The United Church of Canada General Council

Medical Assistance in Dying, 2020 Statement

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In May 2017, the General Council Executive of the United Church adopted a statement on Medical Assistance in Dying (MAID) that accepted Medical Assistance in Dying as an end of life option (see MAID report), concluding:

> We are not opposed in principle to the legislation allowing assistance in dying and to such assistance being the informed, free choice of terminally ill patients. There are occasions where unrelenting suffering and what we know about the effect of pain on the human body can make Medical Assistance in Dying a preferable option. However, we urge a cautious approach by legislators and medical professionals implementing these laws, as well as by individuals, families and communities of faith who are considering making use of this new legislative option. To this end, we advocate community-focused and theologically robust discernment on a case-by-case basis that also ensures the protection and care of those potentially made vulnerable by this new law and others like it.

In the months since this report was adopted challenges to the legislation governing Medical Assistance in Dying have arisen, focussed primarily on three questions: access to MAID for those suffering mental illness; the use of advance directives (an advance directive is written instructions about what health care you do or do not want in the future if you become incapable and a health care decision needs to be made); and the age of consent for access to MAID. In October 2019 the Quebec Superior Court decision in the Truchon case struck down the federal and Quebec legislative requirement for a “reasonably foreseeable natural death” or “end of life” in requests for Medical Assistance in Dying, declaring it unconstitutional. The ruling required the federal and Quebec governments to amend their legislation.

The United Church 2017 statement did not specifically offer guidance on these issues. Given the questions arising for people in the United Church engaged in discussion around end-of-life decisions, including those considering MAID or offering pastoral care to those wrestling with such a decision, it is timely to encourage reflection on these issues within the church. Consistent with the previous report, the Theology and Inter-Church Inter-Faith Committee again seeks a reasoned position that accords with our tradition and views the issues through the lens of the previous report, which emphasizes that a decision for MAID must be the result of a free and informed choice.

1. Criterion of Foreseeable Death

The Quebec Superior Court in its October 2019 decision in the Truchon case struck down the requirement in the federal and Quebec legislation that a person seeking MAID be facing a “reasonably foreseeable natural death.” Removing this “end of life” criterion will expand MAID so it is not only for those who are dying, but for those who have a disability. This raises a serious concern for many disabled people that a message is sent that they are not needed and their gifts are not valued, impacting the perceptions of those both with and without disabilities. The removal of the end of life requirement would treat the suffering of disabled people differently from other groups in society, with the state signalling that disabled people, unlike others, have no hope and are irremediable.

Essentially, the failure of MAID legislation to include an end of life criterion would significantly discriminate against disabled people. Such a criterion is justifiable as protecting the equality of disabled people. Our conclusion, like that of virtually every disability organization in Canada, is that the criterion of death being reasonably foreseeable and natural must be maintained.

2. Mental Health

At present the criterion of “foreseeable death” has prevented MAID being an option for those who seek MAID for a mental illness. Pressure for change in this aspect of the legislation has come from those who argue that they have suffered enough mental health anguish and should be able to have this suffering terminated.

The experience of mental health professionals suggests that with time and resources enough, most mental health conditions can be improved. In responding to mental health

issues, it is important for the church to ask, what are the resources available to people suffering mental illness, and how can access to resources be improved?

The 2017 statement emphasized that people's sense of being a burden should not be a reason for MAID. It affirmed that MAID "must not be viewed as a way to curb health care costs or system burdens by terminating lives, or as a means to remove people from society because they are seen as a liability." The concern about "exploiting the hopelessness that can result from the stigma and negative stereotypes of disability being irremediable" is particularly relevant for questions of MAID in relation to mental health. At the same time, opening access to MAID for persons suffering mental illness risks furthering the vulnerability of those who have been subject to social pressures to meet societal definitions of what is "normal" or constitutive of a "good life."

Our conclusion is that we do not support opening MAID for mental health disorders because they do not meet the criterion of "foreseeable death."

3. Advance Directives

The use of advance directives is advocated by people who fear a loss of control with a failing ability to make decisions, as in the case of a diagnosis of dementia or Alzheimer's Disease. They would support advance planning for the end of life, focussing on cognitive inability to make decisions. People who advocate for disabled people oppose this change, suggesting it crafts a process that treats the life of one group of people as not worth living. There is also concern about the role of a substitute decision-maker and the power they have when it comes to implementing an advance directive.

The following quotation from a 2016 submission by past moderator Jordan Cantwell to the joint parliamentary committee preparing the original MAID legislation argues against allowing for advance directives. Allowing Medical Assistance in Dying

> in [such] cases after the person has lost reasoning capacity and can no longer initiate the act themselves (regardless of the extent of the advanced directives) raises profound questions of personal responsibility for the action. To imagine a society where, as a matter of course, individuals who had reached a certain stage of dementia would be euthanized is inconceivable, regardless of whether the action is supported by end of life directions. It would still of necessity involve

someone other than the individual making the final determination. It also could potentially lead to unconscious or more blatant societal coercion that such directives were expected.

The submission concludes that the difficult reality of dementia-related illnesses would best be addressed through the development of better care options and facilities.

The argument in support of advance directives has also been put forward in relation to ALS and similar conditions. In fact, alternative communication strategies are used to ensure that those people who can give informed consent are able to communicate that effectively.

Thus, the commitment of the church to hold together both individual agency and our covenant to each other in both living and dying, expressed as protection and care of the most vulnerable in our society, leads to the recommendation that advance directives not be an option in MAID legislation.

4. Age of Consent

The present age of consent for MAID in federal legislation is 18. In other major medical procedures, there is a process by which a physician, in conjunction with other agencies (e.g., Children's Aid Society, legal system) and the child's family, seeks to determine on a case-by-case basis the capability of a mature minor to make decisions about their treatment. This practice supports agency for young people in the context of community. While recognizing that there is the likelihood of conflicts between minors and parents, as there is in other situations, for young people as for others, end of life decisions should be made in community, with family, health care professionals and spiritual care practitioners. We support such a case-by-case process regarding access to MAID for patients who are under the age of 18.

Conclusion and Recommendations

In response to these issues, it is important to emphasize again the need for more dialogue around death and dying, in the church and in the wider community. As well, there continues to be a need for attention to palliative care needs, and expansion of facilities for palliative care, and resources for pain management.

Keeping these conditions in mind, together with the church's commitment to free and informed choice made in the context of community, the Theology and Inter-Church Inter-Faith Committee recommends:

1. That the criterion of "foreseeable death" for access to Medical Assistance in Dying be maintained.
2. That ending suffering due to mental illness not be a category for MAID, and that the church advocate for increased mental health resources.
3. That advance directives in relation to MAID not be permitted.
4. For mature minors, capacity to make a decision for MAID be judged on a case-by-case basis, by medical professionals in consultation with family and community.

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