



MEDICAL ASSISTANCE IN DYING: MATURE MINORS AND ADVANCE REQUESTS

Canadian Association of Social Workers
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Founded in 1926, the Canadian Association of Social Workers (CASW) is the national association voice for the social work profession.

The mission of CASW is to promote the profession of social work in Canada and advance social justice. CASW is active in the International Federation of Social Workers (IFSW).



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BACKGROUND

In early 2016, the Canadian Association of Social Workers (CASW) released a discussion paper on Medical Assistance in Dying (MAiD) that reiterated the importance of a social work perspective and the inclusion of the profession in next steps for policies and legislation. It also highlighted risks and considerations, namely balancing the importance of self-determination with the need to protect vulnerable persons. It made no policy recommendations. CASW was subsequently successful in having the profession of social work named as a protected profession within the new legislation, guaranteeing social work's involvement in MAiD moving forward.

The legislation currently does not allow for mature minors to request MAiD; it also does not allow access to MAiD through advance requests. However, when the legislation passed in 2016, the Government of Canada tasked the Council of Canadian Academies (CCA) with examining these types of requests for medical assistance in dying as they had been identified for further review and study. CCA's report on these two areas is forthcoming in December 2018.

In this paper, CASW recommends that:

following a period of further study, the Criminal Code of Canada be amended to allow mature minors, under certain circumstances and commensurate with their capacity to provide informed consent, to request MAiD and; that MAiD be available through advance requests under certain circumstances – recommendations we make only with the caveat that certain principles be upheld.

PRINCIPLES

Before proceeding to CASW's recommendations, certain principles that must be foregrounded:

- A palliative first approach to care, including the development of a more robust and accessible model of palliative care, is crucial in ensuring that Canadians do not pursue MAiD due to a lack of adequate or accessible palliative services;
- Vigorous safeguards must remain in place to protect persons vulnerable due to age, health, disability, or any other factor, and to ensure that no Canadian pursues MAiD due to coercive influence. In this regard, CASW is satisfied with current procedures that ensure checks and balances;
- Social workers, with their unique perspective and expertise, must be integral members of teams caring for Canadians considering MAiD and their loved ones.



RECOMMENDATIONS

1) Mature Minors and MAiD:

CASW agrees with the 2016 Special Joint Committee on Physician-Assisting Dying, *“Medical Assistance in Dying: A Patient-Centred Approach,”* that **“[g]iven existing practices with respect to mature minors in health care and the obvious fact that minors can suffer as much as any adult, [...] it is difficult to justify an outright ban on access to MAiD for minors.”**

CASW also agrees with the Special Joint Committee’s view that, “by instituting appropriate safeguards, health care practitioners can be relied upon to identify appropriate cases for MAiD and to refuse MAiD to minors that do not satisfy the criteria.”

CASW is pleased that the Canadian Council of Academies has been directed by the Government of Canada to study requests for MAiD by minors; we anticipate that their forthcoming report will assist in shedding light on the moral, medical, and legal issues that must be considered in ensuring mature minors’ dignity and self-determination is upheld, but also balanced with the importance of protecting this vulnerable group.

The Special Joint Committee originally recommended a two-stage legislative process, as follows:

the Government of Canada implement a two-stage legislative process, with the first stage applying immediately to competent adult persons 18 years or older, to be followed by a second stage applying to competent mature minors, coming into force at a date no later than three years after the first stage has come into force [...].

With this in mind, CASW recommends that Criminal Code of Canada be amended to allow mature minors, under certain circumstances and commensurate with their capacity to provide informed consent, to request MAiD. CASW again agrees with the Special Joint Committee, that the Government should begin a period of dedicated study to “facilitate[e] a study of the moral, medical and legal issues surrounding the concept of “mature minor” and appropriate competence standards that could be properly considered and applied to those under the age of 18.”

We also agree that “this study include broad-based consultations with health specialists, provincial and territorial child and youth advocates, medical practitioners, academics, researchers, mature minors, families, and ethicists before [coming into force].”

The CASW Code of Ethics highlights the importance of self-determination, capacity to consent, and informed consent:

- Social workers uphold each person’s right to self-determination, consistent with that person’s capacity and with the rights of others.

As MAiD is now a legal health care option, CASW’s position is that the Criminal Code of Canada should be amended to allow mature minors, commensurate with their capacity to provide



informed consent, and after a thorough consultative process with stakeholders as listed above to inform amendments to the Criminal Code of Canada, the option to request MAiD. This would best uphold minors' dignity and right to self-determination.

2) Advance Requests and MAiD:

CASW agrees with ongoing Charter Challenges against the current MAiD legislation that argue its restrictive eligibility criteria, combined with lack of access through advance requests, discriminates against some Canadians.

Dying with Dignity Canada puts it in this way: “[f]or some, the combined effects of the safeguard banning advance requests and Bill C-14’s eligibility criteria mean that they will never qualify for MAiD.”

CASW again agrees with the conclusions of the 2016 Special Joint Committee on Physician-Assisting Dying, *“Medical Assistance in Dying: A Patient-Centred Approach,”* who felt confident that **“advance requests for MAiD can and must be done to ensure the autonomy of Canadians and the protection of the vulnerable.”**

We support the Special Joint Committee’s 2016 recommendation that:

the permission to use advance requests for medical assistance in dying be allowed any time after one is diagnosed with a condition that is reasonably likely to cause loss of competence or after a diagnosis of a grievous or irremediable condition but before the suffering becomes intolerable. An advance request may not, however, be made, prior to being diagnosed with such a condition. The advance request is subject to the same procedural safeguards as those in place for contemporaneous requests.

We would add to this recommendation that further research into how to safely implement advance requests must be conducted prior to the legislation’s coming into force. CASW also looks forward to the December 2018 publication of the Canadian Council of Academies’ expert panel report on advance requests, hoping it will contain further guidance on the responsible implementation of advance requests for MAiD.

CASW believes that permitting advance requests for MAiD in certain circumstances is most aligned with the CASW Code of Ethics that seeks to balance self-determination and autonomy with protection of vulnerable persons.



References

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