

Changes (Required and Desired) to MAID Law

(STATUTES OF CANADA 2016 CHAPTER 3, BILL C-14, ASSENTED TO JUNE 17, 2016)

A)

Required:

Remove "their natural death has become reasonably foreseeable" (from 241.2 (2) (d) and also from the Preamble).

B)

Desired:

1)

Under 241.2 (3) (Safeguards) remove or modify (h) – "immediately before providing the medical assistance in dying, give the person an opportunity to withdraw their request and ensure that the person gives express consent".

Such last-minute consent is valued by medical practitioners, but demanding it can cause hardship to the people they are trying to serve.

Audrey Parker is the best-known example. She had been approved for MAID in the fall of 2018 but she wanted to have one more Christmas – it was her favourite time of year. However, her cancer was moving quickly and she feared that by the end of the season she might have become incapable of giving consent with sufficient force and credibility. Therefore she reluctantly agreed to a pre-Christmas date for the procedure.

We could reduce the frequency of such sad events by allowing the consent to be given by a qualified substitute decision-maker.

There has been a tendency among lawmakers to predicate legislation on an assumption of universal venality among the relatives and friends of dying people. It is common for laws in this field to completely bar a person's heirs from speaking as a delegate or representative of their spouse or parent or whatever. But this is impractical and unnecessary. For instance, my brother and I were our mother's principal heirs, but we were also the people who loved her most and knew her best. A suspicion voiced by a social worker or a family friend should trigger an investigation, but in the normal course of events the policy should be "innocent until proven guilty".

If there is no official or obvious surrogate, perhaps an ethicist or advocate (e.g. hospital-based or government-based) could be thoroughly briefed on the case and then allowed to speak on behalf of the now-mute patient. Some patients might be able to protect themselves by having a video or audio statement recorded, if they feel their competence slipping somewhat during the waiting period.

2)

Noting that the Supreme Court used the phrase "medical condition", and considering that psychiatric conditions are medical conditions (they are treated by people who are medical

doctors, sometimes with neurology as their specialty), remove the prohibition on MAID for people whose suffering stems solely from a condition which is currently labelled "mental".

This prohibition is not explicit in the main body of the statute, but it can be deduced from two passages near the beginning and the end of the text, where reference is made to independent review of the policy. The review has been completed and a report has been delivered to Parliament and to the public, but I have not heard about any recommendations being made.

Some recommendations could be made via the Regulations that get written for the revised Act, to guide decision-making by a professional who receives a MAID application from a patient. (Of course various relevant associations and "colleges" could also produce such guidelines, but this might be more likely to happen if something had already come from the hand of a Cabinet Minister.)

The Court spoke of "enduring" suffering and "irremediable" conditions. Perhaps the Regulations could cover such variables as number of drugs/procedures tried, or total time under treatment. The concept would be "de facto irremediability".

Alternatively or in addition, data on remission rates for certain conditions and certain groups of patients might be used to create an algorithm showing the odds for a particular patient. If the patient decided that the odds were unacceptable, that too would be considered as de facto irremediability.

Some useful background is contained in an article I wrote in the spring of 2017, which was published in the *Journal of Ethics in Mental Health*. Here is a link:

<http://jemh.ca/issues/v9/documents/JEMH%20final%20Reflection-iii.pdf>