



Legislative Summary

BILL C-62: AN ACT TO AMEND AN ACT TO AMEND THE CRIMINAL CODE (MEDICAL ASSISTANCE IN DYING), NO. 2

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(Legislative Summary)

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LEGISLATIVE SUMMARY OF BILL C-62: AN ACT TO AMEND AN ACT TO AMEND THE CRIMINAL CODE (MEDICAL ASSISTANCE IN DYING), NO. 2

1 BACKGROUND

On 1 February 2024, the Honourable Mark Holland, Minister of Health, introduced Bill C-62, An Act to amend An Act to amend the Criminal Code (medical assistance in dying), No. 2, in the House of Commons.¹ The bill was passed and received Royal Assent on 29 February 2024.

Bill C-62 pushes back the date of eligibility for medical assistance in dying (MAID) based solely on mental illness from 17 March 2024 to 17 March 2027. The bill also requires a joint committee of the House of Commons and the Senate to undertake a comprehensive review relating to eligibility on this basis within two years of the date of Royal Assent.

The issue of mental illness has been contemplated from the outset of Canada's deliberations on MAID.

In the 2015 case *Carter v. Canada (Attorney General)*² (*Carter*), the Supreme Court of Canada declared the provisions of the *Criminal Code* (Code) that prohibited assisted dying constitutionally invalid

insofar as they prohibit 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.³

While the issue of mental illness was raised on the record,⁴ the Court limited the scope of its declaration to “the factual circumstances in this case,” which did not involve mental illness. The implications of *Carter* for MAID based solely on mental illness have been contested in court⁵ and in Parliament.⁶

In February 2016, the Special Joint Committee on Physician-Assisted Dying (PDAM) tabled a report providing recommendations for a federal framework for MAID, which included the following:

Recommendation 3

That individuals not be excluded from eligibility for medical assistance in dying based on the fact that they have a psychiatric condition.⁷

The first federal bill permitting MAID, Bill C-14, An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying), received Royal Assent on 17 June 2016.⁸ The bill did not expressly exclude individuals with a psychiatric condition or a mental illness. However, it did limit eligibility for MAID to those whose “natural death has become reasonably foreseeable.”⁹ When Bill C-14 was introduced, Quebec had already passed its own assisted-dying law, the *Act respecting end-of-life care*, which similarly required that patients be “at the end of life” to be eligible for MAID.¹⁰

Bill C-14 required an independent review of three circumstances under which MAID was, and is still, restricted, including MAID where mental illness is the sole underlying medical condition.¹¹ These reviews were undertaken by the Council of Canadian Academies (CCA), which released its reports on 12 December 2018.¹²

The CCA’s Expert Panel Working Group on MAID Where a Mental Disorder Is the Sole Underlying Medical Condition used the term “mental disorder” rather than “mental illness” to be consistent “with current clinical and legal practice.”¹³ Key issues that were considered by the Panel included the clinical challenges of determining whether an individual’s request for MAID is a symptom of the individual’s mental disorder; whether it is possible to determine that an individual’s case is “irremediable”; and whether permitting MAID where mental disorder is the sole underlying medical condition (MAID MD-SUMC) is compatible with suicide prevention efforts. The working group reviewed a number of potential safeguards for MAID MD-SUMC but disagreed about whether the risks of the practice could be mitigated by such safeguards.

On 11 September 2019, in the case *Truchon c. Procureur général du Canada* (*Truchon*), the Superior Court of Quebec found the federal eligibility criterion requiring a reasonably foreseeable natural death, and the Quebec criterion requiring a person to be at the end of life, unconstitutional.¹⁴ Parliament responded to the ruling in *Truchon* with Bill C-7, An Act to amend the Criminal Code (medical assistance in dying), which received Royal Assent on 17 March 2021.¹⁵ The bill created an additional pathway to MAID for individuals whose natural death is not reasonably foreseeable.

Bill C-7 also prohibited MAID MD-SUMC. Prior to Bill C-7, individuals with mental disorders were not barred from obtaining MAID, but they were limited by the reasonably foreseeable natural death criterion. Bill C-7’s removal of this criterion could have allowed more individuals suffering solely from a mental disorder to obtain MAID. However, the bill included a new provision stating that mental illness does not count as an “illness, disease or disability” for the purposes of MAID eligibility (section 241.2(2.1) of the Code). The Senate amended the bill to include a sunset clause that would allow MAID MD-SUMC 18 months after the date of Royal Assent.

This was extended to two years by the House of Commons.¹⁶ MAID MD-SUMC was thus due to become available as of 17 March 2023.

Prior to its passage, the House of Commons amended Bill C-7 to require the Minister of Justice and the Minister of Health to set up an independent expert review “respecting recommended protocols, guidance and safeguards to apply to requests for medical assistance in dying by persons who have a mental illness.”¹⁷ The Expert Panel on MAiD and Mental Illness was formed in August 2021 to undertake this review. The expert panel tabled its final report, which included 19 recommendations, in Parliament on 13 May 2022.¹⁸ The report concluded that the existing eligibility criteria and safeguards for MAID are adequate for cases based solely on mental disorder.¹⁹ However, it made several recommendations regarding how these criteria and safeguards should be interpreted and implemented. It also recommended the development of standards of practice for MAID assessments in complex cases²⁰ and the development of a model of prospective oversight that could be adapted by the provinces and territories.²¹

In 2021, the Special Joint Committee on Medical Assistance in Dying (AMAD) began a statutory review of the federal MAID regime, including issues relating to mental illness, as required by Bill C-7. In June 2022, AMAD released an interim report focused on MAID MD-SUMC,²² to which the government provided a response in October 2022.²³ While the interim report did not contain recommendations, it concluded:

We must have standards of practice, clear guidelines, adequate training for practitioners, comprehensive patient assessments and meaningful oversight in place for the case of MAID MD-SUMC.²⁴

AMAD’s final report for the statutory review, tabled in February 2023, also emphasized the importance of having standards of practice in place prior to permitting MAID MD-SUMC:

While the committee supports MAID MD-SUMC, it is concerned that there has not been sufficient time to develop the standards of practice referred to by the Expert Panel [on MAID and Mental Illness]. Witnesses were clear that these standards are key to ensuring a thoughtful, consistent approach to MAID MD-SUMC.²⁵

The government provided its response to AMAD’s final report in June 2023.²⁶

In response to concerns that the health care system would not be prepared to safely and consistently provide MAID MD-SUMC by the 17 March 2023 deadline set out in Bill C-7, the federal Minister of Justice introduced Bill C-39, An Act to amend An Act to amend the Criminal Code (medical assistance in dying).²⁷ The bill delayed the availability of MAID MD-SUMC for an additional year to 17 March 2024.²⁸

It was introduced in the House of Commons on 2 February 2023, as AMAD was nearing the end of its mandate, and was passed in that chamber on 15 February 2023, the same day AMAD presented its final report to the Senate and House of Commons. The bill was passed in the Senate and received Royal Assent on 9 March 2023. According to the government, the passage of the bill provided more time for the “dissemination and uptake of key resources,” such as practice standards and training, and for consideration of AMAD’s final report.²⁹

In March 2023, Health Canada’s MAID Practice Standards Task Group published the Model Practice Standard for MAID, a non-binding template for provinces and territories that takes into consideration MAID MD-SUMC.³⁰ In August 2023, the Canadian Association of MAiD Assessors and Providers launched a nationally accredited training program to support the practice of MAID that includes a unit on MAID and mental disorders.³¹

Meanwhile, on 7 June 2023, the National Assembly of Quebec passed Bill 11, An Act to amend the Act respecting end-of-life care and other legislative provisions.³² The bill provides that a person cannot request MAID for a mental disorder other than a neurocognitive disorder (sections 26(4) and 29.1(2)(d)(ii) of Quebec’s *Act respecting end-of-life care*).

AMAD’s final report for the statutory review included Recommendation 13, which reads as follows:

That, five months prior to the coming into force of eligibility for MAID where a mental disorder is the sole underlying medical condition, a Special Joint Committee on Medical Assistance in Dying be re-established by the House of Commons and the Senate in order to verify the degree of preparedness attained for a safe and adequate application of MAID (in MD-SUMC situations). Following this assessment, the Special Joint Committee will make its final recommendation to the House of Commons and the Senate.³³

AMAD was re-established in October 2023 pursuant to this recommendation. On 29 January 2024, the committee tabled a third report recommending that the implementation of MAID MD-SUMC be further delayed.³⁴ The report noted that, while “significant progress” had been made to prepare for MAID MD-SUMC, “some stakeholders perceive a lack of readiness” and “many practitioners remain concerned, particularly regarding the challenges of assessing irremediability, distinguishing requests for MAID MD-SUMC from suicidality, and protecting the most vulnerable in our society.”³⁵ The report was not unanimous; four out of five senators on the committee issued dissenting opinions, while members from the Conservative Party of Canada and the Bloc Québécois issued supplementary opinions. On the day the report was tabled, the Minister of Health and the Minister of Justice publicly expressed their

agreement with the committee's recommendation, leading to the introduction of Bill C-62.³⁶

Whether and when individuals should be eligible for MAID MD-SUMC has been the subject of much controversy in Canada. The key points of debate over Canada's readiness for MAID MD-SUMC are described in AMAD's third report.³⁷ The Charter Statement for Bill C-62 sets out considerations that support the constitutionality of both prohibiting and permitting MAID MD-SUMC.³⁸

2 DESCRIPTION AND ANALYSIS

Bill C-62 contains three clauses. The first changes the date of eligibility for MAID MD-SUMC, the second sets out the requirements for a parliamentary review and the third sets out coordinating amendments.

The first clause extends the temporary exclusion of eligibility for MAID MD-SUMC under the Code from 17 March 2024 to 17 March 2027. It does so by amending section 6 of *An Act to amend the Criminal Code (medical assistance in dying)* (formerly Bill C-7), which establishes the coming-into-force date of the sunset clause set out in subsection 1(2.1) of that Act. The sunset clause repeals the provision of the Code which states that "a mental illness is not considered to be an illness, disease or disability" for the purposes of MAID eligibility.³⁹

The three-year delay proposed by Bill C-62 will have a significant impact on the lives of individuals who wish to receive MAID on the basis of mental disorder and who meet all the other eligibility criteria, including experiencing intolerable suffering. Both AMAD and the Government of Canada have recognized that the suffering caused by mental illness can be as severe as that caused by physical illness.⁴⁰

The second clause requires that a joint committee of the House of Commons and the Senate undertake "a comprehensive review relating to the eligibility of persons whose sole underlying medical condition is a mental illness to receive medical assistance in dying" (clause 2(1)). The review must begin within two years after the date on which the bill receives Royal Assent (clause 2(2)). Clause 2 leaves it open to the joint committee to prepare a report, which may recommend changes to the Code provisions on MAID. However, neither a report nor recommendations are required. If the committee does choose to prepare a report, it must be tabled in both the House of Commons and the Senate (clause 2(3)). The committee expires on the day its report is tabled, or on 17 March 2027 if a report has not yet been tabled by that date (clause 2(4)).

The third clause provides an alternative legislative pathway to extend the temporary exclusion of eligibility for MAID MD-SUMC in case Bill C-62 does not receive Royal Assent before the sunset clause comes into force on 17 March 2024. In that

case, clause 3 would amend the Code directly so as to reintroduce the provision prohibiting MAID MD-SUMC and establish a new sunset clause that would expire on 17 March 2027.

NOTES

1. [Bill C-62, An Act to amend An Act to amend the Criminal Code \(medical assistance in dying\), No. 2](#), 44th Parliament, 1st Session.
2. [Carter v. Canada \(Attorney General\)](#), 2015 SCC 5.
3. *Ibid.*, para. 127.
4. *Ibid.*, paras. 111–114.
5. See [Canada \(Attorney General\) v. E.F.](#), 2016 ABCA 155 (CanLII), paras. 43–59.
6. See for example Parliament of Canada, Special Joint Committee on Medical Assistance in Dying (AMAD), [Evidence](#), 21 November 2023; House of Commons, [Debates](#), 15 February 2024, 1025.
7. Parliament of Canada, Special Joint Committee on Physician-Assisted Dying (PDAM), [Medical Assistance in Dying: A Patient-Centred Approach](#), First report, February 2016, Recommendation 3.
8. [Bill C-14, An Act to amend the Criminal Code and to make related amendments to other Acts \(medical assistance in dying\)](#), 42nd Parliament, 1st Session (S.C. 2016, c. 3). For more information about Bill C-14, see Julia Nicol and Marlisa Tiedemann, [Legislative Summary of Bill C-14: An Act to amend the Criminal Code and to make related amendments to other Acts \(medical assistance in dying\)](#), Publication no. 42-1-C14-E, Library of Parliament, 27 September 2018.
9. [Bill C-14, An Act to amend the Criminal Code and to make related amendments to other Acts \(medical assistance in dying\)](#), 42nd Parliament, 1st Session (S.C. 2016, c. 3), cl. 3, adding s. 241.2(2)(d) to the [Criminal Code](#) (Code), R.S.C. 1985, c. C-46 (version in force from 9 December 2014 to 15 December 2014).
10. Quebec, [Act respecting end-of-life care](#), R.S.Q., c. S-32.0001, s. 26(3).
11. [Bill C-14, An Act to amend the Criminal Code and to make related amendments to other Acts \(medical assistance in dying\)](#), 42nd Parliament, 1st Session (S.C. 2016, c. 3), cl. 9.1. The other two circumstances were medical assistance in dying (MAID) for mature minors and advance requests for MAID. This requirement was added during the House of Commons Standing Committee on Justice and Human Rights' study of the bill.
12. Council of Canadian Academies (CCA), [Medical Assistance in Dying: The Expert Panel on Medical Assistance in Dying](#), 12 December 2018. See in particular, CCA, [The State of Knowledge on Medical Assistance in Dying Where a Mental Disorder Is the Sole Underlying Medical Condition](#), report prepared by the Expert Panel Working Group on MAID Where a Mental Disorder Is the Sole Underlying Medical Condition, 2018.
13. CCA, [State of Knowledge on Medical Assistance in Dying for Mature Minors, Advance Requests, and Where a Mental Disorder Is the Sole Underlying Medical Condition: Summary of Reports](#), 2018, p. 26.
14. [Truchon c. Procureur général du Canada](#), 2019 QCCS 3792 (CanLII). Neither the federal government nor the Government of Quebec appealed the ruling.
15. [Bill C-7, An Act to amend the Criminal Code \(medical assistance in dying\)](#), 43rd Parliament, 2nd Session (S.C. 2021, c. 2). For more information about Bill C-7, see Julia Nicol and Marlisa Tiedemann, [Legislative Summary of Bill C-7: An Act to amend the Criminal Code \(medical assistance in dying\)](#), Publication no. 43-2-C7-E, Library of Parliament, 19 April 2021.
16. [Bill C-7, An Act to amend the Criminal Code \(medical assistance in dying\)](#), 43rd Parliament, 2nd Session (S.C. 2021, c. 2), cls. 1(2.1) and 6.
17. *Ibid.*, cl. 3.1(1).

18. Health Canada, [Final Report of the Expert Panel on MAiD and Mental Illness](#), 13 May 2022.
19. Ibid., p. 12.
20. Ibid., p. 12 (Recommendation 1).
21. Ibid., p. 16 (Recommendation 16).
22. AMAD, [Medical Assistance in Dying and Mental Disorder as the Sole Underlying Condition: An Interim Report](#), First report, June 2022.
23. Jean-Yves Duclos, Minister of Health, [Government response to the first report of the Special Joint Committee on Medical Assistance in Dying, entitled "Medical Assistance in Dying and Mental Disorder as the Sole Underlying Condition: An Interim Report"](#), 20 October 2022.
24. AMAD, [Medical Assistance in Dying and Mental Disorder as the Sole Underlying Condition: An Interim Report](#), First report, June 2022, p. 20.
25. AMAD, [Medical Assistance in Dying in Canada: Choices for Canadians](#), Second report, February 2023, p. 53.
26. Jean-Yves Duclos, Minister of Health, and David Lametti, Minister of Justice and Attorney General of Canada, [Government response to the second report of the Special Joint Committee on Medical Assistance in Dying, entitled "Medical Assistance in Dying in Canada: Choices for Canadians"](#), 13 June 2023.
27. Government of Canada, [Changes to the Law: Extension of the temporary exclusion of eligibility for persons suffering solely from mental illness](#).
28. [Bill C-39, An Act to amend An Act to amend the Criminal Code \(medical assistance in dying\)](#), 44th Parliament, 1st Session (S.C. 2023, c. 1).
29. Government of Canada, [Changes to the Law: Extension of the temporary exclusion of eligibility for persons suffering solely from mental illness](#).
30. Health Canada, [Model Practice Standard for Medical Assistance in Dying \(MAiD\)](#), March 2023.
31. Canadian Association of MAiD Assessors and Providers, [Canadian MAiD Curriculum](#).
32. Quebec, [Bill 11, An Act to amend the Act respecting end-of-life care and other legislative provisions](#), 43rd Legislature, 1st Session (S.Q. 2023, c. 15).
33. AMAD, [Medical Assistance in Dying in Canada: Choices for Canadians](#), Second report, February 2023, Recommendation 13.
34. AMAD, [MAiD and Mental Disorders: The Road Ahead](#), Third report, January 2024, p. 4.
35. Ibid.
36. Darren Major, ["Federal government seeking another pause on planned expansion of medical assistance in dying,"](#) CBC News, 29 January 2024.
37. AMAD, [MAiD and Mental Disorders: The Road Ahead](#), Third report, January 2024.
38. Government of Canada, [Bill C-62: An Act to amend An Act to amend the Criminal Code \(medical assistance in dying\). No. 2 – Charter Statement](#), 8 February 2024.
39. To be eligible for MAiD under the Code, a person must have a "serious and incurable illness, disease or disability" (section 241.2(2)).
40. AMAD, [MAiD and Mental Disorders: The Road Ahead](#), Third report, January 2024, p. 4; and Health Canada, [The Government of Canada introduces legislation to delay Medical Assistance in Dying expansion by 3 years](#), News release, 1 February 2024.

APPENDIX A – TIMELINE OF KEY EVENTS

Date	Description of Event
6 February 2015	The Supreme Court of Canada declares unconstitutional the provisions of the <i>Criminal Code</i> prohibiting assisted dying in <i>Carter v. Canada (Attorney General)</i> .
25 February 2016	The Special Joint Committee on Physician-Assisted Dying (PDAM) tables its final report, including a recommendation that individuals not be excluded from eligibility for medical assistance in dying (MAID) for having a psychiatric condition.
17 June 2016	Bill C-14 receives Royal Assent, creating an exemption for MAID in the <i>Criminal Code</i> but limiting eligibility to those whose natural death has become reasonably foreseeable.
12 December 2018	The Council of Canadian Academies Expert Panel Working Group on MAID Where a Mental Disorder Is the Sole Underlying Medical Condition (MAID MD-SUMC) releases its final report, considering the potential implications of prohibiting or permitting MAID MD-SUMC without reaching a consensus on the evidence.
11 September 2019	The Superior Court of Quebec releases its decision in <i>Truchon c. Procureur général du Canada</i> , finding unconstitutional the federal MAID eligibility criterion requiring a reasonably foreseeable natural death and the Quebec criterion requiring a person to be at the end of life.
17 March 2021	Bill C-7 receives Royal Assent, creating an additional pathway to MAID for individuals whose natural death is not reasonably foreseeable but prohibiting MAID on the basis of mental illness for a period of two years.
13 May 2022	The Expert Panel on MAiD and Mental Illness releases its final report, concluding that the existing eligibility criteria and safeguards for MAID are adequate for cases based solely on mental disorder.
22 June 2022	The Special Joint Committee on Medical Assistance in Dying (AMAD) tables an interim report focused on MAID MD-SUMC.
15 February 2023	AMAD tables its second report (final report for the statutory review), including a recommendation that the committee be re-established to verify the degree of preparedness for MAID MD-SUMC five months before it becomes available.
9 March 2023	Bill C-39 receives Royal Assent, delaying the availability of MAID MD-SUMC to 17 March 2024.
27 March 2023	Health Canada releases the Model Practice Standard for MAID , which takes into consideration MAID MD-SUMC.
7 June 2023	Quebec passes Bill 11 , prohibiting MAID on the basis of a mental disorder other than a neurocognitive disorder in that province.
August 2023	The Canadian Association of MAiD Assessors and Providers launches a nationally accredited training program to support the practice of MAID which includes a unit on MAID and mental disorders.

Date	Description of Event
October 2023	AMAD is re-established to verify the degree of preparedness attained for MAID MD-SUMC.
29 January 2024	AMAD tables a third report recommending that the implementation of MAID MD-SUMC be further delayed.
29 February 2024	Bill C-62 receives Royal Assent, pushing back the date of eligibility for MAID MD-SUMC to 17 March 2027.