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BILL C-7, AN ACT TO AMEND THE CRIMINAL CODE (MEDICAL ASSISTANCE IN DYING)

**Submission to the House of Commons Standing Committee
on Justice and Human Rights**

November 03, 2020

The Canadian Nurses Association is a powerful, unified voice for the Canadian nursing profession. We represent nurses in all 13 jurisdictions as well as retired nurses from across the country. We advance the practice and profession of nursing to improve health outcomes and strengthen Canada's publicly funded, not-for-profit health system.

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Introduction

The Canadian Nurses Association (CNA) has been actively involved in work related to medical assistance in dying (MAID) for several years (see [Appendix A](#)). Nurse practitioners, physicians, pharmacists and “persons aiding practitioners” (including regulated nurses) are permitted to help those who have explicitly requested MAID. Health-care providers are in a unique position compared with five years ago. Nurses and nurse practitioners are an integral part of the delivery of MAID and have acquired significant knowledge and experience from nearly five years of MAID in practice. In particular, ongoing research into nurses’ experiences with MAID has confirmed the existence of anticipated dilemmas while uncovering new and unanticipated challenges.

The federal government has moved forward with legislation that responds to the September 2019 *Truchon* decision from the Superior Court of Quebec. Bill C-7 has implications for the nursing workforce and nurses can bring their knowledge to bear in informing impending changes to federal legislation.

In December 2019, prior to the February 2020 introduction of Bill C-7, CNA met with Health Canada and the Department of Justice. The aim was to start a conversation on ways nurses’ knowledge and experience could inform potential amendments and revisions to the Criminal Code’s provisions related to MAID. CNA also reached out to our network of nursing experts to identify regulated nurses who have participated in supporting patients, families and health-care providers.

Following the December meeting, and in collaboration with the Canadian Nurses Protective Society (CNPS), CNA then hosted a series of small group meetings early in 2020 to engage with nurses experienced in MAID. The findings from those meetings supported the development of recommendations in a submission¹ to the government in January 2020 to help inform the development of Bill C-7. CNA’s January 2020 submission also included key findings from the first two years of a three-year Canadian research study on nurses’ experiences with MAID.

With the evolution of the COVID-19 pandemic, much of CNA’s work, including that related to MAID, was put on hold. Now with the government’s re-introduction of Bill C-7 on October 5, 2020, CNA re-engaged with nurse key informants, as well as CNPS, to help inform our position

¹ Canadian Nurses Association, January 2020, Amendments and Revision of the Criminal Code of Canada Provisions on MAID. Submission to the Minister of Health and Department of Justice. Available at: https://www.cna-aiic.ca/-/media/cna/page-content/pdf-en/2020_amendments-and-revision-to-criminal-code-re-MAID_e.pdf?la=en&hash=36ACA4CAE9A7A3B5251E09038141EA752FCE12C1



regarding proposed amendments to the Criminal Code under Bill C-7. CNA wishes to reiterate its gratitude to CNPS for its continued partnership on work related to MAID.

CNA understands the government has reintroduced Bill C-7 to respond to the Superior Court of Quebec's decision by December 18, 2020. Although time for more thorough consultations would have been preferred, CNA was able to obtain some input from nurses. However, it should be noted that while these engagements did garner informative feedback, CNA does not consider this effort a comprehensive consultation of nurses.

CNA also understands that at this time, the standing committee on justice and human rights will be focused on proposed legislative changes under Bill C-7. CNA strongly recommends and encourages parliamentarians and the government to undertake as soon as possible a broader review of MAID and the state of palliative care in Canada. This review could include consideration of advanced requests, mature minors, and situations where mental illness is the sole underlying medical condition.



CNA's recommendations

CNA believes that the federal government has listened to our initial feedback, which was put forward on behalf of nurses and nurse practitioners during the consultation phase at the beginning of 2020. We are pleased to see some of our initial recommendations incorporated in Bill C-7, such as the following:

- ▶ Removal of the 10-day reflection period
- ▶ Removal of final consent for those who lose capacity
- ▶ Amendment of the legislation to allow for one independent witness, instead of two
- ▶ Inclusion of a section on advance consent for self-administration
- ▶ Inclusion of a section on ensuring that the patient has been informed of available means to relieve suffering, including counselling services, palliative care and mental health and disability support services
- ▶ Recognition of the need for an in-depth review of current MAID legislation, with potential expansion to include mature minors, advanced directives and cases where psychiatric illness is the sole diagnosis

Bill C-7 proposes the creation of a new stream for cases where natural death is not foreseeable; CNA believes that, overall, these proposed provisions and additional safeguards are adequate and sufficient. Legal expertise for updating MAID guideline documentation will be critical to ensure all new items in the legislation are explicitly acknowledged and understood by patients and practitioners.

Although CNA supports Bill C-7, we believe that further improvements to the Criminal Code and clarification of proposed amendments are needed. The following four proposals will strengthen the legislation and provide better care for patients and legal protection for nurses.

1. Initiation of the discussion on MAID

CNA recommends amending subsection **241(5.1)** of the Criminal Code to stipulate that its exemption applies notwithstanding that the health-care professional may have initiated the discussion about the lawful provision of MAID.

Nurses have spoken about situations in which they felt it would have been helpful for patients to have information about MAID. These nurses said MAID was not raised in these situations because of the way the law is currently written, and nurses subsequently felt that they were



not offering all available options to their patients. Clarity in the Criminal Code would be beneficial to nurses who find the law unclear.

As suggested by our partners at CNPS, the revised Criminal Code section could read as follows:

Criminal Code	Proposed change
241(5.1) 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.	241(5.1) 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, <u>whether or not the health care professional initiates the discussion.</u>

2. Connection to another practitioner

CNA recommends removing wording in **s.241.2 (6) (c)** that stipulates that the practitioner providing MAID does not know or believe that they are connected to the other practitioner who assesses if the person making the request meets the criteria. CNA is concerned that in rural and remote settings, for example, this provision could act as a barrier given that, in these areas, practitioners are more likely to know each other.

Criminal Code	Proposed change
241.2 (6) (c) do not know or believe that they are connected to the other practitioner or to the person making the request in any other way that would affect their objectivity.	241.2 (6) (c) do not know or believe that they are connected to the other practitioner or to the person making the request in any other way that would affect their objectivity.

3. Clarification of preliminary assessments

Key informants and our partners at CNPS are concerned with proposed **s.241.31 (1.1)**, which introduces a reporting requirement for preliminary assessments. However, the term is undefined in the legislation and would need to be reported as part of the MAID monitoring regulation. **CNA believes clarification from the government, discussion with stakeholders and further consultations are required before moving forward with this provision.** Preliminary assessments could create an additional barrier to access MAID and lead to confusion and uncertainty of roles. It could potentially result in increased administrative burden and unreasonable workloads that do not provide helpful data. Furthermore, it is not clear if a



preliminary assessment would be a new reporting requirement or part of what currently must be reported.

If parliamentarians decide to maintain this provision under Bill C-7, CNA urges that roles be clarified and reporting processes be developed as MAID monitoring regulations are developed. Preliminary assessments must be explicitly defined to prevent misinterpretation of role clarity and accountability of who completes legal requirements.

4. Additional review of the act

CNA recommends amending Bill C-7 to include a provision that would mandate an additional review of MAID by a committee of Parliament after five years. This would provide an opportunity for a more comprehensive consultation on MAID, as well as an examination of issues that may occur as a result of Bill C-7.

Proposed change
<u>Review of Act</u>
<u>Review by committee</u>
<u>(1) At the start of the fifth year after the day on which this Act receives royal assent, the provisions enacted by this Act are to be referred to the committee of the Senate, of the House of Commons or of both Houses of Parliament that may be designated or established for the purpose of reviewing the provisions.</u>
<u>Report</u>
<u>(2) The committee to which the provisions are referred is to review them and the state of palliative care in Canada and submit a report to the House or Houses of Parliament of which it is a committee, including a statement setting out any changes to the provisions that the committee recommends.</u>

Further considerations

- ▶ **Voluntary vs. involuntary movements, sounds or gestures:** Bill C-7 allows the waiver of final consent via written agreement in cases where natural death is foreseeable and the person loses capacity to consent. To receive MAID, the person must not demonstrate refusal or resistance, by words, sounds or gestures. Bill C-7 further states that involuntary words, sounds or gestures made in response to contact do not constitute a demonstration of refusal or resistance.



- Some nurses stated that Bill C-7 needs further clarification due to concerns that involuntary movements, sounds or gestures could be interpreted as refusal of MAID and lead to provider uncertainty. Other nurses highlighted that to resolve any uncertainties, the provider would need to conduct a clinical assessment and, if needed, seek additional input.
 - CNA recommends that this issue should remain an area of attention and be included in any future consideration or review of MAID. Further clarification and guidance can be sought with the development of new clinical practice guidelines.
- ▶ **Parliamentary review of MAID and the state of palliative care in Canada:** CNA strongly recommends that parliamentarians conduct the review (which is mandated by law) of the legislative provisions relating to MAID and the state of palliative care in Canada.
 - ▶ **Consideration of advanced requests, mature minors, and cases where psychiatric illness is the sole diagnosis.** Additional work and considerations are required to define the processes around patients representing these three special populations. A team of experts that includes nurses, physicians, social workers, among others, will need to map out the procedure for patients making advanced requests, mature minors, and patients whose sole diagnosis is psychiatric illness. Multiple aspects need to be considered such as time, written criteria, accountability and responsibilities.
 - CNA understands that there are some nurses in Canada who have concerns that not making MAID available as an option for persons where psychiatric illness is the sole diagnosis may be discriminatory. Additional consultation is required.
 - ▶ **Development of palliative care options and accessibility for all Canadians having life-limiting conditions.** CNA strongly recommends enhancing palliative approaches to care for all who are living with chronic and life-limiting conditions. Nurses strongly support the advancement of palliative service availability across the system as a necessary pre-condition for the safe and ethical development of MAID in Canada. Practice supports are critical to ensuring high-quality care in MAID.



Appendix A

SUMMARY OF CNA'S PREVIOUS RESPONSES AND RECOMMENDATIONS

CNA has been actively engaged in the consultations on MAID legislation following the 2015 Supreme Court of Canada decision in *Carter v. Canada*, up to the release of *Bill C-14: An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying)*. In appearances before and submissions to the legislative committees studying MAID in Canada and developing proposed legislation, CNA has advocated for safeguards to protect the rights of the patient and the nurse, as well as for system-level changes including access to palliative care and accountability mechanisms. CNA has put forward the following submissions:

- ▶ [Amendments and Revision of the Criminal Code of Canada Provisions on Medical Assistance in Dying: Submission to the Ministry of Health and Department of Justice](#) (January 2020)
- ▶ [Physician-Assisted Death: Brief for the Government of Canada's External Panel on Options for a Legislative Response to Carter v. Canada \(2015\)](#) (October 2015)
- ▶ [Suggested Amendments to the text of Bill C-14: Brief for the Standing Senate Committee on Legal and Constitutional Affairs](#) (May 2016)
- ▶ [Suggested Amendments to the text of Bill C-14: Brief for the House of Commons Standing Committee on Justice and Human Rights](#) (May 2016)

