RNAO Submission on Bill C-7: *An Act to amend the Criminal Code (Medical Assistance in Dying)*

Submission to the Standing Committee on Justice and Human Rights

November 12, 2020

Summary of RNAO Recommendations:

Legislative:
• Amend Bill C-7 to include the 10 day reflection period for when natural death is foreseeable, with the proviso that the 10 day reflection period can be waived at the sole discretion of the person. • Eliminate the clause outlining the requirement for at least one of the MAID practitioners to have expertise in the condition that is causing the person's intolerable suffering where natural death is not foreseeable—rather seek consultation from a practitioner with such expertise who is not directly involved in MAID provision for that individual when needed. • Add a clause requiring high-quality and culturally-sensitive psychosocial support for all persons inquiring about, considering or deciding to pursue MAID from the time of initial conversations respecting MAID through to time of death. • Amend the clause requiring that, when natural death is not reasonably foreseeable, a person be informed of and offered available means to relieve suffering, such as counseling services, palliative care, mental health and disability support services to include circumstances when natural death is foreseeable. • Add a clause outlining virtual care options to increase accessibility to MAID for all persons, in particular those in rural and remote communities across Canada. • Add a clause mandating a parliamentary review be conducted after 5 years, with consideration of mature minors, advanced requests, and cases where psychiatric illness is the sole diagnosis for inclusion in MAID legislation.
Policy:
• Provide funding for equitable access to treatment options to relieve pain and suffering—including high-quality counseling services, mental health and disability support services, community services and palliative care—across all provinces/territories. • Collaborate with provincial/territorial governments to ensure MAID practitioners are fairly and equitably compensated for providing MAID when the service is provided outside of their usual role with their employer, including fair and equitable compensation for NPs who are MAID providers in Ontario. • Commit to robust education, training and practice supports for all health care professionals, in particular RNs and NPs directly or indirectly involved in MAID provision. • Implement, with funding, the national comprehensive and evidence-based palliative care framework to guarantee palliative care services are available to every Canadian in need, regardless of geographic location.

Introduction

The Registered Nurses' Association of Ontario (RNAO) is the professional association representing registered nurses (RN), nurse practitioners (NP), and nursing students, in all roles and sectors across Ontario. Since 1925, RNAO has advocated for healthy public policy, promoted excellence in nursing practice, increased nurses' contributions to shaping the health system, and influenced decisions that affect nurses and the public they serve. RNAO welcomes the opportunity to provide feedback to the Standing Committee on Justice and Human Rights on Bill C-7, *an Act to amend the Criminal Code (medical assistance in dying)*[1].

It has been four years since federal MAID legislation (Bill C-14) passed in 2016, making it legal for physicians and nurse practitioners (NPs) to assist eligible individuals to request and receive assistance to end their lives. Canada is the first country to recognize NPs as MAID assessors and providers. This landmark legislation greatly impacts the scope of practice, roles and responsibilities for not only NPs, but also registered nurses (RN) across Canada providing safe, compassionate, competent and ethical palliative and end-of-life care. Of Canada's 6,159 NPs, 3,451 are licensed and practicing in Ontario[2], and approximately 43 of those are MAID providers. The debate surrounding MAID remains a contentious ethical and moral issue, one accompanied by an ongoing paucity in understanding of how nurses enact their roles with MAID—a very emotive and morally challenging aspect of nursing practice.[3]

"The most important predictor of how well a MAiD death will go is the presence of a nurse."[4]

Since 2014, RNAO has actively weighed in on key matters related to MAID[5] [6] and is pleased that recommendations put forth in a submission on Ontario's Bill 84 in 2017[7] have since been addressed—including NPs in Ontario now having the authority to prescribe controlled substances. RNs and NPs have gained considerable information about the strengths and challenges of MAID in practice after four years, which must be reflected in the planning and implementation of a new MAID legislative regime. RNAO reinforces that all physicians, nurse practitioners and other health-care professionals who have a conscientious or religious objection to MAID, have a duty to immediately refer patients to ensure timely access to MAID. Conscientious objection and duty to refer with respect to providing and/or assisting with MAID has been incorporated into professional practice standards at the provincial/territorial level.[8] [9] Since the passing of the legislation, nearly 14,000 Canadians who were intolerably suffering enacted their choice for a medically assisted death.[10]

Given that the federal government has committed to responding to the 2019 Superior Court of Quebec's Truchon-Gladu ruling by December, 2020, RNAO urges that a comprehensive parliamentary review of MAID and the state of palliative care across Canada be carried out now. RNAO supports the intent of Bill C-7 to respect personal autonomy for those seeking access to MAID, while balancing the protection of vulnerable people and the equal rights of all Canadians. Within that framework, RNAO presents 10 recommendations that aim to strike the right balance with the proposed legislative changes to advance equitable and timely access to MAID while protecting all those involved.

Recommendations

Legislative recommendations:

- **Amend Bill C-7 to include the 10 day reflection period for when natural death is foreseeable, with the proviso that the 10 day reflection period can be waived at the sole discretion of the person.**

RNAO maintains that there is a delicate balance between having safeguards in place to protect vulnerable Canadians and creating unnecessary barriers in access to MAID that may contribute to prolonged physical and psychological suffering. The survey results from the Government of Canada's public consultation in early 2020 demonstrated that there were differing views on the length of reflection period and some respondents suggested certain situations in which this period should be shortened or removed.[11] The lack of clear consensus points to the need for a more flexible and person-centred approach[12] that maintains the current 10 day reflection period in legislation for when natural death is foreseeable, with an amendment to allow the reflection period to be waived at the sole discretion of the person. Under current legislation, the MAID assessors can, under certain circumstances, waive the 10 day reflection period[13], which reinforces the providers' inherent power over decision-making when it comes to the provision of MAID.

- **Eliminate the clause outlining the requirement for at least one of the MAID practitioners to have expertise in the condition that is causing the person's intolerable suffering where natural death is not foreseeable—rather seek consultation from a practitioner with such expertise who is not directly involved in MAID provision for that individual when needed.**

Access to MAID remains an issue in some geographic areas across Canada; thus, requiring one of two MAID practitioners to have expertise in a person's condition may create an additional barrier to MAID access in those areas. In Canada, MAID is primarily provided by physicians (94.1 per cent) and was reported to have been provided most frequently by family medicine physicians in 2019.[14] In rural and remote communities, it may already be a challenge to gain access to two qualified practitioners with expertise in MAID eligibility assessment (physicians and/or NPs), even without the expectation that they have expertise in the complex underlying medical conditions of those being assessed for MAID. Currently, MAID assessors can and do seek expert consultation from practitioners on certain conditions when needed. RNAO recommends language in Bill C-7 that provides for expert consultation to maintain safeguards, without compromising equity of access and without contributing to undue delays and enduring suffering.

- **Add a clause requiring high-quality and culturally-sensitive psychosocial support for all persons inquiring about, considering or deciding to pursue MAID from the time of initial conversations respecting MAID through to time of death.**

Patients must receive high-quality and culturally-sensitive psychosocial support at every step of the MAID process, from initial consideration through to death. All health care providers in the care team must respect the patient's request, their values, preferences, and unique psychosocial needs. A cohort study on the early experiences with medical assistance in dying in Ontario, found that MAID was unlikely to be driven by social or economic vulnerability—as recipients of MAID were younger, had higher income, were substantially less likely to reside in an institution and were more likely to be married than the general population.[15]

- **Amend the clause requiring that, when natural death is not reasonably foreseeable, a person be informed of and offered available means to relieve suffering, such as counseling services, palliative care, mental health and disability support services to include circumstances when natural death is foreseeable.**

As part of informed consent in the context of MAID, the availability of and information about high-quality relevant health care services, including counseling, palliative care, mental health and disability services are crucial. RNAO recommends that this new clause under Bill C-7 be extended to when natural death is foreseeable as well. In addition, the complementary clause requiring both of the presiding physicians and/or NPs to have discussed with the person the reasonable and available means to relieve the person's suffering should also be applied when natural death is foreseeable and not solely for cases when death is not reasonably foreseeable. Extreme caution and a person-centred philosophy must be taken when reviewing Bill C-7 clause-by-clause to consider disability inclusion and systemic disability discrimination.

- **Add a clause outlining virtual care options to increase accessibility to MAID for all persons, in particular those in rural and remote communities across Canada.**

Amid the COVID-19 pandemic, physician and NP MAID assessors are utilizing virtual care options where possible as an alternative to direct patient contact. A virtual option for witnessing a patient's request for MAID should be clearly outlined in Bill C-7, as should a virtual option for MAID assessment when it is suitable and increases accessibility to MAID in a safe manner. Virtual care options can allow for opportunities for expert consultations without the need for travel to rural and remote communities. During the pandemic, certain areas of Ontario shut down MAID services to prevent the transmission of COVID-19 and to conserve health care resources.[16] RNAO recommends exploring innovative options, including virtual care options, to increase and maintain accessibility to MAID under all circumstances.

- **Add a clause mandating a parliamentary review be conducted after 5 years, with consideration of mature minors, advanced requests, and cases where psychiatric illness is the sole diagnosis for inclusion in MAID legislation.**

The enactment of Bill C-14 in 2016 provided for a parliamentary review of its provisions and of the state of palliative care in Canada after 5 years. Given that there are substantial changes to the MAID regime proposed with Bill C-7, it is imperative that another parliamentary review of its provisions and of the state of palliative care in Canada is mandated five years following the day on which Bill C-7 receives royal assent. A number of issues remain outstanding in Bill C-7,

which warrants further time for parliamentary review and full discussion engaging key stakeholders, including RNs and NPs, to identify critical factors related to consideration of additional populations—mature minors, advanced requests, and cases where psychiatric illness is the sole diagnosis—for inclusion in MAID legislation.

"Quality hospice palliative care neither hastens death or prolongs life."[17]

Policy recommendations:

- **Provide funding for equitable access to treatment options to relieve pain and suffering—including high-quality counseling services, mental health and disability support services, community services and palliative care—across all provinces/territories.**

RNAO's Best Practice Guideline, *A Palliative Approach to Care in the Last 12 Months of Life*, states that "…persons facing any diagnosis—regardless of prognosis and age—who have unmet needs and/or expectations can have palliative care and end-of-life care when they are ready to accept it".[18] Likewise, the Australian National Palliative Care Standards reinforce the breadth of palliative care and the need for this full range of services for persons and their families at end-of- life.[19] While quality comprehensive palliative care is a companion to quality end-of-life care, both must be seen as distinctive practices.[20] In this regard, funding and resource support to enable equitable access to palliative care is necessary to ensure a peaceful end-of-life, whether occurring naturally or through MAID. Quality end-of-life care is supported by knowledgeable professionals, includes counseling that is aligned with cultural beliefs, and occurs within an environment of choice for the person. Effective MAID services can only be offered within such a context.

- **Collaborate with provincial/territorial governments to ensure MAID practitioners are fairly and equitably compensated for providing MAID when the service is provided outside of their usual role with their employer, including fair and equitable compensation for NPs who are MAID providers in Ontario.**

As identified in the government's 2019 annual report on MAID, many provinces still do not have a specific fee-for-service code for provision of MAID. Additionally, NP providers, paid by salary, often are not supported by their employer to provide MAID services and carry out such interventions outside their usual role without any compensation.[21] This has yet to be fully addressed. We also know that NP providers in Ontario are not compensated in a way that acknowledges the skill level, time and emotional intensity involved. Nor is this compensation equitable to other MAID practitioners.[22] With less than 1 per cent of Ontario NPs providing this service and the intent of Bill C-7 to expand eligibility for MAID services, it is imperative that practitioners be adequately supported through fair and equitable compensation. Attention to remuneration and system supports for MAID providers will go a long way to increase capacity, and must be a strong consideration as part of in Bill C-7.

- **Commit to robust education, training and practice supports for all health care professionals, in particular RNs and NPs directly or indirectly involved in MAID provision.**

Provision of quality MAID services with necessary supports and palliative resources requires a specific knowledge base that is currently not part of the curriculum for health care professionals. Evidence shows that practitioners directly involved in MAID service provision and those indirectly involved, in particular RNs and NPs, need and want education to provide culturally sensitive and holistic end-of-life care.[23] Indirect involvement may include enabling MAID service discussions and referrals in organizations not providing such services. In addition, indirect involvement extends to those acting as a witness, necessary in situations where persons consider staff who are not engaged in their MAID eligibility assessment, among those who can identify them. This sometimes becomes a challenging situation for health professionals who are prevented from carrying out this role. We recommend that legislation address the responsibility of organizations to enable care providers within their organization to act as witnesses as part of the MAID provision, if they choose.

Training must be available through basic curricula for health practitioners as well as through robust continuing education programs. Many RNs and NPs as health care providers with extensive patient contact across all sectors, including home and hospice care centres, inevitably are involved when a person in their care requests MAID. They too benefit from access to education, training and practice tools.[24] Organizations and services offering MAID must be funded to educate and provide support to a range of health care professionals, including those in management and leadership roles.

- **Implement, with funding, the national comprehensive, evidence-based palliative care framework to guarantee palliative care services are available to every Canadian in need, regardless of geographic location.**

In 2018, Health Canada released the *Framework on Palliative Care in Canada.*[25] However, to date there has been little progress on national uptake and funding to enable the goals of: clarifying the intent of the framework; aligning activities to harmonize work within and between governments and stakeholders; and, influencing the improvement of palliative care in Canada. According to the First Annual MAID report, 82.1 per cent of persons receiving MAID were reported to have received palliative care services.[26] However, the quality and nature of these services was not definitive. This same result was corroborated through stakeholder consultations by RNAO that reinforced quantity does not always equate to quality when it comes to health care services. More work needs to be done to achieve the goal of equitable access to quality comprehensive palliative care regardless of geography or whether dying is natural or assisted. RNAO calls for urgent attention to this recommendation in the wake of Bill C-7 to ensure that Canada delivers on quality services that support the right to die as well as the right to comprehensive palliative care.

Conclusion

RNAO appreciates the opportunity to provide input to the Standing Committee on Justice and Human Rights regarding amendments to the MAID legislation under Bill C-7. In navigating the complex moral and legal landscape surrounding MAID, we thank the Committee members for considering the recommendations outlined by RNAO aimed at strengthening Bill C-7.

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