

2023 Glassen Ethics Essay Competition: Should Canada make medical assistance in dying (MAiD) available to people with mental illnesses?

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Medical assistance in dying (MAiD) is a process by which individuals request help from a doctor or nurse practitioner to end their life, through the use of medication taken intravenously or orally.¹ After the Supreme Court decision *Carter v. Canada* in 2015, Canadian Parliament passed a law legalising MAiD that came into effect the following year.² In general, eligibility for MAiD, under the new laws, has been based on three main criteria: the patient's illness is irremediable, the patient's death is reasonably foreseeable, and the patient has provided informed, voluntary consent.³ These criteria met, with the approval of two independent medical personnel, the application of MAiD may proceed legally. However, who exactly might be eligible for MAiD remains controversial. The question of whether to allow MAiD for the mentally ill strikes at core issues related to bodily autonomy and presents a unique challenge for defenders of legal MAiD. The criteria normally applied in determining eligibility, especially the first and second cited above, generate the main tension with regards to MAiD for the mentally ill. However, through a close examination of the main arguments for legal MAiD, it becomes clear that there are strong utilitarian grounds to argue the mentally ill ought to have the right to MAiD, so long as some safeguards are put in place.

There are three main arguments for legal MAiD. The first is tied into Kantian notions of autonomy, and the right of individuals to make decisions for themselves, based on their status as rational and autonomous beings. Though Immanuel Kant himself famously argued against all forms of suicide, his theory of autonomy, as reformulated by John Rawls, can be used to justify

¹ Ministry of Health, "Medical Assistance in Dying," Province of British Columbia, May 10, 2023, <https://www2.gov.bc.ca/gov/content/health/accessing-health-care/home-community-care/care-options-and-cost/end-of-life-care/medical-assistance-in-dying>.

² Department of Justice Government of Canada, "Canada's Medical Assistance in Dying (Maid) Law," Government of Canada, Department of Justice, Electronic Communications, June 19, 2023, <https://www.justice.gc.ca/eng/cj-jp/ad-am/bk-di.html>.

³ Ibid.

MAiD.⁴ The second argument is libertarian. From this perspective, the idea of self-ownership provides justification. Going as far back as John Locke, the concept of self-ownership has been used to assert self-determination and individual autonomy.⁵ According to this argument, since one's death does not infringe the liberty of anyone else, everyone enjoys the right to MAiD, as masters of their own bodies and fates; people should be able to dispose of themselves as they please.⁶ Both Rawls and libertarian theorist Robert Nozick agree that for the terminally ill, "such rights [to MAiD]" deserve "recognition."⁷ Finally, there is the utilitarian argument for MAiD. If the rest of someone's life will be spent suffering, then it follows that someone should be allowed to choose MAiD to die in dignity and comfort, for the sake of avoiding pain, especially if the patient would likely attempt suicide on their own. The libertarian argument fails where utilitarianism succeeds; self-ownership extends a flawed vision of markets to human personhood. People have duties and bonds to their community and society. Others have a stake in an individual's decision to seek MAiD, since it has an effect on the rest of society. The utilitarian appeal to the collective provides more effective justification. Indeed, utilitarian arguments were

⁴ Elvio Baccharini, "Rawls and the Problem of Euthanasia," ResearchGate, January 2001, https://www.researchgate.net/profile/Elvio-Baccarini/publication/259891510_Rawls_and_the_Question_of_Physician-Assisted_Suicide/links/02e7e52e6d01df38fb000000/Rawls-and-the-Question-of-Physician-Assisted-Suicide.pdf.

⁵ Johan Olsthoorn, "Self-Ownership and Despotism: Locke on Property in the Person, Divine Dominion of Human Life, and Rights-Forfeiture: Social Philosophy and Policy," Cambridge Core, February 10, 2020, <https://www.cambridge.org/core/journals/social-philosophy-and-policy/article/selfownership-and-despotism-locke-on-property-in-the-person-divine-dominium-of-human-life-and-rightsforfeiture/62B4312A7B2054DACC1AC383BA7269A5>.

⁶ "Euthanasia," Libertarianism.org, accessed June 28, 2023, <https://www.libertarianism.org/topics/euthanasia>.

⁷ "Philosophy 12B," Social Justice, accessed June 28, 2023, [https://people.brandeis.edu/~teuber/justice09paptop4\(a\).html](https://people.brandeis.edu/~teuber/justice09paptop4(a).html).

taken up, among others, by the Supreme Court in *Carter*; in its decision, the Court wrote that forbidding the administration of MAiD is “cruel.”⁸

The objection to cruelty reflects the utilitarian argument for MAiD; legal MAiD exists to alleviate suffering and to allow a dignified death for the terminally ill. By this logic, there are equal grounds for at least some of those who are mentally ill to receive MAiD. Physical and mental anguish can be just as severe in terms of the suffering they can inflict on the individual. Mental anguish, like physical illness, can become intractable and irremediable. Indeed, mental illnesses are not generally curable, although their character may change over time, and their impact might be limited in various ways, such as through counselling or medication.⁹ It stands to reason that someone with an intractable mental illness ought to be eligible for MAiD.

Admittedly, there are numerous special challenges to consider in the case of mental illness, starting with assessment. It is easier to predict that a patient will die of cancer than to foresee the course of severe depression. One in three schizophrenia patients recover with treatment. Some medical professionals contend that it is impossible to tell whether mental illness is permanent and incurable.¹⁰ Therefore, an argument in relation MAiD that seems specifically applicable to those with mental health issues is that a patient seeking MAiD should have a documented “enduring desire to die,” to avoid the possibility that they seek out death during a period of acute yet temporary mental anguish.¹¹ Because of their mental illness, or due to a

⁸ 2015 SCC 5 (CanLII) | *Carter v. Canada* (attorney general) | canlii, accessed June 29, 2023, <https://www.canlii.org/t/gg5z4>.

⁹ “Information about Mental Illness and the Brain - NIH Curriculum,” National Library of Medicine, accessed June 29, 2023, <https://www.ncbi.nlm.nih.gov/books/NBK20369/>.

¹⁰ Meera Mahendiran, “Mental Health and Maid: An Ongoing Challenge,” *Healthy Debate*, September 7, 2021, <https://healthydebate.ca/2021/09/topic/mental-health-and-maid/>.

¹¹ Robert Young, “Voluntary Euthanasia,” *Stanford Encyclopedia of Philosophy*, May 24, 2022, <https://plato.stanford.edu/entries/euthanasia-voluntary/#FiveCondOftePropNeceForCandForVoluEuth>.

depressive episode brought on by a physical illness, the patient may be unable to judge their own long term quality of life accurately; such patients would no longer be rational actors. The spectre of Kant's opposition to suicide would haunt the MAiD debate.

It is important to note that some form of mental illness does not necessarily render a patient mentally incompetent. It is possible that a mental illness is truly irremediable and the patient has not but a life of suffering to which to look forward. A measured solution ought to involve safeguards. First, regular review and assurance of voluntary consent throughout the process must be carried out. Second, the imposition of a waiting period between the time that MAiD is requested and administered, already supported by some proponents of the practice,¹² would help patients establish irremediability; their suffering can be documented as sustained. The third measure is expert review to ensure that the patient is making independent and reasoned decisions. Some rights theorists might balk at the imposition of any restrictions on MAiD, but there are clear social interests in protecting against outside manipulation or coercion, alongside ensuring that the patient is proceeding responsibly. MAiD ought to be a last resort, used to alleviate suffering when treatment fails; treatment must first be provided. Human life is the most important good that exists. However, allowing every person to avoid pointless suffering, no matter the form, is the best way to ensure a happier and more just world.

¹² Robert Young, "Voluntary Euthanasia," Stanford Encyclopedia of Philosophy.

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