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# Allowing Mental Disorders as a Sole Underlying Condition in Canadian MAID Law (MAID MD-SUMC)

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## Introduction

This research conducts a preliminary analysis to better understand the role of Mental Disorders in Canadian MAID legislation.

As assisted death remains outlawed in most jurisdictions, Canada's Medical Assistance in Dying (MAID) legislation is **rapidly evolving**. With the introduction of the practice in 2016 (*Bill C-14*) and its most recent amendment assented in 2021 (*Bill C-7*), Canada finds itself in a situation where the eligibility of persons who want to obtain this medical service is expanding. The next step in this expansion is the **allowance of MAID for patients with mental disorders**. Although this potential expansion of eligibility has been met with great skepticism, there are many philosophical arguments that argue for Mental Disorders to be treated as a Sole Underlying Condition in Canadian MAID Law (MAID MD-SUMC).

This poster will display what those arguments are, what are the potential conditions for this eligibility, and what questions need to be answered for the execution of this expansion.

## MAID Eligibility Criteria

241.2 (*Canadian Criminal Code*):

- (b) the patient is at least 18 years of age and capable of making decisions with respect to their health
- (c) they have a grievous and irremediable medical condition
- (d) A voluntary request has been made freely and unpressured.
- (e) Informed Consent.

## Arguments Supporting MAID MD-SUMC

*Taken from the works of Udo Schuklenk, Joyce Downie, and The Council of Canadian Academies*

- a. "Hard" paternalism exhibited by medical professionals threatens the autonomy rights of mentally ill individuals."
- b. Suffering from severe mental illness can be "equal to that of the most severe physical conditions."
- c. Patients with mental illness have the capacity to make decisions. "Persons with mental illness can be capable of making decisions with respect to their health – even where the consequences of the decision are death."
- d. Social Benefit argument: "Permitting more MAID MD-SUMC may reduce mental health stigma by demonstrating that people with mental disorders have capacity and that their suffering is serious"



## Most Controversial Conditions Allowing MAID MD-SUMC

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| <p>A. <u>Treatment Refractory Depression (TRD)</u></p> <ul style="list-style-type: none"> <li>• Antidepressants and cognitive therapy fail to treat people with TRD.</li> <li>• "Psychiatrists are able to diagnose Treatment Resistant Depression (TRD) with the same reliability as other medical specialties."</li> <li>• TRD is incurable and irremediable</li> </ul> | <p>B. <u>Anorexia Nervosa (AN)</u></p> <ul style="list-style-type: none"> <li>• "AN is a chronic treatment-refractory and terminal illness with, in some cases, a deteriorating course that leads to physiological collapse, starvation, and death"</li> <li>• "Over 20 percent of patients with anorexia follow a very severe and chronic course despite treatment."</li> <li>• "Repeated attempts at re-feeding can become too painful and intolerable to the patient."</li> </ul> |
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## Areas of Concern

- Accurate diagnosis: An assessment tool to diagnose mental disorders (such as TRD) must be clarified and proven.
- Capacity: individualised capacity assessments must be established.
- Institutional Support: Construct safeguards for suicidality and initiate principles that support MAID MD-SUMC expansion.
- Role of Physician: Establish how this expansion will affect a physician's right to conscientious objection.

## Conclusion

The novel, but rapidly expanding Canadian medical practice of MAID is in the next stage of its evolution; the allowance of Mental Disorders as a Sole Underlying Condition. With this next step there are many questions that need to be asked; which conditions will be considered for MAID MD-SUMC? How will these conditions be diagnosed? How do we know these individuals have the capacity to make this decision? Through philosophical works and reports about this issue, there are some arguments that answer these questions, however, there is still a need for further discussion and debate that must occur before this expansion becomes part of MAID legislation. In sum, the purpose of allowing MAID is to help people die with dignity, and if this expansion is permitted, the irremediable suffering of some Canadians may be relieved.

## References

- Schuklenk, Udo et al., "For Their Own Good": A Response to Popular Arguments Against Permitting Medical Assistance in Dying (MAID) where Mental Illness is the Sole Underlying Condition" (2018) 63:7 Can J Psychiatry 451.
- Downie, Jocelyn & Justine Dombro, "Medical Assistance in Dying and Mental Illness under the New Canadian Law" (2016) J Ethics in Mental Health 1.
- Downie, Jocelyn & Jennifer A. Chandler, "Interpreting Canada's Medical Assistance in Dying Legislation" (2018) IRPP Report at 23.
- McKenzie, Kwame et al., "The Expert Panel Working Group on MAID Where a Mental Disorder is the Sole Underlying Medical Condition" in The Council of Canadian Academies, State of Knowledge on Medical Assistance in Dying For Mature Minors, Advance Requests, And Where a Mental Disorder is The Sole Underlying Medical Condition (Ottawa: CCA, 2018) at 26.
- Gupta, Mona "Why the mental illness exclusion clause is clinically and logically unjustifiable" (Montreal: Centre hospitalier de l'université de Montreal, 2021).
- Bailey, Anne & Nicholas Delva, "Making a case for the inclusion of refractory and severe mental illness as a sole criterion for Canadians requesting medical assistance in dying (MAID): a review" (2021) J Med Ethics 1.