

Guidance for Social Workers on Medical Assistance in Dying
Saskatchewan Association of Social Workers

Introduction

In June of 2016, the *Criminal Code of Canada* (“*Criminal Code*”) was amended to permit Medical Assistance in Dying (“MAID”). The amendments followed the Supreme Court of Canada’s decision in *Carter v Canada*¹ wherein the Supreme Court unanimously agreed that sections 241(b) and 14 of the *Criminal Code* unjustifiably infringed section 7 of the *Charter of Rights and Freedoms*.

Section 241(b) of the *Criminal Code* stated that anyone who aids or abets a person in committing suicide commits an indictable offence and section 14 stated that no person could consent to death being inflicted on them. As such, these provisions created an all-encompassing prohibition against MAID. The Supreme Court found these provisions were unconstitutional “insofar as they [prohibited] physician-assisted death for a competent adult person who (1) clearly consents to the termination of life; and (2) has a grievous and irremediable medical condition (including an illness, disease or disability) that causes enduring suffering that is intolerable to the individual in the circumstances of his or her condition”.² The Supreme Court specifically noted that “irremediable...does not require the patient to undertake treatments that are not acceptable to the individual”.³ The declaration of invalidity was suspended for 12 months to allow Parliament to amend the *Criminal Code* to allow for MAID. The suspension was later extended a further four months; however, it was also ordered persons who wanted MAID could apply to the superior court in their jurisdiction and seek an exemption from the suspension and extension of that section pursuant to the criteria and eligibility the Supreme Court had previously identified.

The Criminal Code Amendments

The amendments to the *Criminal Code* were passed on June 17, 2016. In that regard, specific exemptions for MAID were brought into force and protections for those people assisting in the process were set out. The *Criminal Code* now reads that “no medical practitioner or nurse practitioner commits culpable homicide if they provide a person with medical assistance in dying in accordance with section 241.2”⁴, that “no person is a party to culpable homicide if they do anything for the purpose of aiding a medical practitioner or nurse practitioner to provide a person with medical assistance in dying in accordance with section 241.2”⁵, and that “section 14 does not apply with respect to a person who consents to have death inflicted on them by means of medical assistance in dying...”⁶.

It is important to note that counselling a person to die by suicide or aiding or abetting a person to die by suicide is still an indictable offence⁷, however, there are exemptions for medical practitioners, nurse practitioners, persons aiding the practitioner or patient, and pharmacists

¹ 2015 SCC 5.

² *Ibid* at para 126.

³ *Ibid*.

⁴ *Criminal Code*, s 227(1).

⁵ *Criminal Code*, s 227(2).

⁶ *Criminal Code*, s 227(4).

⁷ *Criminal Code*, s 241(1).

involved in the MAID process.⁸ Further, social workers, amongst other health care professionals, are offered specific protection:

For greater certainty, no social worker, psychologist, psychiatrist, therapist, medical practitioner, nurse practitioner or other health care professional commits an offence if they provide information to a person on the lawful provision of medical assistance in dying.⁹

Eligibility for MAID

MAID is defined in the *Criminal Code* as:

- (a) the administering by a medical practitioner or nurse practitioner of a substance to a person, at their request, that causes their death; or
- (b) the prescribing or providing by a medical practitioner or nurse practitioner of a substance to a person, at their request, so that they may self-administer the substance and in doing so cause their own death.¹⁰

A person may receive MAID only if they meet the following criteria:

- (a) they are eligible — or, but for any applicable minimum period of residence or waiting period, would be eligible — for health services funded by a government in Canada;
- (b) they are 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) they have made a voluntary request for medical assistance in dying that, in particular, was not made as a result of external pressure; and
- (e) they give informed consent to receive medical assistance in dying after having been informed of the means that are available to relieve their suffering, including palliative care.¹¹

A person having a grievous and irremediable medical condition is further explained as a person who meets the following criteria:

- (a) they have a serious and incurable illness, disease or disability;
- (b) they are in an advanced state of irreversible decline in capability;
- (c) that illness, disease or disability or that state of decline causes them enduring physical or psychological suffering that is intolerable to them and that cannot be relieved under conditions that they consider acceptable; and

⁸ *Criminal Code*, ss 241(2), (3), (4), and (5).

⁹ *Criminal Code*, s 241(5.1).

¹⁰ *Criminal Code*, s 242.1.

¹¹ *Criminal Code*, s 242.2(1).

(d) their natural death has become reasonably foreseeable, taking into account all of their medical circumstances, without a prognosis necessarily having been made as to the specific length of time that they have remaining.

A number of safeguards are also in place that the medical practitioner or nurse practitioner must ensure are met before providing a patient with MAID. For example, a written request for MAID must be signed and dated by the patient, after they have been informed they have a grievous and irremediable medical condition, and in front of two independent witnesses.¹² The patient must also be informed they can withdraw the request for MAID at any time and a second opinion must be provided in writing confirming the patient meets the criteria.¹³

Effect of Legislation on Social Workers in Saskatchewan/Professional Obligations

Only medical practitioners or nurse practitioners are permitted to provide a person with MAID. The involvement of social workers is limited to assisting a medical practitioner or nurse practitioner or providing information to clients/patients on MAID, when requested. Social workers are encouraged to use caution to ensure they do not cross the threshold of counselling a person to die. If a patient/client approaches a social worker concerning MAID, providing information or directing the patient/client to proper information is an appropriate and protected action pursuant to the *Criminal Code*. Similarly, if a health region or medical practitioner/nurse practitioner seeks a social worker to be a part of a team to provide information to patients or families or assist with MAID, such would also be protected under the amendments to the *Criminal Code*. However, initiating a conversation about MAID, encouraging a patient to seek MAID, or attempting to influence a patient/client into pursuing MAID *could* be seen as a breach of the *Criminal Code* and *could* result in criminal prosecution and/or discipline proceedings by the Saskatchewan Association of Social Workers (“SASW”).

Despite the protections offered in the *Criminal Code*, social workers must also carefully consider their professional obligations and scope of practice when dealing with clients/patients seeking MAID or information about MAID as the protections offered by the *Criminal Code* do not extend to civil claims or prevent complaints to the SASW.

The Canadian Association of Social Workers (“CASW”) *Code of Ethics, 2005* (the “*Code of Ethics*”)¹⁴ contains core values and principles that are applicable in dealing with situations where a client requests MAID or information on MAID. In particular, social workers must have respect for the inherent dignity and worth of persons, including respecting a “client’s right to make choices based on voluntary, informed consent”.¹⁵ Further, social workers must maintain integrity in professional practice and “refrain from imposing their personal values, views and preferences on clients”¹⁶ and must ensure confidential information is not disclosed to others without informed consent of the client/patient, an authorized representative, or if required by law or court order¹⁷.

Competence is also of utmost importance when dealing with MAID requests. A social worker must “uphold the right of clients to be offered the highest quality service possible”, “strive to

¹² *Criminal Code*, Section 242.2(3)(a), (b), and (c).

¹³ *Criminal Code*, Section 242.2(3)(d) and (e).

¹⁴ The SASW adopted the CACW *Code of Ethics* in April of 2005 and uses it as a basis to evaluate professional conduct.

¹⁵ CACW *Code of Ethics*, Value 1: Respect for the Inherent Dignity and Worth of Persons, pg. 4.

¹⁶ CACW *Code of Ethics*, Value 4: Integrity in Professional Practice, pg. 6.

¹⁷ CACW *Code of Ethics*, Value 5: Confidentiality in Professional Practice, pg. 7.

maintain and increase their professional knowledge and skill”, “demonstrate due care of the client’s interests and safety by limiting professional practice to areas of demonstrated competence”, and “engage in research to minimize risks to participants, ensure informed consent, maintain confidentiality and accurately report the results of their studies.”¹⁸

Conscientious Objection

The *Criminal Code* specifically states that an individual will not be compelled to provide or assist in MAID.¹⁹ As such, social workers will not be compelled to assist in MAID in situations where personal values and beliefs preclude such participation. In this circumstance, the social worker must still “uphold each person’s right to self-determination” and “respect the right of individuals to their unique beliefs...”²⁰ Further, social workers have a positive obligation to “make or recommend a referral to another professional, technical or administrative resource when a referral is clearly in the best interests of the client.”²¹ As such, where a client specifically requests information on MAID, a professional obligation to make an appropriate referral would arise if it is in the best interests of the client and the social worker has a conscientious objection or does not have the appropriate knowledge or skill to deal with the request.

Conclusion

The recent amendments to the *Criminal Code* provide protection for social workers who may be asked to assist in MAID. However, in doing so, social workers must ensure their competence and that in each situation the Values and Principles set out in the *CASW Code of Ethics* are upheld and that they are not crossing the threshold from assisting in MAID to encouraging or counselling someone to die. Social workers are not compelled to provide or assist in MAID, however, an appropriate referral should be made in circumstances where a social worker is unable or unwilling to assist a client.

This paper provides a general overview on MAID and the effects on Social Workers in Saskatchewan, however, specific questions or concerns should be directed to legal counsel for an opinion specific to the situation.

¹⁸ CACW *Code of Ethics*, Value 6: Competence in Professional Practice, pg. 8.

¹⁹ *Criminal Code*, s 242.2(3)(d).

²⁰ CACW *Code of Ethics*, Value 1: Respect for the Inherent Dignity and Worth of Persons, pg. 4.

²¹ Saskatchewan Association of Social Workers, *Standards of Practice for Registered Social Workers in Saskatchewan*, C.10