



**HillStudies**

In-depth reads on Canadian topics

## MEDICAL ASSISTANCE IN DYING IN CANADA AFTER *CARTER V. CANADA*

Publication No. 2019-43-E

**19 March 2024**

Revised by Dana Phillips

Research and Education

## AUTHORSHIP

19 March 2024	Dana Phillips	Legal, Social and Indigenous Affairs
29 November 2019	Marlisa Tiedemann	Economics, Resources and Environment

## ABOUT THIS PUBLICATION

Library of Parliament HillStudies provide in-depth studies of policy issues. They feature historical background, current information and references, and often anticipate the emergence of the issues they examine. They are prepared by Research and Education, which carries out research for and provides information and analysis to parliamentarians, Senate and House of Commons committees and parliamentary associations in an objective, impartial manner.

© Library of Parliament, Ottawa, Canada, 2024

*Assisted Dying in Canada After Carter v. Canada*  
(HillStudies)

Publication No. 2019-43-E

Ce document est également publié en français.

# CONTENTS

EXECUTIVE SUMMARY	
1	INTRODUCTION.....1
2	SPECIAL JOINT COMMITTEE ON PHYSICIAN-ASSISTED DYING AND OTHER INITIATIVES IN RESPONSE TO <i>CARTER V. CANADA</i> .....1
3	BILL C-14, AN ACT TO AMEND THE CRIMINAL CODE AND TO MAKE RELATED AMENDMENTS TO OTHER ACTS (MEDICAL ASSISTANCE IN DYING) .....2
4	COUNCIL OF CANADIAN ACADEMIES: MATURE MINORS, ADVANCE REQUESTS AND MENTAL DISORDER AS SOLE UNDERLYING MEDICAL CONDITION .....4
5	COURT CHALLENGES TO BILL C-14 .....5
6	BILL C-7, AN ACT TO AMEND THE CRIMINAL CODE (MEDICAL ASSISTANCE IN DYING) .....6
7	EXPERT PANEL ON MEDICAL ASSISTANCE IN DYING AND MENTAL ILLNESS .....7
8	SPECIAL JOINT COMMITTEE ON MEDICAL ASSISTANCE IN DYING.....8
9	READINESS FOR MEDICAL ASSISTANCE IN DYING WHERE MENTAL DISORDER IS THE SOLE UNDERLYING MEDICAL CONDITION .....8
10	QUEBEC’S LEGISLATION ON MEDICAL ASSISTANCE IN DYING.....9
11	PRACTICE STANDARDS, GUIDELINES AND TRAINING FOR HEALTH CARE PROVIDERS .....10
12	CONSCIENCE RIGHTS OF HEALTH CARE PROVIDERS.....10
13	STRUCTURAL VULNERABILITIES AND MEDICAL ASSISTANCE IN DYING .....11
14	CONCLUSION .....12



## EXECUTIVE SUMMARY

In February 2015, the Supreme Court of Canada released *Carter v. Canada (Attorney General)*, an important decision about the law on assisted dying. The decision found that the *Criminal Code* provisions that made it a crime to help a person end their life violated the *Canadian Charter of Rights and Freedoms*. As a result, several groups were formed to study the issue of assisted dying and to consider options for changing the law and related policies. This included a joint Senate and House of Commons committee that used the term “medical assistance in dying,” or MAID.

In April 2016, the federal Minister of Justice 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 about the procedures that health care providers had to follow. The eligibility criteria for MAID included having a “serious and incurable illness, disease or disability,” experiencing intolerable suffering, and having a “reasonably foreseeable” natural death. Bill C-14 also required an independent review of issues relating to MAID for mature minors, advance requests for MAID and MAID where mental illness is the sole underlying medical condition. These reviews were conducted by the Council of Canadian Academies between December 2016 and December 2018.

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 declared unconstitutional the part of the law that said that a person’s natural death had to be reasonably foreseeable to access MAID. In March 2021, Parliament responded by passing Bill C-7, An Act to amend the Criminal Code (medical assistance in dying). The bill removed the “reasonably foreseeable” natural death eligibility criterion and established a different set of rules for cases where a person’s natural death is not reasonably foreseeable. It also prohibited MAID on the basis of mental illness for a period of two years. That period has since been extended twice.

Bill C-7 required an independent expert panel to study the issue of MAID and mental illness, as well as a parliamentary review of the law on MAID. The former study was completed in May 2022; it found that changes to the law were not necessary to provide MAID on the basis of mental disorder. The report of the joint committee that conducted the parliamentary review, released in February 2023, made a number of recommendations regarding MAID as it relates to palliative care, persons with disabilities, mature minors, persons with mental disorders and advance requests. Both the expert panel and the parliamentary committee recommended the development of harmonized standards of practice for MAID across the country.

In March 2023, Parliament passed Bill C-39, An Act to amend An Act to amend the Criminal Code (medical assistance in dying) which delayed eligibility for MAID where mental illness is the sole underlying medical condition by one year. The joint parliamentary committee was re-established in October 2023 to assess Canada's readiness to provide MAID on this basis. In January 2024, the committee released another report which recommended further delaying eligibility for this form of MAID, leading to the enactment of Bill C-62, An Act to amend An Act to amend the Criminal Code (medical assistance in dying), No. 2. Eligibility for MAID on the basis of mental illness is now set to come into force on 17 March 2027.

Quebec has been a leader in the development of MAID law and policy. Prior to Bill C-14, Quebec passed its own legislation on end-of-life care which included provisions on "medical aid in dying." Differences between Quebec's legislation and the federal legislation have led to uncertainties about the applicable law in Quebec. On 7 June 2023, the National Assembly of Quebec passed amendments to Quebec's law that will allow advanced requests for MAID, among other important changes.

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. The removal of the reasonably foreseeable natural death requirement has heightened concerns about the practice of MAID. Some argue that the new law discriminates against persons with disabilities, and some worry that people may turn to MAID because they are not receiving adequate health care or social supports.

While some people want to restrict access to MAID, others would like to see access expanded to include mature minors and to allow for advance requests under certain conditions. In the meantime, the federal government and health care providers are preparing for MAID on the basis of mental illness to be legalized in March 2027.

# ASSISTED DYING IN CANADA AFTER CARTER V. CANADA

---

## 1 INTRODUCTION

In the 2015 case of *Carter v. Canada (Attorney General)*<sup>1</sup> (*Carter*), the Supreme Court of Canada struck down the provisions of the *Criminal Code* (the Code) that prohibited assistance in terminating life.<sup>2</sup> The Court declared the provisions constitutionally void

insofar as they prohibit physician-assisted death for a competent adult person who (1) clearly consents to the termination of life; and (2) has a grievous and irremediable medical condition (including an illness, disease or disability) that causes enduring suffering that is intolerable to the individual in the circumstances of his or her condition.<sup>3</sup>

The declaration of invalidity was suspended for one year, which was subsequently extended by four months.<sup>4</sup>

In response to *Carter*, Parliament passed Bill C-14, An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying), which allowed for the provision of medical assistance in dying (MAID) based on certain eligibility criteria.<sup>5</sup> In the 2019 case of *Truchon c. Procureur général du Canada (Truchon)*,<sup>6</sup> the Superior Court of Quebec declared one of the eligibility criteria, which required that a person's natural death be "reasonably foreseeable," unconstitutional. This led to the enactment of Bill C-7, An Act to amend the Criminal Code (medical assistance in dying).<sup>7</sup>

The law relating to MAID and its practice by health care providers continues to evolve in Canada. This HillStudy highlights some of the key developments that have taken place in Canada in the wake of the *Carter* decision.

Background on the history of MAID in Canada and information on assisted dying in other jurisdictions can be found in the Library of Parliament publications *Euthanasia and Assisted Suicide in Canada* and *Medical Assistance in Dying: The Law in Selected Jurisdictions Outside Canada*.<sup>8</sup>

## 2 SPECIAL JOINT COMMITTEE ON PHYSICIAN-ASSISTED DYING AND OTHER INITIATIVES IN RESPONSE TO CARTER V. CANADA

Several government initiatives were taken in response to the *Carter* decision. In July 2015, the federal government established the External Panel on Options for a Legislative Response to *Carter v. Canada*.<sup>9</sup> After holding extensive consultations,

the panel presented its final report on 15 December 2015.<sup>10</sup> In August 2015, 11 provinces and territories established the Provincial–Territorial Expert Advisory Group on Physician-Assisted Dying to undertake consultations and develop recommendations for provincial policies and procedures regarding assisted dying.<sup>11</sup> Their final report was published on 30 November 2015.<sup>12</sup>

In December 2015, a joint committee of the Senate and the House of Commons called the Special Joint Committee on Physician-Assisted Dying (PDAM) was established to study physician-assisted dying and make recommendations on a federal framework.<sup>13</sup> PDAM’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.<sup>14</sup> The report was not unanimous; some of the Conservative members of the committee issued a dissenting opinion, while the New Democratic Party members issued a supplementary opinion on behalf of their party.<sup>15</sup> Many of PDAM’s recommendations relating to eligibility requirements and procedural safeguards were included in Bill C-14.<sup>16</sup>

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

Bill C-14, An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying),<sup>18</sup> was the federal legislative response to the *Carter* decision. The bill received Royal Assent on 17 June 2016. It defined “medical assistance in dying” as the administration or prescription of a substance to a person to cause their death at their request (and allowing for self-administration). Under the bill, certain individuals – including medical and nurse practitioners – who provide or assist in the provision of MAID were exempted from criminal liability (sections 241(2) to 241(5) of the Code). The bill set out both eligibility criteria for individuals seeking MAID and procedural safeguards. When Bill C-14 was introduced, Quebec had already passed its own assisted dying law, the *Act respecting end-of-life care*,<sup>19</sup> which established somewhat different criteria (see section 10 of this HillStudy, “Quebec’s Legislation on Medical Assistance in Dying”).

The eligibility criteria set out in Bill C-14 required a person seeking MAID to

- be eligible for government-funded health services in Canada;
- be 18 years of age or older and capable of making health-related decisions;
- have a “grievous and irremediable medical condition”;
- make a voluntary request for MAID that is not coerced; and

- give informed consent to MAID after having been provided with information about ways to alleviate suffering.

To qualify as having a “grievous and irremediable medical condition” under the bill, a person had to

- have a “serious and incurable illness, disease or disability”;
- be in an “advanced state of irreversible decline in capability”;
- have enduring physical or psychological suffering “that is intolerable to them and that cannot be relieved under conditions that they consider acceptable”; 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.”

Procedural safeguards set out in the bill included the following:

- A medical practitioner or nurse practitioner who provides MAID must first ensure that the individual meets the eligibility criteria.
- A second medical practitioner or nurse practitioner must confirm that finding.
- A written request for MAID must be signed in front of two independent witnesses.
- 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.<sup>20</sup>

Bill C-14 provided regulation-making authority for the provision and collection of information relating to MAID (section 241.31(3) of the Code). The consequent *Regulations for the Monitoring of Medical Assistance in Dying*<sup>21</sup> came into force in November 2018. The regulations set out the information that medical and nurse practitioners and pharmacists are required to provide to the Minister of Health (section 2(1) of the regulations) or other designated provincial and territorial recipients (section 2(2) of the regulations).

The final version of the bill also included a requirement that an independent review be conducted regarding three circumstances under which MAID was, and is still, restricted. These included MAID for mature minors,<sup>22</sup> advance requests (ARs) for MAID,<sup>23</sup> and requests for MAID where mental illness is the sole underlying medical condition.<sup>24</sup>



#### 4 **COUNCIL OF CANADIAN ACADEMIES: MATURE MINORS, ADVANCE REQUESTS AND MENTAL DISORDER AS SOLE UNDERLYING MEDICAL CONDITION**

In December 2016, the Council of Canadian Academies (CCA) was asked by the Minister of Health and the Minister of Justice and Attorney General of Canada to undertake the independent review required by Bill C-14.

The CCA's Expert Panel on Medical Assistance in Dying included Canadian and international experts and was divided into three working groups, one for each of the subject areas to be reviewed (mature minors, ARs and mental illness as sole underlying medical condition). As the summary of the three working group reports explains:

The 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.<sup>25</sup>

The CCA released the final reports of each working group, as well as a summary of the reports, on 12 December 2018.<sup>26</sup> All three working groups found significant knowledge gaps with respect to the issues they were asked to review, including minimal international experience to draw from.<sup>27</sup>

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."<sup>28</sup> According to the working group, not allowing minors to access MAID could result in a constitutional challenge.<sup>29</sup> It observed 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."<sup>30</sup> The working group noted other potential safeguards for minors, such as requiring that they have a terminal illness and ensuring that their capacity is assessed by a multidisciplinary team.<sup>31</sup>

The working group that reviewed ARs for MAID identified the key reasons underlying the desire for an AR as wanting control over the end of one's life and avoiding intolerable suffering. 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."<sup>32</sup> Many of the issues canvassed related to the uncertainty faced by those who would have to make a decision about MAID without being able to confirm that MAID was still desired by the person who had made an AR. There was no agreement among members of the working group about what safeguards would be necessary in this context or whether safeguards could adequately minimize the risks of ARs for MAID.<sup>33</sup>

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 a "contentious subject."<sup>34</sup> 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."<sup>35</sup> Key issues that were considered included the clinical challenges of determining whether an individual's request for MAID is a symptom of their mental disorder; whether it is possible to determine if an individual's case is "irremediable"; and whether permitting MAID where mental disorder is the sole underlying medical condition (MAID MD-SUMC) is compatible with suicide prevention efforts. The working group reviewed a number of potential safeguards for MAID MD-SUMC but disagreed about whether the risks of the practice could be mitigated by such safeguards.

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.<sup>36</sup> The lack of consultation with Indigenous peoples has also been raised during parliamentary consideration of MAID.

## 5 COURT CHALLENGES TO BILL C-14

Shortly after Bill C-14 came into force in June 2016, Julia Lamb, a woman with spinal muscular atrophy type 2, and the British Columbia Civil Liberties Association challenged the law as being too restrictive because it required that a person be in an "advanced state of irreversible decline" and that a person's natural death be "reasonably foreseeable."<sup>37</sup> However, the challenge was dropped after expert evidence put forward by the Attorney General of Canada affirmed a more expansive interpretation of the phrase "reasonably foreseeable" according to which Ms. Lamb would likely be found eligible for MAID.<sup>38</sup>

In June 2017, the law was again challenged by two individuals in Quebec.<sup>39</sup> Jean Truchon had 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 individuals 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 and the requirement of Quebec's assisted dying law that they be "at the end of life". They challenged those provisions as being contrary to the *Canadian Charter of Rights and Freedoms* (the Charter).<sup>40</sup>

On 11 September 2019, the Superior Court of Quebec declared that the Code provision that required natural 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, and that the infringement was not justified under section 1.<sup>41</sup> 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, and not saved under section 1.<sup>42</sup>

Neither the federal government nor the Government of Quebec appealed the ruling.<sup>43</sup>

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

Parliament responded to the ruling in *Truchon* with Bill C-7, An Act to amend the Criminal Code (medical assistance in dying) which received Royal Assent on 17 March 2021.<sup>44</sup> The bill repealed the MAID eligibility criterion requiring a reasonably foreseeable natural death, which had been deemed unconstitutional by the Superior Court of Quebec. However, the criterion remains relevant under MAID law, as Bill C-7 established a two-track system, with different safeguards depending on whether or not a person's natural death is reasonably foreseeable.

Bill C-7 revised some of the existing safeguards for MAID. For instance, it reduced the number of witnesses required to sign a request for MAID from two to one (section 241.2(3)(c) of the Code) and permitted those providing personal or health care to the person seeking MAID to act as witnesses in certain circumstances (section 241.2(5.1) of the Code). For cases where a person's natural death is reasonably foreseeable – otherwise known as "track one" – the bill eliminated the mandatory 10-day waiting period between requesting and obtaining MAID, and allowed individuals to waive the requirement to give a final consent immediately prior to obtaining MAID in certain circumstances (section 241.2(3.2) of the Code).<sup>45</sup>

At the same time, Bill C-7 established new safeguards for cases where natural death is not reasonably foreseeable – otherwise known as "track two." For example, it required a 90-day waiting period from the first assessment to the provision of MAID unless the person's loss of capacity is deemed imminent (section 241.2(3.1)(i)

of the Code). It also required that one of the assessors have expertise in the condition causing the suffering or that such an expert be consulted (sections 241.2(3.1)(e) and 241.2(3.1)(e.1) of the Code). Finally, the bill added certain safeguards to ensure that a person whose natural death is not reasonably foreseeable has been informed of, and has considered, alternative options to relieve their suffering (sections 241.2(3.1)(g) and 241.2(3.1)(h) of the Code).

In addition to modifying various safeguards, Bill C-7 expanded the reporting requirements for MAID to encompass a wider range of cases and health care providers (sections 241.31(1), 241.31(1.1) and 241.31(2) of the Code). The relevant regulations were modified accordingly by the *Regulations Amending the Regulations for the Monitoring of Medical Assistance in Dying*, which came into force on 1 January 2023.<sup>46</sup>

Bill C-7 also prohibited MAID where mental illness is the sole underlying medical condition, now known as MAID MD-SUMC, where mental disorder is the sole underlying medical condition (MAID MD-SUMC). Prior to Bill C-7, individuals with mental disorders were not barred from obtaining MAID, but they were limited by the reasonably foreseeable natural death criterion. Bill C-7's removal of this criterion could have allowed more individuals suffering solely from a mental disorder to obtain MAID. However, the bill included a new provision stating that mental illness does not count as an "illness, disease or disability" for the purposes of MAID eligibility (section 241.2(2.1) of the Code). The Senate amended the bill to include a sunset clause that would allow MAID MD-SUMC 18 months after the date of Royal Assent. This was extended to two years by the House of Commons.<sup>47</sup> MAID MD-SUMC was thus due to become available as of 17 March 2023.

For more details on some of the controversies that arose with respect to Bill C-7, see section 13 of this HillStudy, "Structural Vulnerabilities and Medical Assistance in Dying."

## **7 EXPERT PANEL ON MEDICAL ASSISTANCE IN DYING AND MENTAL ILLNESS**

Prior to its passage, the House of Commons amended Bill C-7 to require the Minister of Justice and the Minister of Health to set up an independent expert review "respecting recommended protocols, guidance and safeguards to apply to requests for medical assistance in dying by persons who have a mental illness."<sup>48</sup> The Expert Panel on MAiD and Mental Illness was formed in August 2021 to undertake this review. The expert panel tabled its final report, which included 19 recommendations, in Parliament on 13 May 2022.<sup>49</sup> The report concluded that the existing eligibility criteria and safeguards for MAID are adequate for cases based solely on mental disorder.<sup>50</sup>

## 8 SPECIAL JOINT COMMITTEE ON MEDICAL ASSISTANCE IN DYING

Bill C-14 required a parliamentary committee to review and report on the new MAID provisions and the state of palliative care starting five years after the date of Royal Assent. However, this did not take place prior to the introduction of Bill C-7. For its part, Bill C-7 included a similar provision requiring a review of the MAID provisions and their application, “including but not limited to issues relating to mature minors, advance requests, mental illness, the state of palliative care in Canada and the protection of Canadians with disabilities,” by a joint committee of the Senate and House of Commons, to commence within 30 days after the date of Royal Assent.<sup>51</sup>

The Special Joint Committee on Medical Assistance in Dying (AMAD) began the statutory review required by Bill C-7 in 2021, but the committee was dissolved with the calling of the 2021 federal election. The committee was re-established in March 2022. In June 2022, AMAD released an interim report focused on MAID where mental disorder is the sole underlying medical condition,<sup>52</sup> to which the government provided a response in October 2022.<sup>53</sup> AMAD’s final report for the statutory review was released in February 2023.<sup>54</sup> The committee’s recommendations included exploring potential amendments to the Code to avoid stigmatizing persons with disabilities, allowing mature minors whose natural death is reasonably foreseeable to obtain MAID, and allowing ARs for MAID in certain circumstances. The government provided its response to AMAD’s final report in June 2023.<sup>55</sup>

As described in the following section, AMAD was re-established in October 2023 to address the issue of readiness for MAID MD-SUMC.

## 9 READINESS FOR MEDICAL ASSISTANCE IN DYING WHERE MENTAL DISORDER IS THE SOLE UNDERLYING MEDICAL CONDITION

In response to concerns that the health care system would not be prepared to safely and consistently provide MAID MD-SUMC by the 17 March 2023 deadline provided by Bill C-7, the federal Minister of Justice introduced Bill C-39, An Act to amend An Act to amend the Criminal Code (medical assistance in dying).<sup>56</sup> The bill delayed the availability of MAID MD-SUMC for an additional year, to 17 March 2024.<sup>57</sup> It was introduced in the House of Commons on 2 February 2023 as AMAD was nearing the end of its mandate and was passed in that chamber on 15 February 2023, the same day AMAD presented its final report to the Senate and House of Commons. The bill was passed in the Senate and received Royal Assent on 9 March 2023. According to the government, the passage of the bill provided more time for the “dissemination and uptake of key resources” such as practice standards and training, and for consideration of AMAD’s final report.<sup>58</sup>

AMAD's final report for the statutory review recommended that the committee be re-established five months before MAID MD-SUMC becomes available "to verify the degree of preparedness attained for a safe and adequate application of MAID (in MD-SUMC situations)" (Recommendation 13). The committee was re-established in October 2023 pursuant to this recommendation. On 29 January 2024, the committee tabled a third report recommending that the implementation of MAID MD-SUMC be further delayed.<sup>59</sup> The report was not unanimous; four out of five senators on the committee issued dissenting opinions, while members from the Conservative party and the Bloc Québécois issued supplementary opinions. On the day the report was tabled, the Minister of Health and the Minister of Justice publicly expressed their agreement with the committee's recommendation.<sup>60</sup> On 1 February 2024, the Minister of Health introduced Bill C-62, An Act to amend An Act to amend the Criminal Code (medical assistance in dying), No. 2 in the House of Commons.<sup>61</sup> The bill pushes back the date of eligibility for MAID MD-SUMC to 17 March 2027, and requires a joint committee to review the issue again prior to that date. It received Royal Assent on 29 February 2024.

## 10 QUEBEC'S LEGISLATION ON MEDICAL ASSISTANCE IN DYING

Quebec has been a leader in the development of MAID law and policy. Quebec's *Act respecting end-of-life care* (the Quebec Act) was first introduced as Bill 52 in June 2013 following several important reports on the issue of end-of-life care in the province.<sup>62</sup> The bill included provisions allowing for "medical aid in dying" under certain conditions. It received assent on 10 June 2014, prior to the release of the Supreme Court of Canada's decision in *Carter*. However, the bill only came into force on 10 December 2015 after *Carter* had struck down the Code prohibitions on assisted dying.

The declaration of invalidity made in *Carter* was still suspended at the time Bill 52 came into force, raising questions about a potential conflict between the federal law, which still prohibited assisted dying, and the law in Quebec.<sup>63</sup> Uncertainty regarding the interaction of the two regimes continued following the passage of Bill C-14 at the federal level, as the terminology and criteria set out in the federal bill differed in certain ways from Quebec's legislation. For example, the eligibility criteria in the federal statute referred to a "reasonably foreseeable" natural death rather than the "end of life" criterion set out in the Quebec law, and the federal law allowed requests for MAID on the basis of a "serious and incurable illness, disease or disability," rather than a "serious and incurable illness" only, as in the Quebec legislation. Bill C-14 also allowed for the self-administration of MAID.

On 7 June 2023, the National Assembly of Quebec passed Bill 11, An Act to amend the Act respecting end-of-life care and other legislative provisions.<sup>64</sup> The bill makes a number of important changes to Quebec's MAID regime. Most notably, it allows persons suffering from a serious and incurable illness leading to incapacity to make

an AR for MAID and sets out the applicable rules and criteria governing such requests. The provisions pertaining to ARs are due to come into force on a date to be set by the Quebec government, no later than 7 June 2025.<sup>65</sup> Bill 11 also allows individuals with “a serious physical impairment causing significant and enduring disabilities” to receive MAID as of 26 March 2024 (section 26 of the Quebec Act).<sup>66</sup> At the same time, the bill provides that a person cannot request MAID for a mental disorder other than a neurocognitive disorder (sections 26(4) and 29.1(2)(d)(ii) of the Quebec Act).

## 11 PRACTICE STANDARDS, GUIDELINES AND TRAINING FOR HEALTH CARE PROVIDERS

The provincial and territorial health professionals’ regulatory bodies have established various resources for their members with respect to MAID, including standards of practice. Resources have also been developed by other groups, such as the Canadian Medical Protective Association and the Canadian Nurses Protective Society.

In addition, the Canadian Association of MAID Assessors and Providers (CAMAP) has developed clinical guidance documents, including in relation to interpreting “reasonably foreseeable,”<sup>67</sup> and discussing MAID with patients as a clinical care option.<sup>68</sup> CAMAP has also developed the “Canadian MAiD Curriculum,” the first nationally accredited training program supporting the practice of MAID in Canada. The curriculum includes modules on MAID assessment, including “capacity considerations and psychosocial vulnerabilities,” the provision of MAID, and MAID and mental disorders.<sup>69</sup>

Some clinicians have called for consistent standards of practice to govern MAID across Canada.<sup>70</sup> AMAD and the expert panel both made recommendations to this effect, emphasizing the need for collaboration between professional regulatory bodies, facilitated by federal, provincial and territorial governments, to develop harmonized standards of practice for MAID assessments.<sup>71</sup> The federal government convened the MAID Practice Standards Task Group for this purpose in September 2022. In March 2023, the task group published a Model Practice Standard for MAID.<sup>72</sup> As explained by the government, the model practice standard is “not a proposed national regulatory standard as there is no body that has the jurisdiction to issue national regulatory standards.”<sup>73</sup> However, it provides a template for provincial and territorial regulators.

## 12 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 PDAM and during parliamentary debate on Bill C-14.

The House of Commons Standing Committee on Justice and Human Rights amended Bill C-14 to specify that section 241.2 of the Code does not compel an individual to provide or to assist in providing MAID (section 241.2(9) of the Code). In addition, the preamble to the bill stated 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.”<sup>74</sup>

At the same time, provincial and territorial health professional regulatory authorities have established policies in relation to participation in MAID. In some cases, these policies require that 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.<sup>75</sup>

### 13 **STRUCTURAL VULNERABILITIES AND MEDICAL ASSISTANCE IN DYING**

Another important area of discussion pertains to how structural vulnerabilities,<sup>76</sup> rooted in social inequality, may influence MAID-related decision-making and care. For example, some stakeholders have suggested that experiences of hardship or discrimination rooted in age, disability, socio-economic status, mental illness, Indigenous identity, and other factors can exacerbate suffering, and that this can contribute to the decision to seek MAID.<sup>77</sup> This includes discriminatory treatment within the health care system. On the other hand, some individuals may incorrectly be presumed to have diminished capacity to consent to MAID based on such factors, in a manner that can itself be discriminatory and autonomy-limiting.<sup>78</sup>

Bill C-7 has amplified these concerns, particularly with respect to persons with disabilities. According to some disability rights activists, since eligibility for MAID is based on having a “serious and incurable illness, disease or disability,” the removal of the “reasonably foreseeable” natural death eligibility criterion creates a special pathway to MAID for persons with disabilities that does not exist for other vulnerable groups, and thereby devalues their lives. However, other persons with disabilities (including the litigants in *Truchon*) have advocated for the right to choose MAID, arguing that to deny access on the basis of disability would itself be paternalistic and discriminatory.<sup>79</sup>

Stakeholders have also expressed concerns that Bill C-7’s removal of the reasonably foreseeable natural death eligibility criterion may result in the use of MAID to alleviate suffering that is in part due to socio-economic challenges, or to inadequate access to health and social services, including palliative care.<sup>80</sup>



14 **CONCLUSION**

Issues relating to MAID in Canada are far from settled. While some stakeholders advocate for a stricter MAID regime, including the reinstatement of the reasonably foreseeable natural death eligibility criterion, others wish to expand access to include mature minors and ARs for MAID.<sup>81</sup> Meanwhile, the forthcoming legalization of MAID based solely on mental disorder raises new concerns and new challenges for MAID practitioners. How Parliament responds to these issues in the coming years will be a subject of ongoing interest.

NOTES

1. [Carter v. Canada \(Attorney General\) \(Carter\)](#), 2015 SCC 5. For more information on this decision, see Martha Butler and Marlis Tiedemann, [Carter v. Canada: The Supreme Court of Canada's Decision on Assisted Dying](#), Publication no. 2015-47-E, Library of Parliament, 7 October 2015.
2. [Criminal Code](#), R.S.C. 1985, c. C-46, ss. 14 and 241(b) (version in force from 9 December 2014 to 15 December 2014).
3. [Carter v. Canada \(Attorney General\)](#), 2015 SCC 5, para. 127.
4. *Ibid.*, para. 128; and [Carter v. Canada \(Attorney General\)](#), 2016 SCC 4, para. 7.
5. [Bill C-14, An Act to amend the Criminal Code and to make related amendments to other Acts \(medical assistance in dying\)](#), 42<sup>nd</sup> Parliament, 1<sup>st</sup> Session (S.C. 2016, c. 3).
6. [Truchon c. Procureur général du Canada](#), 2019 QCCS 3792 (CanLII).
7. [Bill C-7, An Act to amend the Criminal Code \(medical assistance in dying\)](#), 43<sup>rd</sup> Parliament, 2<sup>nd</sup> Session (S.C. 2021, c. 2).
8. Julia Nicol and Marlis Tiedemann, [Euthanasia and Assisted Suicide in Canada](#), Publication no. 2015-139-E, Library of Parliament, 15 December 2015; and Julia Nicol and Marlis Tiedemann, [Medical Assistance in Dying: The Law in Selected Jurisdictions Outside Canada](#), Publication no. 2015-116-E, Library of Parliament, 23 September 2021.
9. Government of Canada, [Government of Canada Establishes External Panel on options for a legislative response to Carter v. Canada](#), News release, 17 July 2015. The panel's mandate was modified following the election of a new government in October 2015; the panel was asked merely to summarize their findings rather than to present legislative options for a response to *Carter v. Canada*.
10. Government of Canada, External Panel on Options for a Legislative Response to *Carter v. Canada*, [Consultations on Physician-Assisted Dying: Summary of Results and Key Findings](#), Final report, 15 December 2015.
11. Ontario, [Provincial-Territorial Expert Advisory Group Convened on Physician-Assisted Dying](#), Backgrounder, 14 August 2015.
12. Provincial-Territorial Expert Advisory Group on Physician-Assisted Dying, [Final Report](#), 30 November 2015.
13. Senate, [Journals](#), 11 December 2015, p. 55; and House of Commons, [Journals](#), 11 December 2015, p. 50.
14. Parliament of Canada, Special Joint Committee on Physician-Assisted Dying (PDAM), [Medical Assistance in Dying: A Patient-Centred Approach](#), First report, February 2016.
15. *Ibid.*, pp. 51–56 (Conservative Party) and pp. 57–60 (New Democratic Party).
16. Recommendations by PDAM that were not reflected in Bill C-14 included the following:
  - that competent “mature minors” should have access to medical assistance in dying (MAID) within three years of the coming into force of the provisions relating to MAID for competent adults (recommendation 6); and
  - that advance requests for MAID should be permitted in certain circumstances (recommendation 7).
 Parliament of Canada, PDAM, [Medical Assistance in Dying: A Patient-Centred Approach](#), First report, February 2016, p. 15 (recommendation 3) and pp. 21–24 (recommendations 6 and 7).
17. This section of the HillStudy relies heavily on Julia Nicol and Marlis 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, Library of Parliament, 27 September 2018.
18. [Bill C-14, An Act to amend the Criminal Code and to make related amendments to other Acts \(medical assistance in dying\)](#), 42<sup>nd</sup> Parliament, 1<sup>st</sup> Session (S.C. 2016, c. 3).
19. Quebec, [Act respecting end-of-life care](#), R.S.Q., c. S-32.0001.
20. Many of these criteria and safeguards are still reflected in sections 241.2(1) to 241.2(3) of the *Criminal Code*.

21. [Regulations for the Monitoring of Medical Assistance in Dying](#), SOR/2018-166.
22. In its report *The State of Knowledge on Medical Assistance in Dying for Mature Minors*, the Expert Panel Working Group on MAID for Mature Minors, convened by the Council of Canadian Academies (CCA), offers the following definition of “mature minor”:
 

A *minor* is a person under the age of majority (18 or 19 depending on the province or territory). A *mature minor* is a minor who has the capacity to understand and appreciate the nature and consequences of a decision. [Emphasis in the original]

CCA, [The State of Knowledge on Medical Assistance in Dying for Mature Minors](#), Report prepared by the Expert Panel Working Group on MAID for Mature Minors, 2018, p. 5.
23. In its report *The State of Knowledge on Advance Requests for Medical Assistance in Dying*, the Expert Panel Working Group on Advance Requests for MAID, convened by the CCA, offers the following definition of “advance requests for MAID”:
 

The Panel defines an *advance request for MAID* (AR for MAID) as a request for MAID, created in advance of a loss of decision-making capacity, intended to be acted upon under the circumstances outlined in the request after the person has lost decisional capacity. [Emphasis in the original]

CCA, [The State of Knowledge on Advance Requests for Medical Assistance in Dying](#), Report prepared by the Expert Panel Working Group on Advance Requests for MAID, 2018, p. 5.
24. [Bill C-14, An Act to amend the Criminal Code and to make related amendments to other Acts \(medical assistance in dying\)](#), 42<sup>nd</sup> Parliament, 1<sup>st</sup> Session (S.C. 2016, c. 3), cl. 9.1. This requirement was added during the House of Commons Standing Committee on Justice and Human Rights’ study of the bill.
25. 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.
26. CCA, [Medical Assistance in Dying: The Expert Panel on Medical Assistance in Dying](#), 12 December 2018.
27. CCA, [The 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.
28. *Ibid.*, p. 5.
29. *Ibid.*, p. 12.
30. *Ibid.*, p. 13.
31. *Ibid.*, p. 13.
32. *Ibid.*, p. 23.
33. *Ibid.*, p. 24.
34. *Ibid.*, pp. 26 and 38.
35. *Ibid.*, p. 27.
36. CCA, [The State of Knowledge on Advance Requests for Medical Assistance in Dying](#), Report prepared by the Expert Panel Working Group on Advance Requests for MAID, 2018, p. 8; CCA, [The State of Knowledge on Medical Assistance in Dying for Mature Minors](#), Report prepared by the Expert Panel Working Group on MAID for Mature Minors, 2018, p. 8; and CCA, [The State of Knowledge on Medical Assistance in Dying Where a Mental Disorder Is the Sole Underlying Medical Condition](#), Report prepared by the Expert Panel Working Group on MAID Where a Mental Disorder Is the Sole Underlying Medical Condition, 2018, p. 8.
37. [Lamb v. Canada \(Attorney General\)](#), 2017 BCSC 1802 (CanLII); and Supreme Court of British Columbia, [Notice of Civil Claim](#), Vancouver Registry No. S-165851, 27 June 2016. Robyn Moro later joined the challenge as an additional plaintiff. See [“Delta woman joins fight to overturn right-to-die limitations,” CBC News](#), 23 May 2017.
38. Jocelyn Downie, [“A watershed month for medical assistance in dying,” Policy Options](#), 20 September 2019.
39. [Truchon c. Procureur général du Canada](#), 2019 QCCS 3792 (CanLII).

40. [Canadian Charter of Rights and Freedoms](#), Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982*, 1982, c. 11 (U.K.).
41. [Truchon c. Procureur général du Canada](#), 2019 QCCS 3792 (CanLII), para. 734.
42. *Ibid.*, paras. 734–735. The two sections of those laws (section 241.2(2)(d) of the *Criminal Code* and section 26(3) of *An Act respecting end-of-life care*) 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.
43. Kathleen Harris, [“Trudeau rules out coalition, promises gender equity in new cabinet,”](#) *CBC News*, 23 October 2019.
44. [Bill C-7, An Act to amend the Criminal Code \(medical assistance in dying\)](#), 43<sup>rd</sup> Parliament, 2<sup>nd</sup> Session (S.C. 2021, c. 2). For more information about Bill C-7, see Julia Nicol and Marlisa Tiedemann, [“2. Description and Analysis,”](#) *Legislative Summary of Bill C-7: An Act to amend the Criminal Code (medical assistance in dying)*, Publication no. 43-2-C7-E, Library of Parliament, 19 April 2021.
45. This amendment responded to the advocacy of Audrey Parker, who chose to end her life using MAID earlier than she would have preferred because she feared she would lose the capacity to consent. See Government of Canada, [“Final consent for persons whose natural death is reasonably foreseeable,”](#) *Canada’s medical assistance in dying (MAID) law*; and Anjuli Patil, [“Halifax woman posthumously calls for fix to Canada’s assisted dying rules,”](#) *CBC News*, 6 February 2019.
46. [Regulations Amending the Regulations for the Monitoring of Medical Assistance in Dying](#), SOR/2022-222, 26 October 2022, in *Canada Gazette*, Part II, 9 November 2022.
47. [Bill C-7, An Act to amend the Criminal Code \(medical assistance in dying\)](#), 43<sup>rd</sup> Parliament, 2<sup>nd</sup> Session (S.C. 2021, c. 2), cls. 1(2.1) and 6.
48. *Ibid.*, cl. 3.1(1).
49. Health Canada, [Final Report of the Expert Panel on MAiD and Mental Illness](#), 13 May 2022.
50. *Ibid.*, p. 12.
51. [Bill C-7, An Act to amend the Criminal Code \(medical assistance in dying\)](#), 43<sup>rd</sup> Parliament, 2<sup>nd</sup> Session (S.C. 2021, c. 2), cl. 5(1).
52. Parliament of Canada, Special Joint Committee on Medical Assistance in Dying (AMAD), [Medical Assistance in Dying and Mental Disorder as the Sole Underlying Condition: An Interim Report](#), First report, June 2022.
53. Jean-Yves Duclos, Minister of Health, [Government response to the first report of the Special Joint Committee on Medical Assistance in Dying titled Medical Assistance in Dying and Mental Disorder as the Sole Underlying Condition: An Interim Report](#), 20 October 2022.
54. Parliament of Canada, AMAD, [Medical Assistance in Dying in Canada: Choices for Canadians](#), Second report, February 2023.
55. Jean-Yves Duclos, Minister of Health and David Lametti, Minister of Justice, [Government response to the second report of the Special Joint Committee on Medical Assistance in Dying titled Medical Assistance in Dying in Canada: Choices for Canadians](#), 13 June 2023.
56. Government of Canada, [Changes to the Law: Extension of the temporary exclusion of eligibility for persons suffering solely from mental illness](#).
57. [Bill C-39, An Act to amend An Act to amend the Criminal Code \(medical assistance in dying\)](#), 44<sup>th</sup> Parliament, 1<sup>st</sup> Session (S.C. 2023, c. 1).
58. Government of Canada, [Changes to the Law: Extension of the temporary exclusion of eligibility for persons suffering solely from mental illness](#).
59. Parliament of Canada, AMAD, [MAiD and Mental Disorders: the Road Ahead](#), Third report, January 2024.
60. Darren Major, [“Federal government seeking another pause on planned expansion of medical assistance in dying,”](#) *CBC News*, 29 January 2024.
61. [Bill C-62, An Act to amend An Act to amend the Criminal Code \(medical assistance in dying\), No. 2](#), 44<sup>th</sup> Parliament, 1<sup>st</sup> Session (S.C. 2024, c. 1).

62. Quebec, [Act respecting end-of-life care](#), R.S.Q., c. S-32.0001; and Quebec, [Bill 52, An Act respecting end-of-life care](#), 40<sup>th</sup> Legislature, 1<sup>st</sup> Session. For a timeline of reports on the matter, see [Truchon c. Procureur général du Canada](#), 2019 QCCS 3792 (CanLII), paras. 120–136.
63. When the federal government sought to extend the suspension of the declaration of invalidity in *Carter*, Quebec sought and was granted an exemption from the extension in order to avoid uncertainty regarding this potential conflict. See [Carter v. Canada \(Attorney General\)](#), 2016 SCC 4, para. 7.
64. Quebec, [Bill 11, An Act to amend the Act respecting end-of-life care and other legislative provisions](#), 43<sup>rd</sup> Legislature, 1<sup>st</sup> Session (S.Q. 2023, c. 15).
65. *Ibid.*, cl. 59(2).
66. *Ibid.*, cls. 16 and 58.
67. Canadian Association of MAiD Assessors and Providers (CAMAP), [The Clinical Interpretation of “Reasonably Foreseeable”](#), Clinical Practice Guideline, June 2017.
68. CAMAP, [Bringing up Medical Assistance In Dying \(MAiD\) as a clinical care option](#).
69. CAMAP, [Canadian MAiD Curriculum Topic Areas](#).
70. Parliament of Canada, AMAD, [Medical Assistance in Dying in Canada: Choices for Canadians](#), Second report, February 2023, pp. 18, 51 and 63.
71. *Ibid.*, Recommendation 1, p. 20; and Health Canada, [Final Report of the Expert Panel on MAiD and Mental Illness](#), 6 May 2022, Recommendation 1, p. 12. The expert panel’s recommendation pertained specifically to assessments that “raise questions about incurability, irreversibility, capacity, suicidality and impact of structural vulnerabilities.”
72. Government of Canada, [Model Practice Standard for Medical Assistance in Dying \(MAiD\)](#), March 2023.
73. Government of Canada, [Background Document: The Work of the Medical Assistance in Dying \(MAiD\) Practice Standards Task Group](#), March 2023.
74. [Bill C-14, An Act to amend the Criminal Code and to make related amendments to other Acts \(medical assistance in dying\)](#), 42<sup>nd</sup> Parliament, 1<sup>st</sup> Session (S.C. 2016, c. 3).
75. See for example, Ontario, College of Physicians and Surgeons of Ontario, [Human Rights in the Provision of Health Services](#), Policy, September 2023. Requiring an effective referral was also recommended by PDAM. See Parliament of Canada, PDAM, [Medical Assistance in Dying: A Patient-Centred Approach](#), First report, February 2016, Recommendation 10, p. 26.
76. According to the expert panel, “[s]tructural vulnerability refers to the impacts of the interaction of demographic attributes (i.e., sex, gender, socioeconomic status, race/ethnicity), with assumed or attributed statuses related to one’s position in prevailing social, cultural, and political hierarchies.” Health Canada, [Final Report of the Expert Panel on MAiD and Mental Illness](#), 6 May 2022, p. 11.
77. See for example, Parliament of Canada, AMAD, [Medical Assistance in Dying in Canada: Choices for Canadians](#), Second report, February 2023, pp. 15–17 and pp. 36–41; Archibald Kaiser et al., “MAiD Bill C-7 Is an Affront to Equality,” University of Toronto Faculty of Law blog, 11 March 2021; and The Fifth Estate, [“Is it too easy to die in Canada? Surprising approvals for medically assisted death.”](#) YouTube, 19 January 2023.
78. Parliament of Canada, AMAD, [Medical Assistance in Dying in Canada: Choices for Canadians](#), Second report, February 2023, pp. 35–36.
79. *Ibid.*, pp. 35–38.
80. *Ibid.*, pp. 28, 36–39 and 57–58.
81. *Ibid.*, pp. 40, 59–61 and 66.