



BACKGROUND PAPER

**ASSISTED DYING IN CANADA
AFTER *CARTER V. CANADA***

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Assisted Dying in Canada After Carter v. Canada
(Background Paper)

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EXECUTIVE SUMMARY

In February 2015, the Supreme Court of Canada released *Carter v. Canada (Attorney General)* (the *Carter* decision), an important decision about the law on assisted dying. The law had been unsuccessfully challenged twenty years earlier at the Supreme Court in *Rodriguez v. British Columbia (Attorney General)*. In the *Carter* decision, the Court found that the *Criminal Code* provisions that make it a crime to help a person end their life violate the *Canadian Charter of Rights and Freedoms*. As a result, the Government of Canada, Parliament and some groups reviewed the law surrounding assisted dying and considered options for changing it. In Parliament, a joint Senate and House of Commons committee studied the issue and made recommendations to the government about what a new law should include. In its report, released in February 2016, the committee used the term “medical assistance in dying,” or MAID.

In April 2016, the Government of Canada tabled Bill C-14, An Act to amend the *Criminal Code* and to make related amendments to other Acts (medical assistance in dying). The bill set out rules about who could have access to MAID and what steps medical practitioners and nurse practitioners had to take to make sure the person qualified for MAID. This included making sure that two independent medical or nurse practitioners reviewed the patient’s case and agreed that the patient met the criteria for MAID (including having a “grievous and irremediable medical condition” and being in a state in which “natural death has become reasonably foreseeable”). They were also required to ensure that the patient was not pressured by anyone into making the decision to have MAID.

Bill C-14 became law in June 2016. The law was challenged almost immediately as being too restrictive. In September 2019, the Superior Court of Quebec struck down the part of the law that said that a person’s death had to be “reasonably foreseeable” to access MAID. Since then, Prime Minister Justin Trudeau has noted that he would be introducing amendments to the law to make it broader.

Not everyone agrees with the practice of MAID, and health professionals who feel that MAID goes against their conscience or religious beliefs have sought to ensure that they are protected from having to participate in MAID. Some of the medical professional regulatory bodies have policies that state that a medical practitioner who objects to MAID because of conscience or religion must provide an “effective referral” if a patient wants MAID.

The law requires that three further issues related to MAID be independently reviewed: MAID for “mature minors,” i.e., children who have the mental capacity to make their own decisions about treatment; advance requests for MAID, meaning that an individual can give consent to MAID sometime in the future while the person is still mentally competent to do so; and MAID for someone who is not physically ill but rather has a mental disorder.

The Government of Canada asked the Council of Canadian Academies (CCA) to study these issues. The CCA brought out three detailed reports in December 2018 that reviewed the experiences of other countries that allow MAID and the possible effects in Canada of allowing MAID in the three scenarios examined. The reports also outlined where there were information or knowledge gaps.

The law on assisted dying also addressed the need to collect information about MAID. In November 2018, regulations came into force that set out what MAID information must be provided to the Government of Canada. Under the new regulations, Health Canada will publish annual reports with information collected from medical practitioners and nurse practitioners. The first report is expected in spring 2020.

ASSISTED DYING IN CANADA AFTER CARTER V. CANADA

1 INTRODUCTION

In 2015 in *Carter v. Canada (Attorney General)*¹ (the *Carter* decision), the Supreme Court of Canada declared that sections 241(b) and 14 of the *Criminal Code* (Code), which prohibited assistance in terminating life, infringed upon the right to life, liberty and security of the person for individuals who want access to an assisted death.²

Bill C-14, An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying)³ was the federal legislative response to the *Carter* decision. The bill received Royal Assent in June 2016. As a result, medical practitioners and nurse practitioners who provide medical assistance in dying (MAID) to patients who meet the eligibility criteria contained in the law are exempt from the prohibition if they comply with all aspects of the law.

When Bill C-14 was introduced, Quebec had already given Royal Assent to its own assisted dying law, *Act respecting end-of-life care*, which has different criteria.⁴ On 29 November 2019, an expert panel in Quebec recommended that the Quebec law be expanded to allow a person to provide advance consent for MAID.⁵ Other provinces and territories have also developed their own policies and guidelines relating to MAID.⁶

The law relating to MAID and its practice by health care providers continues to evolve in Canada. High-profile cases, such as that of Audrey Parker,⁷ who chose to end her life using MAID earlier than she would have preferred because she feared she would lose the capacity to consent, and Mary Wilson,⁸ a woman with dementia who sought MAID, continue to generate discussion about the appropriate limits for assisted dying in Canada.

In September 2019, the Superior Court of Quebec struck down the MAID requirement that a person's death be "reasonably foreseeable."⁹ Following the October 2019 federal election, Prime Minister Justin Trudeau announced that he would be introducing amendments to expand the law.¹⁰

This Background Paper highlights some of the key issues and developments that have taken place in Canada in the wake of the *Carter* decision, including the work of the Special Joint Committee on Physician-Assisted Dying (the Committee), the introduction of Bill C-14, reviews of selected issues by the Council of Canadian Academies (CCA), MAID reporting requirements, and the conscience rights of health care providers.¹¹ Background on the history of assisted dying in Canada can be found in the Library of Parliament publication *Euthanasia and Assisted Suicide in*

Canada,¹² and information on assisted dying in other jurisdictions can be found in *Medical Assistance in Dying: The Law in Selected Jurisdictions Outside Canada*.¹³

2 SPECIAL JOINT COMMITTEE ON PHYSICIAN-ASSISTED DYING

In response to the *Carter* decision, in December 2015, the Senate and House of Commons passed motions to establish a special joint committee that would review existing consultations and studies relating to assisted dying, carry out its own consultations, and “make recommendations on the framework of a federal response on physician-assisted dying that respects the Constitution, the [Canadian] *Charter of Rights and Freedoms*, and the priorities of Canadians.”¹⁴

The Committee’s February 2016 report contained 21 recommendations for a legislative response to assisted dying (which the Committee referred to as “medical assistance in dying,” or “MAID”), including eligibility requirements and procedural safeguards.¹⁵ The Committee’s report was not unanimous; some of the Conservative members of the Committee issued a dissenting opinion, while the New Democratic Party (NDP) members of the Committee issued a supplementary opinion on behalf of their party.¹⁶

Many of the Committee’s recommendations relating to eligibility requirements and procedural safeguards were included in Bill C-14. Recommendations that were not reflected in Bill C-14 included the following:

- that a psychiatric condition should not be a bar to eligibility (recommendation 3);
- that competent “mature minors” should have access to MAID within three years of the coming into force of the provisions relating to MAID for competent adults (and that during that three-year period, the issue of competent mature minors and MAID be examined) (recommendation 6); and
- that advance requests for MAID should be permitted in certain circumstances (recommendation 7).

3 BILL C-14, AN ACT TO AMEND THE CRIMINAL CODE AND TO MAKE RELATED AMENDMENTS TO OTHER ACTS (MEDICAL ASSISTANCE IN DYING)¹⁷

Bill C-14 was introduced in the House of Commons on 14 April 2016. The bill defined “medical assistance in dying” as

- (a) the administering by a medical practitioner or nurse practitioner of a substance to a person, at their request, that causes their death; or

(b) the prescribing or providing by a medical practitioner or nurse practitioner of a substance to a person, at their request, so that they may self-administer the substance and in doing so cause their own death.

The bill included amendments to the Code providing exemptions from criminal liability for a number of people, including medical practitioners and nurse practitioners who provide MAID and persons who assist them, e.g., pharmacists. In the context of individuals who have been approved for MAID and who choose to self-administer a substance to end their life, an individual who helps the person to self-administer would also be exempt.

Other Code amendments contained both eligibility criteria for individuals who seek MAID and procedural safeguards. To be eligible for MAID, a person must

- be eligible for government-funded health services in Canada (section 241.2(1)(a)) of the Code;
- be 18 years of age or older, and capable of making health-related decisions (section 241.2(1)(b));
- have a “grievous and irremediable medical condition” (section 241.2(1)(c));
- make a voluntary request for MAID that is not coerced (section 241.2(1)(d)); and
- after having been provided with information about ways to alleviate suffering, give informed consent to MAID (section 241.2(1)(e)).

To have a “grievous and irremediable medical condition,” a person must

- have a serious and incurable illness, disease or disability (section 241.2(2)(a));
- be in an advanced state of irreversible decline in capability (section 241.2(2)(b));
- have enduring physical or psychological suffering “that is intolerable to them and that cannot be relieved under conditions that they consider acceptable” (section 241.2(2)(c)); and
- be in a state in which “natural death has become reasonably foreseeable, taking into account all of their medical circumstances, without a prognosis necessarily having been made as to the specific length of time that they have remaining” (section 241.2(2)(d)).

Procedural safeguards include the following:

- A medical practitioner or nurse practitioner who provides MAID must first ensure that the individual meets the eligibility criteria (section 241.2(3)(a)).
- A second medical practitioner or nurse practitioner must confirm that finding (section 241.2(3)(e)).

- A written request for MAID must be signed in front of two independent witnesses (section 241.2(3)(c)).
- With permitted exceptions, there must be a waiting period of 10 days between the date a request for MAID is signed and the date MAID is provided (section 241.2(3)(g)).

The Code amendments also established offences for failing to comply with the safeguards (section 241.3), forging or destroying documents (section 241.4), and failing to comply with reporting requirements or contravening regulations (sections 241.31(4) and 241.31(5)).

The final version of the bill included a requirement that an independent review be conducted on three circumstances under which MAID is currently restricted. These include MAID for mature minors, advance requests for MAID, and requests for MAID where mental illness is the sole underlying condition. This requirement was added during the House of Commons Standing Committee on Justice and Human Rights' study of the bill. The results of that independent review are discussed in section 5 of this paper.

4 COURT CHALLENGES TO THE *CRIMINAL CODE* AMENDMENTS ON ASSISTED DYING

The sections below provide brief summaries of two cases, one from British Columbia and one from Quebec, that have challenged the assisted dying law.

4.1 JULIA LAMB

Shortly after Bill C-14 came into force in June 2016, the law was challenged by Julia Lamb, who has spinal muscular atrophy type 2, with the support of the British Columbia Civil Liberties Association (BCCLA). Ms. Lamb and the BCCLA challenged the law as being too restrictive by requiring that a person be in an “advanced state of irreversible decline” and that a person’s “natural death has become reasonably foreseeable.”

While there had been some pre-trial decisions in this matter, the case had not yet proceeded to trial when expert evidence put forward by the Attorney General of Canada contained the opinion that Julia Lamb would likely be found to meet the criterion of having a reasonably foreseeable natural death. The expert evidence noted:

While there was more caution in using shorter prognoses for interpreting reasonably foreseeable natural death in the first year, following the CAMAP [Canadian Association of MAID Assessors and Providers] Reasonably Foreseeable Clinical Practice Guideline and the *A.B. v. Canada* determination, some clinicians gained comfort with extending

prognostic timeframes out to many years. At the time Ms. Lamb filed her civil claim, the reasonably foreseeable natural death criterion may have been a barrier to her access.¹⁸

As a result of this evidence, with the understanding that Julia Lamb would likely qualify for MAID, counsel for the plaintiffs requested an adjournment of the trial for an unlimited period. It had been scheduled for November 2019.¹⁹

4.2 *TRUCHON C. PROCUREUR GÉNÉRAL DU CANADA*

Jean Truchon has cerebral palsy and in 2012, he was diagnosed with severe spinal stenosis and myelomalacia, which paralyzed his one functioning arm. Nicole Gladu was diagnosed with post-polio syndrome at the age of 47. Both had made a request for MAID and had been found to meet all of the eligibility criteria except for the requirement under the Code that their natural deaths be “reasonably foreseeable” (section 241.2(2)(d)) and the requirement of the Quebec assisted dying law that they be “at the end of life” (section 26(3)). They challenged those provisions as being contrary to the *Canadian Charter of Rights and Freedoms* (Charter).

On 11 September 2019, the Superior Court of Quebec declared that the Code provision that required death to be reasonably foreseeable was contrary to the rights to life, liberty and security of the person contained in section 7 of the Charter.²⁰ The judge also declared that section of the Code and the section of the Quebec assisted dying law that required that a person be “at the end of life” to be contrary to the equality rights provisions contained in section 15 of the Charter. The two sections of those laws were declared invalid, and the declaration of invalidity was suspended for six months. The applicants were granted a constitutional exemption permitting them to access MAID during the suspension period.

Neither the federal government nor the Government of Quebec appealed the ruling, and Prime Minister Justin Trudeau has announced that the federal government will be introducing amendments to the law.²¹

5 **COUNCIL OF CANADIAN ACADEMIES: MATURE MINORS, ADVANCE REQUESTS AND MENTAL ILLNESS**

As mentioned above, the federal assisted dying law required an independent review of issues relating to MAID for mature minors, advance requests for MAID and requests for MAID where mental illness is the sole underlying condition. In December 2016, the CCA was asked by the federal Minister of Health and the federal Minister of Justice and Attorney General of Canada to review those issues.

The CCA's panel included Canadian and international experts and was divided into three working groups to address the subject areas. As the summary of the three working group reports explains,

[t]he Panel's expertise covered academic, clinical, legal, and regulatory fields from the disciplines of medicine, nursing, law, bioethics, psychology, philosophy, epidemiology, anthropology, and sociology. The Panel was asked to identify the range of knowledge and evidence relevant to the charge, examine this body of evidence, and interpret it in the form of findings ... The Panel also recognized that the breadth of experience is limited, as a small number of jurisdictions permit some form of MAID, and fewer still permit MAID in the three topic areas. To support the Panel's evidence-gathering activity, a Call for Input was carried out, inviting written input from groups and organizations across Canada affected by, or involved in, MAID. In addition, an Elders Circle, facilitated by Indigenous Panel members, was held to provide insight into Indigenous perspectives on MAID, particularly with respect to the three topic areas.²²

The panel was asked to respond to general sub-questions applicable to all three topics and to unique sub-questions applicable to each topic considered on its own. The sub-questions that related to all three topics were as follows:

- the potential implications for affected persons;
- the possible impacts on society of allowing or prohibiting MAID;
- the risks and safeguards that could be considered in those contexts; and
- the knowledge and research gaps, both in Canada and abroad.

As part of the CCA's review, Indigenous panel members facilitated an Elders Circle to give some insight into Indigenous perspectives on MAID. The Elders Circle highlighted that Indigenous peoples in Canada had not been consulted in the context of MAID. The lack of consultation with Indigenous peoples was also raised during parliamentary consideration of Bill C-14.

5.1 MATURE MINORS

The working group that reviewed evidence relating to MAID for mature minors highlighted that "a key concern is finding a balance between keeping [mature minors] safe from harm, while, at the same time, respecting their rights by avoiding unfair and unethical restrictions."²³ The working group summary noted that "no evidence has established that a minimum age would be an effective safeguard for protecting those who are incapable of making an informed, voluntary decision about MAID."²⁴ They went on to observe, however, that not allowing minors to access MAID could result in a constitutional challenge.²⁵ Including criteria for minors, such as the requirement

that they have a terminal illness, and ensuring that capacity is assessed by a multidisciplinary team, could be potential safeguards.²⁶

The only jurisdictions that allow MAID for minors are the Netherlands and Belgium. In the Netherlands, MAID is permitted for children 12 and older, although parental consent is required for children between the ages of 12 and 16.²⁷ While Belgium does not impose a restriction on the minimum age for eligibility, it requires that a person have a capacity to judge, meaning that the person has “the full ability to judge the situation and the full weight of the request for and consequences of euthanasia.”²⁸ Unlike the law for adults, the Belgian law for minors provides that minors who wish to access MAID in Belgium must be terminally ill.²⁹

The working group found that “there are many gaps in knowledge that make it difficult to arrive at definitive answers.”³⁰ For example, there is limited information available on the few cases that have arisen in the only two jurisdictions that allow MAID for minors.³¹ In addition, there is not much information on the perspectives of terminally ill minors and their families or the perspectives of others who might be affected by permitting or allowing MAID for mature minors, including minors who may be seen as vulnerable.

5.2 ADVANCE REQUESTS

The working group that reviewed advance requests (AR) noted that key reasons underlying the desire to have an advance request for MAID relate to wanting control over the end of one’s life and to avoiding intolerable suffering.³² At the same time, the group found that “the primary risk involved in ARs for MAID is the risk that a person will receive an assisted death against their wishes.”³³ Many of the issues canvassed related to the uncertainty faced by those who would have to make a decision about MAID for someone without being able to confirm that MAID was still desired by the person who had made an AR. Some of the many issues explored by the working group include potential difficulties in determining intolerable suffering (which is an existing legislative requirement for a MAID request) in the context of an AR and assessing whether an AR truly reflects informed consent.

While four jurisdictions allow ARs for MAID in some circumstances, they are not used frequently, and evidence on how ARs for MAID are used is lacking.³⁴ Other knowledge gaps identified by the working group include information relating to professional judgment in such cases, and how society would be affected if ARs were permitted. Potential safeguards were considered, but there was no agreement among members about what safeguards would be necessary or whether safeguards could adequately minimize potential risk in the context of ARs for MAID.³⁵

5.3 MENTAL ILLNESS/MENTAL DISORDER

The third working group, which used the term “mental disorder” to be consistent “with current clinical and legal practice,” acknowledged that mental disorder in the context of MAID is contentious.³⁶ Members of the working group did not agree “on some fundamental issues,” and for some areas, “did not reach consensus on the interpretation and/or significance of the evidence, or about what constitutes relevant evidence.”³⁷ Their report noted that while an individual with a mental disorder as the sole underlying medical condition is not specifically excluded from being able to access MAID, it would be difficult in such circumstances to meet the other eligibility criteria. Key issues that were considered were:

- possible difficulty for clinicians in determining whether an individual’s request for MAID is a symptom of their mental disorder;
- whether it is possible to determine whether an individual’s case is irremediable; and
- whether permitting MAID in these circumstances is compatible with suicide prevention efforts.³⁸

Reviewing jurisdictions that permit MAID for mental disorder more broadly than in Canada, the report noted that MAID in these situations “remains controversial” and that “public debate is ongoing.”³⁹ The working group agreed that more research was needed to improve understanding of how individuals with mental disorders, health care providers and society more generally would be affected by allowing MAID in these circumstances or by continuing to limit it.⁴⁰ The working group also reviewed a number of potential safeguards, disagreeing about whether risks could be mitigated by such safeguards.

6 INFORMATION SHARING AND REPORTING REQUIREMENTS

The Code amendments included a regulation-making authority relating to the provision and collection of information relating to MAID, and the consequent *Regulations for the Monitoring of Medical Assistance in Dying*⁴¹ (regulations) came into force in November 2018. Prior to November 2018, provincial and territorial governments shared more limited MAID data with Health Canada on a voluntary basis.

6.1 HEALTH CANADA’S INTERIM REPORTS ON MEDICAL ASSISTANCE IN DYING IN CANADA

The information that provincial and territorial governments shared with Health Canada was compiled and released in four interim reports in April 2017, October 2017, June 2018 and April 2019.⁴²

The fourth interim report from April 2019 noted that there had been 6,749 medically assisted deaths in Canada since both Quebec's law and federal legislation on assisted dying came into force.

The report (which includes data from 1 January 2018 to 31 October 2018) specified that

- 44% of MAID-related deaths occurred in hospital, while 42% occurred in the patient's home;
- the average age of persons who received MAID was 71;
- 51% of those who received MAID were men, while 49% were women;
- 64% of those who received MAID had cancer; and
- there was one case of self-administration.

The report also contained region-specific data.⁴³

6.2 MEDICAL PRACTITIONER/NURSE PRACTITIONER REPORTING REGULATIONS UNDER THE LAW

The regulations set out which medical practitioners or nurse practitioners are required to provide information and what information needs to be provided. Information is to be provided to the federal Minister of Health (section 2(1) or, in some circumstances, other designated provincial and territorial recipients of information (section 2(2)).

Circumstances in which information must be provided include

- when a practitioner either refers a patient who has requested MAID to another practitioner or care coordination service or transfers the care of such a patient (section 4(1));
- when a patient withdraws a written MAID request (section 5);
- when a practitioner determines that a patient who requests MAID does not meet the eligibility criteria (section 6);
- when a practitioner provides or prescribes a substance for self-administration (section 7);
- when a practitioner administers a substance to a patient in the context of MAID (section 8);
- when a practitioner is aware that a patient who had requested MAID dies from a cause other than MAID (section 9); and
- when a pharmacist dispenses a substance in connection with MAID (section 11).

Information that must be provided to the designated recipient is set out in seven schedules to the regulations and includes

- basic information, such as date of birth, sex and postal code (Schedule 1);
- the reasons for referring or transferring the care of a patient who has requested MAID (Schedule 2), including whether “providing medical assistance in dying to the patient or assessing the patient to determine whether they meet the eligibility criteria would have been contrary to the practitioner’s conscience or beliefs” (Schedule 2, section 2(b));
- which eligibility criteria were considered, and whether the patient met or did not meet each criterion (Schedule 3, section 2);
- whether the patient received palliative care, and if no palliative care was received, whether it was accessible to the patient (Schedule 3, section 3);
- whether the patient received disability support services, and if no such services were received, whether they were accessible to the patient (Schedule 3, section 4);
- whether procedural requirements were met (Schedule 4);
- information relating to the prescribing or providing of a substance (Schedule 5);
- date and location of the administration of a substance (Schedule 6); and
- information relating to the dispensing of a substance by a pharmacist (Schedule 7).

At least once a year, the federal Minister of Health must report publicly on this information (section 13).⁴⁴ The first report will likely be published in spring 2020.⁴⁵

7 GUIDANCE DOCUMENTS FOR HEALTH CARE PROVIDERS

The provincial and territorial health professional regulatory bodies have established codes, policies and other tools for their members with respect to MAID, as have groups such as the Canadian Medical Protective Association and the Canadian Nurses Protective Society. In addition, the Canadian Association of MAID Assessors and Providers, which consists mainly of medical practitioners who provide MAID, has developed clinical guidance documents, including in relation to oral medication protocols for MAID,⁴⁶ interpreting “reasonably foreseeable,”⁴⁷ and discussing MAID with patients as a clinical care option.⁴⁸

In addition, in June 2019, guidelines were published in the *Canadian Medical Association Journal* on organ and tissue donation and MAID.⁴⁹

8 CONSCIENCE RIGHTS OF HEALTH CARE PROVIDERS

There has been significant discussion relating to freedom of conscience and religion for health care providers in the context of MAID. The issue was raised before the Special Joint Committee and during parliamentary debate on Bill C-14.

The House of Commons Standing Committee on Justice and Human Rights amended the bill by adding section 241.2(9) to the Code to specify that section 241.2 does not compel an individual to provide or to assist in providing MAID. In addition, the preamble to the bill states that “everyone has freedom of conscience and religion under section 2 of the *Canadian Charter of Rights and Freedoms*”; and “nothing in this Act affects the guarantee of freedom of conscience and religion.”

At the same time, provincial and territorial health professional regulatory authorities have established policies in relation to medical practitioner participation in MAID. In some cases, these policies require that medical practitioners who cannot provide a health care service for reasons of conscience provide an “effective referral,” which aims to ensure that patients’ access to health care services is not restricted. Requiring an effective referral was also recommended by the Special Joint Committee.⁵⁰

In the 42nd Parliament, two private members’ bills were introduced to protect the freedom of conscience of health care providers in the context of MAID; neither bill was debated in the House of Commons nor was either bill considered in committee.⁵¹ The bills would have created an offence where intimidation was used to compel a health care professional to take part in providing MAID, either directly or indirectly. The bills also would have created an offence for an employer who refused to employ or dismissed a health care professional who refused to take part in MAID.

Manitoba has passed a law to protect the conscience rights of health care providers.⁵² Among other things, the law restricts a professional regulatory body from making a “regulation, by-law, rule or standard that requires a member of the regulated profession to provide or aid in the provision of medical assistance in dying” (section 2(3)) and prohibits an employer from taking “adverse employment action against an employee because that employee refused to provide or aid in the provision of medical assistance in dying on the basis of his or her personal convictions” (section 4).

8.1 *CHRISTIAN MEDICAL AND DENTAL SOCIETY OF CANADA V. COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO*

Two policies of the College of Physicians and Surgeons of Ontario have been challenged as infringing on freedom of conscience and religion and equality rights of the Charter (sections 2(a) and 15(1), respectively). The policies, Professional Obligations and Human Rights and Medical Assistance in Dying, both contain

provisions requiring an effective referral in cases where a physician will not provide a service for reasons of conscience and religion.⁵³

In January 2018, the Ontario Divisional Court found that while the policies infringed the applicants' right to freedom of religion, the infringement was justified under section 1 of the Charter.⁵⁴ The court did not consider whether the policies infringed the right to freedom of conscience. The court dismissed the claim that the policies contravened the equality rights of the Charter.

In May 2019, the Court of Appeal for Ontario confirmed the lower court's decision and dismissed the applicants' appeal.⁵⁵

8.2 RELIGIOUS HEALTH CARE INSTITUTIONS AND MEDICAL ASSISTANCE IN DYING

There have been a number of cases reported in the media in which individuals who sought an assisted death faced barriers as patients within religious health care institutions.⁵⁶ Some religiously affiliated care facilities prohibit MAID assessments to be done on their property, as well as prohibiting MAID to be performed, while others allow for MAID assessments but not the performance of MAID. While freedom of conscience and religion is protected for individuals under the Charter, it is unclear whether institutions can successfully claim that they have conscience rights that should be protected.⁵⁷

In at least one case, a complaint was made against a medical practitioner who had provided MAID in a religiously affiliated care facility. The care facility filed a complaint with the College of Physicians and Surgeons of British Columbia. The College found that the doctor had not breached its standards.⁵⁸

9 CONCLUSION

As this paper demonstrates, despite the significant legal and policy shift that resulted from the 2016 assisted dying law, issues relating to assisted dying in Canada are far from settled. Individuals have turned to the courts and have publicly advocated for changes to the 2016 *Criminal Code* amendments on assisted dying in the hopes of making the law less restrictive, and the Prime Minister has indicated that he will be introducing amendments to broaden the law. Whether those proposed changes will be limited to addressing the Superior Court of Quebec's invalidation of the "reasonably foreseeable death" requirement or will also include issues relating to mature minors, advance requests and requests where mental disorder is the sole underlying condition is unknown.

NOTES

1. [Carter v. Canada \(Attorney General\)](#), 2015 SCC 5.
2. For more information on *Carter v. Canada*, see Martha Butler and Marlisa Tiedemann, [Carter v. Canada: The Supreme Court of Canada's Decision on Assisted Dying](#), Publication no. 2015-47-E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 29 December 2015.
3. [Bill C-14, An Act to amend the Criminal Code and to make related amendments to other Acts \(medical assistance in dying\)](#), 1st Session, 42nd Parliament (S.C. 2016, c. 3).
4. Quebec, [Act respecting end-of-life care](#), R.S.Q., c. S-32.0001.
5. Gouvernement du Québec, Ministère de la Santé et des Services sociaux, [L'aide médicale à mourir pour les personnes en situation d'inaptitude : le juste équilibre entre le droit à l'autodétermination, la compassion et la prudence](#), Groupe d'experts sur la question de l'inaptitude et l'aide médicale à mourir, October 2019 [Available in French only]; and ["Quebec to expand law on medically assisted dying, look at advance consent,"](#) *CBC News*, 29 November 2019.
6. In addition to implementing policies relating to medical assistance in dying [MAID] in the health care context, Ontario passed legislation that, among other things, amended the *Excellent Care for All Act, 2010* to require the establishment "of a care coordination service to assist patients and caregivers in accessing additional information and services for medical assistance in dying and other end-of-life options." Ontario, [Medical Assistance in Dying Statute Law Amendment Act, 2017](#), S.O. 2017, c. 7.
7. See, for example, Anjali Patil, ["Halifax woman posthumously calls for fix to Canada's assisted dying rules,"](#) *CBC News*, 6 February 2019.
8. See, for example, Kelly Grant, ["From dementia to medically assisted death: A Canadian woman's journey, and the dilemma of the doctors who helped,"](#) *Globe and Mail*, 12 October 2019.
9. [Truchon c. Procureur général du Canada](#), 2019 QCCS 3792. [Unofficial translation]
10. Kathleen Harris, ["Trudeau rules out coalition, promises gender equity in new cabinet,"](#) *CBC News*, 23 October 2019.
11. This paper provides an overview of topics related to MAID; it does not provide in-depth analysis of the law or its application.
12. Julia Nicol and Marlisa Tiedemann, [Euthanasia and Assisted Suicide in Canada](#), Publication no. 2015-139-E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 15 December 2015.
13. Julia Nicol, [Medical Assistance in Dying: The Law in Selected Jurisdictions Outside Canada](#), Publication no. 2015-116-E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 29 November 2019.
14. Senate, [Journals](#), No. 6, 1st Session, 42nd Parliament, 11 December 2015, p. 55; and House of Commons, [Journals](#), No. 7, 1st Session, 42nd Parliament, 11 December 2015, p. 50.
15. Parliament of Canada, Special Joint Committee on Physician-Assisted Dying, [Medical Assistance in Dying: A Patient-Centred Approach](#), 1st Session, 42nd Parliament, February 2016, p. 2.
16. *Ibid.*, pp. 51–56 and pp. 57–60, respectively.
17. This section of the paper relies heavily on 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, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 27 September 2018.
18. Evidence quoted in a letter from counsel for the plaintiffs to the Supreme Court of British Columbia. Joseph J. Arvay, [Letter to the Supreme Court of British Columbia \(Re: Lamb and BCCLA v. AGC SCBC Action No. S-165851, Vancouver Registry\)](#), 6 September 2019.

In *A.B. v. Canada (Attorney General)*, the judge provided an interpretation of "reasonably foreseeable," stating that

[i]n this regard, those words are modified by the phrase "taking into account all of their medical circumstances, without a prognosis necessarily having been made as to the specific length of time that they have remaining." This language reveals that natural

death need not be imminent and that what is a reasonably foreseeable death is a person-specific medical question to be made without necessarily making, but not necessarily precluding, a prognosis of the remaining lifespan.

[A.B. v. Canada \(Attorney General\)](#), 2017 ONSC 3759 (CanLII), para. 79.

19. Arvay (2019).
20. *Truchon c. Procureur général du Canada*.
21. Harris (2019).
22. Council of Canadian Academies [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. 3.
23. *Ibid.*, p. 5.
24. *Ibid.*, p. 13.
25. *Ibid.*, p. 12.
26. *Ibid.*, p. 13.
27. In addition to the Dutch law which permits assisted dying for children aged 12 and older, the Groningen Protocol (which is a guideline, not a law) addresses assisted dying "in the context of severely ill newborns with a prognosis determined to be hopeless." CCA, Expert Panel Working Group on MAID for Mature Minors, [The State of Knowledge on Medical Assistance in Dying for Mature Minors](#), 2018, pp. 111–112.
28. *Ibid.*, p. 112.
29. *Ibid.* For more information on MAID in jurisdictions outside Canada, see Nicol (2019).
30. 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](#), p. 14.
31. *Ibid.*
32. *Ibid.*, p. 17.
33. *Ibid.*, p. 23.
34. *Ibid.*, p. 21.
35. *Ibid.*, p. 24.
36. *Ibid.*, pp. 26 and 38.
37. *Ibid.*, p. 27.
38. *Ibid.*, pp. 29–30.
39. *Ibid.*, p. 32.
40. *Ibid.*, p. 37.
41. [Regulations for the Monitoring of Medical Assistance in Dying](#) [regulations], SOR/2018-166.
42. Government of Canada, [Interim update on medical assistance in dying in Canada June 17 to December 31, 2016](#); Government of Canada, [2nd Interim Report on Medical Assistance in Dying in Canada](#), October 2017; Government of Canada, [Third Interim Report on Medical Assistance in Dying in Canada](#); and Government of Canada, [Fourth Interim Report on Medical Assistance in Dying in Canada](#), April 2019.
43. The fourth interim report notes that there were data limitations for that reporting period as the numbers in the territories were small enough that they could not be shared due to privacy concerns (which was also the case for all but the first interim report). In addition, Quebec's commission on end-of-life care, which collects information from medical practitioners and health and social services institutions, changed its reporting period. As a result, data from Quebec from April to October 2018 is not included in the report.
44. Section 13 of the regulations came into force on 1 November 2019, one year after the other sections came into force.

45. Health Canada, [“Government of Canada releases Fourth Interim Report on Medical Assistance in Dying,”](#) News release, 25 April 2019.
46. C. Harty et al., [The Oral MAiD Option in Canada: Part 1 – Medication Protocols – Review and Recommendations](#), Canadian Association of MAiD Assessors and Providers [CAMAP], 18 April 2018; and C. Harty et al., [The Oral MAiD Option in Canada: Part 2 – Processes for Providing – Review and Recommendations](#), CAMAP, 18 April 2018.
47. CAMAP, Clinical Practice Guideline, [The Clinical Interpretation of “Reasonably Foreseeable”](#), June 2017.
48. CAMAP, [Bringing up Medical Assistance In Dying \(MAiD\) as a clinical care option](#).
49. J. Downar et al., [“Deceased organ and tissue donation after medical assistance in dying and other conscious and competent donors: guidance for policy,”](#) *Canadian Medical Association Journal*, Guideline, Vol. 191, No. 2, 3 June 2019.
50. Parliament of Canada, Special Joint Committee on Physician-Assisted Dying (2016), Recommendation 10, p. 26.
51. [Bill C-268, An Act to amend the Criminal Code \(medical assistance in dying\)](#), 1st Session, 42nd Parliament; and [Bill C-418, An Act to amend the Criminal Code \(medical assistance in dying\)](#), 1st Session, 42nd Parliament.
52. Manitoba, [The Medical Assistance in Dying \(Protection for Health Professionals and Others\) Act](#), C.C.S.M., c. M92.
53. College of Physicians and Surgeons of Ontario, [Professional Obligations and Human Rights](#), March 2015; and College of Physicians and Surgeons of Ontario, [Medical Assistance in Dying](#), December 2018.
54. [The Christian Medical and Dental Society of Canada v. College of Physicians and Surgeons of Ontario](#), 2018 ONSC 579 (CanLII).
55. [Christian Medical and Dental Society of Canada v. College of Physicians and Surgeons of Ontario](#), 2019 ONCA 393. A search of the Supreme Court of Canada’s database and a media search appear to suggest that the Christian Medical and Dental Society of Canada has not filed an application for leave to appeal with the Supreme Court of Canada.
56. See, for example, Elizabeth Payne, [“Patients must be transferred out of Catholic hospitals to discuss assisted dying,”](#) *Ottawa Citizen*, 27 September 2016; Nicole Ireland, [“One year after Canada’s medically assisted dying law, patients face uneven access,”](#) *CBC News*, 18 June 2017; and Jennie Russell, [“Alberta legislation needed to address Covenant Health assisted-dying policy, says advocacy group,”](#) *CBC News*, 5 November 2018.
57. See, for example, Anna Mehler Paperny, [“Right to die: Should public hospitals have freedom of religion?,”](#) *Global News*, 26 February 2016; [“Should Catholic hospitals have to provide access to medically assisted dying?,”](#) *The Current*, CBC Radio, 11 January 2018; and Jocelyn Downie and Daphne Gilbert, [“OPINION: Nova Scotia now a leader in medical assistance in dying,”](#) *Chronicle Herald* [Halifax], 19 September 2019.
58. Bethany Lindsay, [“Doctor won’t be disciplined for providing assisted death at Jewish nursing home in Vancouver,”](#) *CBC News*, 7 August 2019.