

Draft Federal Legislation to Amend the Criminal Code to be Consistent with *Carter v. Canada (Attorney General)* 2015 SCC 5
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An Act to amend the Criminal Code as it relates to physician-assisted dying and to establish the Commission for the Monitoring and Reporting on Physician-Assisted Dying in Canada

SUMMARY

This enactment amends the law to ensure that the *Criminal Code* does not prohibit physician-assisted dying where the assistance meets the requirements set out in the *Act*. It also ensures that the incidence and circumstances of physician-assisted dying in Canada are well monitored and the vulnerable are well protected.

An Act to amend the *Criminal Code* as it relates to physician-assisted dying and to establish the Commission to Monitor and Report on Physician-Assisted Dying in Canada

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

1. The following be added to s.14:

"except as provided in s.241.1."

2. The heading preceding s.241 is replaced by the following:

“Physician-Assisted Dying”

3. The following new section be added following s.241:

241.1(1) In this section and s.241.2,

"assistance" means the provision of knowledge, means or both;

"assisted dying" and "assisted death" are generic terms used to describe both assisted suicide and voluntary euthanasia.

“assisted suicide” means the act of intentionally killing oneself with the assistance of another person who provides the knowledge, means or both;

“assisting physician” means the physician who provides assistance with dying to the person seeking physician-assisted death;

“Commission” means the Commission to Monitor and Report on Physician-Assisted Dying in Canada;

"competent" means able to understand the subject-matter in respect of which a decision must be made and able to appreciate the consequences of that decision;

“consulting physician” means a physician who is qualified by specialty or experience to form a professional opinion about the matter on which he has been consulted;

"euthanasia" means the intentional termination of the life of a person, by another person, in order to relieve the first person's suffering;

"free request" means a request made voluntarily (i.e., without coercion or undue influence);

"informed consent" means a choice as to treatment options made after the patient has been provided with sufficient information to evaluate risks and benefits of the proposed treatment and other available options;

“irremediable” means cannot be alleviated by means acceptable to the individual;

“patient” means an individual under the care of a physician;

“physician” means a doctor of medicine licensed to practice medicine under the laws of the province or territory in which the assistance is provided;

"physician-assisted death" and "physician-assisted dying" are generic terms that encompass physician-assisted suicide and voluntary euthanasia that is performed by a medical practitioner or a person acting under the direction of a medical practitioner;

“physician-assisted suicide” means the act of intentionally killing oneself with the assistance of a medical practitioner, or person acting under the direction of a medical practitioner, who provides the knowledge, means, or both.”

“request” means something asked for by a person orally or in writing;

"voluntary euthanasia" means euthanasia performed in accordance with the wishes of a competent individual, whether those wishes have been made known personally or by a valid, written advance directive;

“witness” means an individual of the age of majority who is not a relative (by blood, marriage, or adoption), an owner, operator or employee of the health care facility in which the person making the request is receiving treatment, or a resident, a physician involved in the care of the patient, or at the time of acting as a witness entitled to any portion of the estate upon death under any will or by operation of law.

No offence where conditions and requirements met

(2) No physician is guilty of an offence under this Act where the physician meets the requirements set out in paragraphs 3-7 and where the physician provides assistance to a fully-informed, competent adult person who is:

(a) free from coercion and undue influence and personally requests physician-assisted death; and

(b) has been diagnosed by a medical practitioner as having a grievous and irremediable medical condition (including an illness, disease or disability) that causes enduring suffering that is intolerable to that person in the circumstances of his or her condition.

Required assessments

(3) The assisting physician and a consulting physician shall have examined the person making the request and believe that the person meets the conditions set out in (2).

Required informing

(4) The assisting physician shall have informed the person making the request of the patient’s medical diagnosis, prognosis, the consequences of the request being honoured, the feasible alternative treatments including, but not limited to, comfort care, palliative or hospice care, and pain control, and the right to revoke the request at any time.

Required declaration

(5) The person shall have made a valid declaration of the request for physician-assisted dying and that declaration must be in force:

(a) In order to be valid, a declaration must be:

(i) signed by the person in the presence of the assisting physician and two witnesses or received as a solemn declaration under s.41 of the Canada Evidence Act;

(ii) signed in the presence of the person and the assisting physician by two witnesses who, in the presence of the person attest that to the best of their knowledge the person is competent and the request is free and informed;

(iii) made by an individual who is a citizen or permanent resident of Canada as at the date of the declaration; and

(iv) placed in the patient's medical record.

(b) The declaration shall come into force fourteen days after being signed by the assisting physician, the person making the declaration, and the witnesses.

(c) The declaration shall cease to be in force if it has been revoked by the person who made it:

(i) a person may revoke a declaration at any time;

(ii) a written, oral, or other indication or withdrawal of consent is sufficient to revoke the declaration even though the person may not be competent when the indication is given; and

(iii) in the event of a declaration being revoked, the assisting physician shall ensure that a note recording its revocation is made clearly on the declaration.

Required information from person requesting physician-assisted dying

(6) The person making the request shall have completed any forms required by the Commission and given it to the assisting physician for inclusion in the patient's medical record.

Required documentation and filing

(7) The assisting physician shall have ensured that:

(a) the following were filed in the patient's medical record:

(i) a note signed by the assisting physician and consulting physician stating that they examined the patient and believe that the patient meets the conditions set out in paragraph 2;

(ii) a note signed by the assisting physician and patient stating that immediately prior to providing assistance, the physician offered the patient the opportunity to revoke the declaration;

(iii) the required declaration required under paragraph 5 and the information required under paragraph 6; and

(iv) a note signed by the assisting physician stating that he was satisfied that, at the date and time of his having provided assistance, all requirements under this Act had been met and indicating the steps taken to carry out the request.

(b) the information required under paragraph 6 was submitted to the Commission within fourteen days of having been placed in the patient's medical record; and

(c) any further information prescribed by the Commission was submitted to the Commission within fourteen days of the provision of assisted dying.

Offences and penalties

(8) A person commits an offence if he willfully falsifies or forges a declaration made under this Act with the intent or effect of causing the person's death. A person guilty of an offence under this subsection shall be liable, on conviction, to imprisonment for a term not exceeding twenty-five years.

(9) A witness commits an offence if he willfully puts his name to a statement he knows to be false. A person guilty of an offence under this subsection shall be liable on conviction to imprisonment for a term not exceeding five years.

(10) A person commits an offence if he willfully conceals or destroys a declaration or revocation made under this Act. A person guilty of an offence under this subsection shall be liable on conviction to imprisonment for a term not exceeding five years.

(11) An assisting physician commits an offence if he willfully fails to submit the information required under paragraph 6. A person guilty of an offence under this subsection shall be liable on conviction to imprisonment for a term not exceeding five years.

(12) An assisting or consulting physician involved in the care of a patient commits an offence if he takes any part whatsoever in assisting a patient to die or in giving an opinion in respect of such a patient, or acts as a witness if he has grounds for believing that he will benefit financially or in any other way as the result of the death of the patient. A person guilty of an offence under this subsection shall be liable on conviction to imprisonment for a term not exceeding five years.

Inconsistencies

(13) Where there is any inconsistency or conflict between this section and any other provision of this Act or any other federal legislation, this section prevails to the extent of the inconsistency or conflict.

241.2 The Commission to Monitor and Report on Physician-Assisted Dying in Canada is hereby established as a body corporate that may exercise powers and perform duties only as an agent of Her Majesty in right of Canada.

(1) The Commission shall:

- (a) develop a form that the patient must complete and give to the assisting physician for inclusion in the patient's medical record. This form shall solicit non-identifying information including but not limited to information about the patient including demographics (age, sex, marital status, education level, income level), medical condition, and reasons for seeking assistance;
- (b) collect and analyze data from the submitted forms;
- (c) generate and make available to the public an annual statistical report of information collected under this Act;
- (d) oversee the application of the specific requirements relating to assisted dying set out in s.241.1; and
- (e) carry out any other mandate given to it by the Minister.

(2) At its discretion, the Commission may:

- (a) conduct or commission research it deems necessary in accordance with relevant federal, provincial, and territorial law and policy;
- (b) solicit the opinion of individuals or groups on any assisted dying issue;
- (c) call on outside experts to report on any assisted dying issue; and
- (d) make recommendations to the Attorney General of Canada about potential law and policy reform with respect to assisted dying in Canada.

(3) The Commission consists of a Chair and ten other Commissioners to be appointed by the Governor in Council as follows:

- (1) Two members are to be physicians (one of which must be from the palliative care community);
- (2) One member is to be a nurse;

- (3) One member is to be a pharmacist;
- (4) Two members are to be health lawyers;
- (5) Two members are to be health care ethics experts;
- (6) Two members are to be lay members of the public.

(4) The Chair is the chief executive officer of the Commission and presides at meetings of the Commission.

(5) The Commissioners must elect one of themselves as Vice-Chair of the Commission.

(6) If the Chair is absent or unable to act, or if the office of Chair is vacant, the Vice-Chair has all the powers, duties and functions of the Chair.

(7) The Chair is to be paid the remuneration that is fixed by the Governor in Council.

(8) The Commissioners, other than the Chair, are to be paid the fees that are fixed by the Governor in Council.

(9) A Commissioner is entitled to be paid reasonable travel and living expenses incurred by the Commissioner while absent from the Commissioner's ordinary place of residence in the course of performing duties under this Act.

(10) The Commission may make by-laws respecting generally the conduct and management of the work of the Commission.

(11) The Chair and members of the Commission are responsible for the overall management of the Commission and may, with the approval of the Governor in Council, make by-laws for the regulation of its proceedings and generally for the conduct of its activities.

(adapted by Jocelyn Downie from Jocelyn Downie and Simone Bern, "*Rodriguez Redux*" (2008) 16 *Health Law Journal* 27-54 to reflect lessons learned since then and the Supreme Court of Canada decision in *Carter v. Canada (Attorney General)*, 2015 SCC 5)