assistance in Dying (MAiD) in Canada Key Multidisciplinary Perspectives*, 1st ed. 2023., The International Library of Bioethics, 104 (Cham: Springer International Publishing, 2023), <https://doi.org/10.1007/978-3-031-30002-8>.

² Department of Justice Government of Canada, "Canada's Medical Assistance in Dying (MAiD) Law," February 21, 2024, <https://www.justice.gc.ca/eng/cj-jp/ad-am/bk-di.html>.

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mental illness as a sole underlying medical condition was set to expire on March 17, 2024.³ However, on February 1, 2024, just over a month before the set expiration, the Government of Canada once again extended the exclusion, this time setting it back three years to March 17, 2027. There are currently several countries that allow MAiD for mental illness, including Belgium, the Netherlands, and Luxembourg.⁴ Some countries, like Spain,⁵ do not give specific guidance, leaving the matter under discussion by ethicists and courts. In these countries, there are specific (although different) requirements for the process; overall, for mental illness, the illness must be verifiable and not simply related to a perception of satisfaction with the length of life.

This extension ignited discussion on whether MAiD for persons who have mental illness as a sole underlying medical condition in Canada is ethically acceptable. As a complex, multi-faceted, and interdisciplinary issue, ethicists assessing MAiD must take into account various moral obligations and considerations. This paper analyses MAiD in this context through the application of three ethical theories: principlism, deontology, and utilitarianism. This paper concludes that, based on the current evidence and knowledge of this developing situation, MAiD for persons with mental illness in Canada may be ethically justified on the grounds of upholding human rights, labour obligations, and dignity. Through the exploration of research and discussions, it will be demonstrated that society at large ought to protect liberty and act towards relieving suffering, thereby supporting the potential eligibility of MAiD for persons who have mental illness.

Principlism: The Capacity and Ability to Assess and Decide for One's Own Life

Principlism is the application of four principles: autonomy, beneficence, non-maleficence, and justice. Principlism supports permitting MAiD for mental illness due to the importance of autonomy in decision-making, equitable and just practices for MAiD assessors, and reducing suffering for patients and their family member(s) and/or friend(s).

Carter v. Canada, the Canadian Supreme Court ruling of 2015—which changed Canadian law to allow for MAiD—held that the prohibition of MAiD infringed on Canadians' right to "life, liberty, and the security of the person." In a unanimous decision, the Supreme Court of Canada decided that the criminal prohibition of MAiD violates the *Canadian Charter of Rights and Freedoms*.⁶ The Court concluded that the criminal law prohibiting MAiD interfered

³ Health Canada, "Final Report of the Expert Panel on MAiD and Mental Illness," transparency - other, May 13, 2022, <https://www.canada.ca/en/health-canada/corporate/about-health-canada/public-engagement/external-advisory-bodies/expert-panel-maid-mental-illness/final-report-expert-panel-maid-mental-illness.html>.

⁴ Federal Public Service (FPS) Health Belgium, "Federal Commission for the Control and Evaluation of Euthanasia," n.d., <https://consultativebodies.health.belgium.be/en/advisory-and-consultative-bodies/federal-commission-control-and-evaluation-euthanasia>.; Government of Netherlands, "Is Euthanasia Allowed in the Netherlands?," n.d., <https://www.government.nl/topics/euthanasia/is-euthanasia-allowed>.; "Information on Requesting Euthanasia or Assisted Suicide," n.d., <https://guichet.public.lu/en/citoyens/sante/fin-vie/euthanasie/euthanasie-assistance-suicide.html>.

⁵ Luis Espericueta, First official report on euthanasia in Spain: A comparison with the Canadian and New Zealand experiences, *Medicina Clínica* (English Edition), Volume 161, Issue 10, 2023, Pages 445-447,

ISSN 2387-0206, <https://doi.org/10.1016/j.medcle.2023.06.021>.

⁶ Government of Canada, "The Canadian Charter of Rights and Freedoms," March 15, 2021, <https://www.justice.gc.ca/eng/csj-sjc/rfc-dlc/ccrf-ccdl/>.

with people's autonomy and dignity, which are protected by the rights of liberty and security of the person.⁷ The ruling emphasized that Canada's constitution reflects the fundamental importance of individual autonomy in personal decision-making.

Research provides evidence that MAiD improves autonomy: A study among psychiatric patients found that 8 of 48 psychiatric patients said the mere option of accessing MAiD was enough to assess their future options for living wholly.⁸ These findings complement a study entailing interviews with 30 adults who have mental illness, which emphasized that the ability to access MAiD allows individuals to analyze their quality of life, envision their desired future, and make decisions accordingly.⁹ Although not all participants agreed that mental illness as the only underlying medical condition was appropriate for MAiD eligibility, many participants agreed that patient autonomy in decision-making was paramount and should be respected.

However, autonomy as an ethical principle does not immediately grant all persons with mental illness the option to access MAiD. There are multiple eligibility criteria for those who wish to receive MAiD, which still must be approved and assessed. Currently, eligibility criteria for MAiD states that individuals must "give informed consent to receive MAiD, meaning that the person has consented to receiving MAiD after they have received all information needed to make this decision."¹⁰ Consent requires capability or capacity, which is the ability to understand relevant information, appreciate its potential consequences, and make an informed decision for oneself.¹¹ Like for many other diseases, disabilities, and conditions, patient capability is determined on a case-by-case basis.¹² Given the stigma surrounding those struggling with mental health, this thorough case-by-case examination of an individual patient's capability and capacity without prejudice or partiality should lead to equitable and fair treatment. Without appropriate testing, those with mental illness could be wrongly stripped of their decision-making power.

⁷ Supreme Court of Canada, "Carter v. Canada," Constitutional Law, 2015, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14637/index.do.>; Kotalik and Shannon, *Medical Assistance in Dying (MAiD) in Canada Key Multidisciplinary Perspectives*.

⁸ Karandeep Sonu Gaiind, "What Does 'Irremediability' in Mental Illness Mean?," *Canadian Journal of Psychiatry. Revue Canadienne de Psychiatrie* 65, no. 9 (September 2020): 604–6, <https://doi.org/10.1177/0706743720928656>; Lieve Thienpont et al., "Euthanasia Requests, Procedures and Outcomes for 100 Belgian Patients Suffering from Psychiatric Disorders: A Retrospective, Descriptive Study," *BMJ Open* 5, no. 7 (July 27, 2015): e007454, <https://doi.org/10.1136/bmjopen-2014-007454>.

⁹ Hamer Bastidas-Bilbao et al., "Walking Alongside: Views of Family Members on Medical Assistance in Dying for Mental Illness as the Sole Underlying Medical Condition," *Qualitative Health Research* 33 (September 29, 2023), <https://doi.org/10.1177/10497323231197365>.

¹⁰ Government of Canada, "Canada's Medical Assistance in Dying (MAiD) Law."

¹¹ Commission sur les soins de fin de vie, "Les conditions de l'admissibilité à l'aide médicale à mourir au Québec: la constance dans l'évolution de la loi concernant les soins de fin de vie," June 9, 2023, https://csfv.gouv.qc.ca/fileadmin/docs/autres_rapports/csfv_icsfv_conditions_amm_2023-06-29.pdf; Trudo Lemmens, "When Death Becomes Therapy: Canada's Troubling Normalization of Health Care Provider Ending of Life," *The American Journal of Bioethics* 23, no. 11 (November 2, 2023): 79–84, <https://doi.org/10.1080/15265161.2023.2265265>.

¹² Justine Dembo, Udo Schuklenk, and Jonathan Reggler, "'For Their Own Good': A Response to Popular Arguments Against Permitting Medical Assistance in Dying (MAiD) Where Mental Illness Is the Sole Underlying Condition," *Canadian Journal of Psychiatry. Revue Canadienne De Psychiatrie* 63, no. 7 (July 2018): 451–56, <https://doi.org/10.1177/0706743718766055>.

Arguments against MAiD for those with mental illness have raised concerns about the potential for individuals to harm themselves and others. A survey of MAiD providers demonstrated that physicians believed that the bereavement experience following MAiD is challenging and profoundly distinct and that bereavement support for all members involved should be required.¹³

However, while watching one die (of MAiD) may cause harm to their families, friends, and support system at large, it is also important to recognize that watching someone suffer and struggle through their mental health journey also poses significant harm. Qualitative studies in Ontario, Canada, have interviewed family members of persons with mental illness as a sole medical condition, and interviewees shared that witnessing the illness and its impacts on their close one's lives was a very difficult experience.¹⁴ As it relates to MAiD, participants emphasized that those living with mental illness are in the best position to understand their own pain and suffering and, in turn, make their own decisions about relief.¹⁵ In an interview, a MAiD provider stated that MAiD may provide less suffering and more peace, and that, although it “depends on the family, ... usually the family is more prepared and at peace.”¹⁶

On the contrary, a person who has mental illness may perceive choosing MAiD as beneficial to their family member(s) and/or friend(s). Among those who died by MAiD in 2021, 35.7 percent reported that they perceived themselves as a burden on their family and friends.¹⁷ While some authors report their concerns regarding such social burden as a potential driving factor for MAiD requests, others report that there are other additional burdens associated with requesting MAiD that may be financial, societal, and personal.¹⁸ As such, the extension of MAiD eligibility to those with mental illness will likely only allow a small number of people to be granted MAiD.¹⁹ Many others will be diverted to appropriate services and treatments.

¹³ Konia Trouton et al., “Attitudes and Expectations Regarding Bereavement Support for Patients, Family Members, and Friends: Findings from a Survey of MAiD Providers,” *British Columbia Medical Journal* 62, no. 1 (2020).

¹⁴ Bastidas-Bilbao et al., “Walking Alongside.”

¹⁵ Bastidas-Bilbao et al.

¹⁶ Trouton et al., “Attitudes and Expectations Regarding Bereavement Support for Patients, Family Members, and Friends: Findings from a Survey of MAiD Providers,” 2020.

¹⁷ Ramona Coelho et al., “The Realities of Medical Assistance in Dying in Canada,” *Palliative & Supportive Care* 21, no. 5 (October 2023): 871–78, <https://doi.org/10.1017/S1478951523001025>; Health Canada, “Third Annual Report on Medical Assistance in Dying in Canada 2021,” report on plans and priorities; transparency - other, July 26, 2022, <https://www.canada.ca/en/health-canada/services/publications/health-system-services/annual-report-medical-assistance-dying-2021.html>; Lemmens, “When Death Becomes Therapy.”

¹⁸ Coelho et al., “The Realities of Medical Assistance in Dying in Canada,” October 2023.; Bastidas-Bilbao et al., “Walking Alongside.”

¹⁹ Olivia Stefanovich, “Opposition Parties Call for Indefinite Pause to MAiD Expansion for Mental Illness | CBC News,” Canadian Broadcasting Corporation, January 28, 2024, <https://www.cbc.ca/news/politics/special-joint-committee-maid-mental-illness-report-1.7095679>; Benjamin Lopez Steven, “Number of Assisted Deaths Jumped More than 30 per Cent in 2022, Report Says | CBC News,” Canadian Broadcasting Corporation, October 27, 2023, <https://www.cbc.ca/news/politics/maid-canada-report-2022-1.7009704>.

Patients' decision to choose MAiD noted their ability to make choices about their own care, reflecting the value of autonomy.²⁰ Although it is difficult to determine what is good for families in individual cases, MAiD presents an option that is both beneficent and non-maleficent. Therefore, these arguments satisfy the principles which do not necessarily conflict with MAiD.

Deontology: The Duty to Recognize Vulnerability and Relieve Suffering

The argument here begins with the fundamental focus of deontology—that moral duty lies in an *action* rather than in its *consequences*.

Further discussion is required to analyze the impact of MAiD on healthcare workers. The Canadian Medical Association (CMA) Code of Ethics and Professionalism requires physicians to abide by virtues, commitments, and responsibilities in delivering health care and service.²¹ The code states that “a compassionate physician recognizes suffering and vulnerability, ... and alleviate[s] the patient’s suffering.”²²

In the context of MAiD for persons with mental illness as a sole underlying medical condition, vulnerabilities could be wide in range. Many Canadians are concerned with the interaction between mental health and other social determinants of health, such as the lack of medical, disability, financial, housing, and social support and resources.²³ As a result, another layer to the ethical issue arises: Does permitting MAiD for mental illness treat the symptoms of the issue rather than the root problem itself (social, economic, and systemic inequities)? Some argue against MAiD, stating that the nation should first focus on developing better quality care and service.²⁴ Others support MAiD as a potential harm reduction approach, given that most of these unjust conditions require a higher level of long-term structural and public policy overhaul.²⁵

The CMA Code also calls upon physicians to recognize and alleviate patients' suffering. Some argue that while physicians and medical professionals *do* work to relieve suffering, they are trained to do so through a primary care-based diagnose-and-treat approach.²⁶ Studies that have captured Canadian physicians' experiences providing MAiD

²⁰ Hamer Bastidas-Bilbao et al., “Searching for Relief from Suffering: A Patient-Oriented Qualitative Study on Medical Assistance in Dying for Mental Illness as the Sole Underlying Medical Condition,” *Social Science & Medicine* 331 (August 1, 2023): 116075, <https://doi.org/10.1016/j.socscimed.2023.116075>.

²¹ Canadian Medical Association, “Canadian Medical Association Code of Ethics and Professionalism” (Canada: Canadian Medical Association, December 8, 2018), <https://policybase.cma.ca/link/policy13937>.

²² Canadian Medical Association.

²³ Coelho et al., “The Realities of Medical Assistance in Dying in Canada,” October 2023; Stefanovich, “Opposition Parties Call for Indefinite Pause to MAiD Expansion for Mental Illness | CBC News.”

²⁴ John Paul Tasker, “Liberal Government Promoting a ‘culture of Death’ with Medical Assistance in Dying Law, Conservative MP Says | CBC News,” Canadian Broadcasting Corporation, March 6, 2023, <https://www.cbc.ca/news/politics/culture-of-death-medical-assistance-in-dying-mental-illness-1.6769504>.

²⁵ Coelho et al., “The Realities of Medical Assistance in Dying in Canada,” October 2023; Kayla Wiebe and Amy Mullin, “Choosing Death in Unjust Conditions: Hope, Autonomy and Harm Reduction,” *Journal of Medical Ethics*, April 26, 2023, <https://doi.org/10.1136/jme-2022-108871>.

²⁶ Ramona Coelho et al., “The Realities of Medical Assistance in Dying in Canada,” *Palliative & Supportive Care* 21, no. 5 (October 2023): 871–78, <https://doi.org/10.1017/S1478951523001025>.

report that, although physicians stated that the work was rewarding, it came with many challenges, including strained relationships with coworkers, increased workload, and inadequate compensation.²⁷ Physicians report that a part of the problem is that MAiD rules are written by lawyers and experts who are removed from its reality in medical practice. As a result, there is a lack of clarity surrounding practice norms and a lack of support for physicians.²⁸ Thus, while healthcare practitioners have a duty to relieve patients' suffering, they should feel adequately trained and supported in doing so.

If physicians and healthcare professionals recognize vulnerability and relieve suffering, then they should act accordingly, regardless of potential associations or outcomes. Making persons with mental illness eligible for MAiD ensures that treatment to relieve their suffering is available. However, it is imperative that there are sufficient resources and support available to healthcare professionals to ensure that they feel prepared and supported to provide MAiD, should they wish to do so.

Utilitarianism: Minimizing Intolerable Suffering and Dying with Dignity

Overall, utilitarianism is largely concerned with the greatest happiness principle—to increase the amount of happiness for the greatest number of people. So far, this paper has analyzed individual, family, and practitioner-based ethical considerations. But if MAiD were to be extended to those with mental illness as a singular underlying medical condition, what implications would this have for the world and society at large?

There is a global drive toward authorizing organized ending of life, with an increasing number of countries legalizing MAiD.²⁹ The medical system is generally seen as a safe and appropriate system to carry out MAiD, especially when suicide and self-harm are regarded as “alternatives.” Yet despite these worldwide efforts, many argue through the theory of utilitarianism that the inability to see long-term consequences renders MAiD a premature solution, particularly for those who are unable or unwilling to seek other forms of potentially healing treatment or for those who may undergo MAiD only for a technological innovation or biomedical advancement to later come along as a potential cure.³⁰ While it is true that MAiD does not prevent these “premature deaths,” it is also true that it does not claim to.³¹ MAiD provides an option to alleviate intolerable suffering. Some individuals with severe mental illness do describe their condition as intolerable suffering.

²⁷ Konia Trouton et al., “Attitudes and Expectations Regarding Bereavement Support for Patients, Family Members, and Friends: Findings from a Survey of MAiD Providers,” *British Columbia Medical Journal* 62, no. 1 (2020), [https://bcmj.org/articles/attitudes-and-expectations-regarding-bereavement-support-patients-family-members-and-;](https://bcmj.org/articles/attitudes-and-expectations-regarding-bereavement-support-patients-family-members-and-) William Robert Nielsen, “MAiD in Canada: Ethical Considerations in Medical Assistance in Dying,” *Canadian Journal of Bioethics* 4, no. 2 (December 9, 2021): 93–98, <https://doi.org/10.7202/1084456ar>.

²⁸ Coelho et al., “The Realities of Medical Assistance in Dying in Canada,” October 2023.

²⁹ Lemmens, “When Death Becomes Therapy.”

³⁰ William Robert Nielsen, “MAiD in Canada: Ethical Considerations in Medical Assistance in Dying,” *Canadian Journal of Bioethics* 4, no. 2 (December 1, 2021): 93–98, <https://doi.org/10.7202/1084456ar>.

³¹ Steven, “Number of Assisted Deaths Jumped More than 30 per Cent in 2022, Report Says | CBC News.”

MAiD is seen as an option to minimize suffering. It can also be seen as a way to die with dignity and relief.³² While predicting outcomes is difficult, extending MAiD eligibility for persons experiencing mental illness does not undermine its ability to end suffering. It allows eligible individuals to take charge of their health, their life, and their future.

Conclusion

Based on the current evidence, allowing MAiD for persons with mental illness as their sole underlying medical condition presents as an ethically justifiable action. The right to self-determination and fair accessibility demonstrates that there is more harm done by prohibiting MAiD for mental illness than allowing it. Such liberty is a right, and in the context of relieving suffering, it is a duty that healthcare workers must uphold, although the ability to opt out of providing MAiD is well established. Thus, to recognize vulnerability and relieve suffering means to provide methods, such as MAiD, for those deeply impacted by mental illness. These justifications stand at both the individual level and for society at large.

Nevertheless, it remains imperative to take an upstream approach that addresses the social determinants of health and aims to prevent mental illness and promote long-term, beneficial social change for those suffering, struggling, and vulnerable in our communities.

³² A. Plaisance et al., "Quebec Population Highly Supportive of Extending Medical Aid in Dying to Incapacitated Persons and People Suffering Only from a Mental Illness: Content Analysis of Attitudes and Representations," *Ethics, Medicine and Public Health* 21 (April 1, 2022): 100759, <https://doi.org/10.1016/j.jemep.2022.100759>.