**RESPONSES TO COMMON CONCERNS ABOUT MAiD MD-SUMC**

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In what follows we will list several common concerns raised about MAiD for persons with mental disorders and explain why these are false or at best misleading.

**1. If MAiD MD-SUMC is allowed, a person will be able to walk into an Emergency Room and get MAID when they are going through a difficult time**

This is false.

This is the equivalent of saying that a person can get MAiD because they came to emergency room for a minor physical problem, such as spraining their ankle playing soccer. Nobody believes that this is what the law allows for physical disorders, why would it be allowed for mental disorders?

(It is important to note that the word ‘depression’ as it is used in daily language is not what clinicians mean when they refer to the medical condition by a similar name, properly known as major depressive disorder.)

By continuously likening severe mental disorders to ‘difficult times’ or the lay understanding of depression, those who repeat this claim are not only making inaccurate statements, but they are trivializing the suffering resulting from severe, chronic, unremitting, and treatment refractory mental disorders.

**2. A person with MD-SUMC could ask for MAiD and receive it the next day**

This is false.

MD-SUMC MAiD requests will follow the Track 2 safeguards. The Track 2 safeguards require a minimum of 90 days to elapse between the request approval and provision.[[1]](#footnote-1) This period of time is often much longer than 90 days. Complex track 2 MAiD assessments (as MAiD MD-SUMC cases would be) take dozens of hours to complete, often involve several different health care professionals, and extensive chart review and case discussion.

**3. Anyone experiencing emotional distress can be eligible for MAiD MD-SUMC**

This is false.

To be eligible for MAiD, the law requires that a person be experiencing enduring and intolerable suffering caused by an incurable illness, disease, or disability or an advanced state of irreversible decline in capability or both.[[2]](#footnote-2) Emotional distress does not qualify under these criteria.

**4. A request for MAiD based on a mental disorder as a sole underlying medical condition is fundamentally different (for example, in respect of assessing incurability and suicidality) from a request based on a chronic physical condition or a request based by persons who have a significant mental disorder and a physical disorder at the same time.**

No one has provided any evidence to support this statement.

To the contrary, assessing the incurability of a range of physical conditions poses exactly the same challenges as mental disorders.

MAiD assessors have to handle suicidality in all types of MAiD requests.

**5. People can access MAiD in Canada because they are living in poverty**

No one who has made this claim has provided any evidence that this is the case.

The publicly available details about specific cases indicate the contrary.

For example, the case of Sophia in Ontario, discussed widely in the media was alleged to be such a case. In fact, the patient stated unambiguously in a letter to her physician, which she consented to sharing, that she was financially secure and her reasons for wanting MAiD had nothing to do with her financial circumstances, access to housing, or access to services but were directly related to the consequences of a grievous and irremediable medical condition.[[3]](#footnote-3)

It is a breach of the *Criminal Code* to provide MAiD because of suffering due to socioeconomic circumstances. The law requires that the person’s enduring and intolerable suffering be caused by a serious and incurable illness, disease, or disability or their advanced state of irreversible decline in capability.[[4]](#footnote-4)

Furthermore, as demonstrated by Downar et al, evidence shows that in Canada, “across jurisdictions, recipients of MAiD are, on average wealthier, better educated and less likely to be residing in institutions than people who die without receiving MAiD” and “the evidence.

shows that, at a population level, socioeconomic deprivation and service gaps appear, statistically, to be protective against [i.e., inversely correlated with] MAiD.”[[5]](#footnote-5)

**6. The mental illness exclusion clause protects vulnerable people**

There has been an exclusion clause for persons with mental illness in place since March 2021 and there is no evidence that this has conferred benefit to any individual suffering mental illness.

Rather, adopting a law that states that **a mental illness “is not an illness”** – as the *Criminal Code* currently does - is harmful, denigrating and discriminatory to people who suffering from severe, chronic, unremitting, and treatment refractory mental disorders.  In fact, the exclusion clause is leading some patients to hide or minimize their psychiatric problems when they make MAiD requests out of fear of being refused.

Denying people with mental disorders the option of making a request for MAiD implies that they are incapable of making their own healthcare decisions and require the state to control their lives for their own good. This is entirely out of step with the last 40 years of mental health jurisprudence and mental health care in Canada.

**7. People will be able to refuse all psychiatric treatment and access MAiD**

The federal government’s Expert Panel on MAiD and Mental Illness, Health Canada’s MAiD Practice Standards Task Group, and the CAMAP MAiD curriculum all state that in order to establish that a person has an incurable mental disorder a person will have had to have an extensive treatment history.

**8. Clinicians will not know if they should engage in suicide prevention efforts when a person with a mental disorder makes a request for MAiD.**

This statement is false.

Clinicians must and do already respond to expressions of suicidality in the context of MAiD requests for both requests on Track 1 and Track 2. They will continue to do so in the context of requests by persons with mental disorders.

As is appropriate for the regulation of clinical practice, clinicians will continue to be guided by their regulatory bodies, formal training and continuing education. For example, The Model Practice Standard Task Group document “Advice to the Profession” contains a direct response to the question “How do I assess whether a person’s request for MAID is a form of suicidal ideation?” The CAMAP MAiD curriculum makes clear that suicide prevention is in no way altered by the existence of MAID. Suicide prevention is, and with the introduction of MAiD MD-SUMC, will still be mobilized in all of appropriate circumstances.

**9. Canada has the most liberal MAiD regime in the world**

This is false.

There are two kinds of assisted dying regimes in the world: end of life regimes and non-end of life regimes. The Canadian regime is very similar to other non-end of life regimes.

Canada has a non-end of life regime because our courts have reviewed all the arguments and evidence and concluded that an end of life regime is inconsistent with the *Charter of Rights and Freedoms*. The Supreme Court of Canada clearly delineated the parameters for a *Charter*-compliant regime.[[6]](#footnote-6)

**10. Other countries have greater protections for people with mental disorders**

This is false.

No country in the world that allows assisted dying has a mental disorder exclusion clause.

No country in the world that allows assisted dying has separate eligibility criteria or safeguards for people with mental disorders.

In fact, Canada’s mental illness exclusion clause has taken us on a path that is out of step with other countries.

Rather than offering greater protections for persons with mental disorders, the exclusion clause discriminates against persons with mental disability (contrary to s.15 of the *Charter*).[[7]](#footnote-7)

**11. Canada's MAiD system is out of control**

This is a rhetorical statement whose meaning is unclear.

If ‘out of control’ means that clinicians are violating the Criminal Code of Canada, no evidence has been presented to support this claim.

However, there is evidence to the contrary. Unlike anecdotes disseminated in the media, contexts within which allegations can be properly investigated and tested reveal that there are no reported cases of clinicians being charged or disciplined by their regulatory bodies for abuses of patients or breaches of the law or practice standards despite allegations, reports, and exhaustive reviews.[[8]](#footnote-8)

**12. Canada has one of the highest MAiD rates in the world because our laws are too liberal**

This is false.

The rise in MAiD deaths in Canada (and Québec) is almost entirely attributable to a rise in deaths by people at the end of life (Track 1).[[9]](#footnote-9) The introduction of Track 2 patients has not had a significant impact on our rates of MAiD deaths.

The rise in MAiD deaths in Canada is predictable due to the fact that assisted dying has moved from being prohibited to being permitted. It is concerning if the number includes cases in which the eligibility criteria are not met, but there is no evidence of this happening.[[10]](#footnote-10)

**13. The majority of psychiatrists are against MAiD for persons with mental disorders**

No evidence has been presented to support this statement.

This claim has been made recently in a letter to the federal Ministers of Justice, Health, and Mental Health and Addictions by 7 individual, administrative heads of psychiatry departments in Canada. Some salient facts about the authors of this document:

* The authors’ administrative positions do not confer any specific knowledge or expertise concerning MAiD.
* These individuals are not involved in the MAiD system and therefore have no direct knowledge of how it works.
* The authors do not represent the views of their members (they have not engaged their members on this topic and do not represent the views of their members).
* They do not represent the views of the Association of Chairs of Psychiatry in Canada. Furthermore, they are only 7 of 17 members so they are a minority of the members.
* The authors are expressing their personal opinions and so this letter should be understood to be a letter from seven individuals.

In fact, Canada’s two largest psychiatric associations (the Canadian Psychiatric Association of with approximately 2500 members and the Québec Psychiatric Association with approximately 1200 members) have both take the position that people with mental disorders should have the same rights as people affected by other medical conditions.[[11]](#footnote-11)

The Centre for Addiction and Mental Health, one of Canada’s largest psychiatric institutions, has reversed its previous opposition to MAiD for persons with mental disorders in a public statement in March of 2023.[[12]](#footnote-12)

**14. Allowing MAiD MD-SUMC is a further expansion of eligibility for MAiD**

This is false.

MAiD MD-SUMC was not excluded in the Supreme Court of Canada decision in *Carter v. Canada*.[[13]](#footnote-13) This has been affirmed by the Alberta Court of Appeal in *EF[[14]](#footnote-14)* and by Justice Baudouin in *Truchon*.[[15]](#footnote-15) For example, in *EF*, a woman with a mental disorder as her sole underlying medical condition was granted a constitutional exemption to allow her to have MAiD under the terms of the *Carter* decision. Removal of the exclusion clause returns Canada’s legal parameters to those established by the Supreme Court of Canada in *Carter*.

To quote directly from the *Truchon* decision:

‘’[421] Last, it bears repeating that neither *Carter* nor the federal legislation excludes people with a psychiatric condition from requesting and being granted medical assistance in dying like any other Canadian who meets the legislative requirements. These people are, therefore, eligible, regardless of their official diagnosis, once they are deemed competent by two independent physicians and meet the other legal requirements.’’[[16]](#footnote-16)

**15. An exclusion clause for MAiD MD-SUMC is constitutional**

This is false.

The exclusion clause is a breach of the *Charter* right to life, liberty and security of the person of persons with mental disorders – at the very least, it is overbroad. It is also a breach of the equality provisions of the *Charter* – it draws a distinction on the basis of mental disorder. It cannot be justified under s.1 of the *Charter* – it does not minimally impair the *Charter* rights of persons with mental disorders.

The End of Life Working Group of the Canadian Bar Association, among other legal experts, has explained how the exclusion clause “discriminates against individuals suffering from mental illnesses” in a letter to the former Minister of Justice[[17]](#footnote-17) and similarly in submissions to the Special Joint Committee on Medical Assistance in Dying.[[18]](#footnote-18) On constitutional grounds, the Working Group called for the exclusion to be lifted no later than March 2024.

**16. The Canadian MAiD system is not ready for safe implementation of MAiD MD-SUMC**

This is false.

The federal government has fulfilled all of its statutorily mandated responsibilities concerning MAiD MD SUMC:

* 1. Constituted an Expert Panel on MAiD and Mental Illness[[19]](#footnote-19)
  2. Constituted a Special Joint Committee to study this topic (among others).[[20]](#footnote-20)

The federal government has also supported four major, unique initiatives that are now complete:

1. Funded the creation of an independent national accredited curriculum on MAiD including an entire module devoted to MAiD and mental disorders[[21]](#footnote-21)
2. Convened a group of experts to draft a model regulatory standard for MAiD in support of the Expert Panel’s first recommendation.[[22]](#footnote-22)
3. Funded the delivery of an independent national knowledge exchange workshop to ensure there were psychiatrists and MAiD assessors and providers across the country ready to implement MAiD MD-SUMC next March and to facilitate similar knowledge exchange workshops held at regional and local levels to further enhance capacity and readiness.
4. Funded the delivery of a system-readiness workshop to ensure that key stakeholders were up to date on policy and practice developments across the country with respect to MAiD.

Several provinces and territories have established working groups or held meetings to develop policies and clinical processes including British Columbia, Alberta, Saskatchewan, and Nova Scotia. For the most part, these processes will apply to complex cases rather than only to mental disorder cases because the designers recognize, as the Expert Panel laid out, that the same challenges that could apply to mental disorders also apply in other types of complex cases that are currently permitted.

1. S.241.2(3.1)(i) *Criminal Code*. [↑](#footnote-ref-1)
2. S.241.2(1)-(2) *Criminal Code*. [↑](#footnote-ref-2)
3. https://www.ourcommons.ca/Content/Committee/441/AMAD/Brief/BR11824538/br-external/PerrotChantal-e.pdf [↑](#footnote-ref-3)
4. S.241.2(2)(c) *Criminal Code*. [↑](#footnote-ref-4)
5. Downar J, MacDonald S, Buchman S, “Medical Assistance in Dying, Palliative Care, Safety, and Structural Vulnerability” Journal of Palliative Medicine, August 31: 26(9). [↑](#footnote-ref-5)
6. *Carter v Canada (AG),* 2015 SCC 5. See also *Canada (Attorney General) v E.F.*, 2016 ABCA 155; *Truchon c. Procureur général du Canada,* 2019 QCCS 3792. [↑](#footnote-ref-6)
7. See below for response to claim ““An exclusion clause for MAiD MD-SUMC is constitutional”. [↑](#footnote-ref-7)
8. Downar J, MacDonald S, Buchman S, “Medical Assistance in Dying, Palliative Care, Safety, and Structural Vulnerability,” Journal of Palliative Medicine, August 31, 2023: 26(9). [↑](#footnote-ref-8)
9. CSFV, Rapport annuel des activités du 1er avril 2021 au 31 mars 2022 https://csfv.gouv.qc.ca/fileadmin/docs/rapports\_annuels/csfv\_rapport\_activites\_2021-2022.pdf

   Health Canada, Third Annual Report on Medical Assistance in Dying 2021 https://www.canada.ca/en/health-canada/services/publications/health-system-services/annual-report-medical-assistance-dying-2021.html [↑](#footnote-ref-9)
10. For a more detailed response to concerns about the increasing numbers, see Eric Mathison, “How Many Assisted Deaths Should There Be? The best answer to an uninteresting question” Value Judgements August 3, 2023, available online at: https://valuejudgments.substack.com/p/how-many-assisted-deaths-should-there [↑](#footnote-ref-10)
11. <https://www.cpa-apc.org/wp-content/uploads/2021-CPA-Position-Statement-MAID-Update-EN-web-Final.pdf> and <https://ampq.org/wp-content/uploads/2020/12/mpqdocreflexionammenfinal.pdf> [↑](#footnote-ref-11)
12. <https://www.camh.ca/-/media/files/pdfs---public-policy-submissions/maid-considerations-march-14-2023-pdf.pdf> [↑](#footnote-ref-12)
13. *Carter v Canada (AG),* 2015 SCC 5. [↑](#footnote-ref-13)
14. *Canada (Attorney General) v E.F.*, 2016 ABCA 155. [↑](#footnote-ref-14)
15. *Truchon c. Procureur général du Canada,* 2019 QCCS 3792 [↑](#footnote-ref-15)
16. It bears noting, given that some MAiD opponents argue that *Truchon* was a decision by a single judge in trial level court, that the Government deliberately chose not to appeal the decision and the Minister of Justice explained this decision in the House as follows: “Madam Speaker, the simple fact of the matter is this: Had we appealed the decision through the court of appeal, or possibly the Supreme Court of Canada, so many more Canadians would have had to suffer for so much longer. It is that simple. That would be on a case in which we strongly believed legally we would lose on its constitutionality. The reasoning of the Québec Superior Court was compelling, and it will ultimately be upheld. Why make people suffer in the meantime?” (Lametti, D. House of Commons Debates. Tuesday, February 23, 2021, Edited Hansard Volume 150, No. 064, 2nd Session, 43rd Parliament.) [↑](#footnote-ref-16)
17. https://tinyurl.com/mskfa73m [↑](#footnote-ref-17)
18. https://www.cba.org/CMSPages/GetFile.aspx?guid=17faab8e-6087-40bc-9043-b7c9a62446b7 [↑](#footnote-ref-18)
19. <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> [↑](#footnote-ref-19)
20. <https://www.parl.ca/DocumentViewer/en/44-1/AMAD/report-2> [↑](#footnote-ref-20)
21. <https://camapcanada.ca/curriculum/> [↑](#footnote-ref-21)
22. <https://www.canada.ca/en/health-canada/services/publications/health-system-services/model-practice-standard-medical-assistance-dying.html>

    <https://www.canada.ca/en/health-canada/services/publications/health-system-services/advice-profession-medical-assistance-dying.html> [↑](#footnote-ref-22)