

## BREAKING CASE LAW

### Bill C-14: Medical Assistance in Dying



## This Issue

### The Provision of Medical Assistance in Dying is Now Lawful in Canada

Bill C-14, an Act to amend the *Criminal Code* and to make related amendments to other Acts (medical assistance in dying), received Royal Assent and became law on Friday, June 17, 2016.

Parliament crafted the amendments in response to the Supreme Court's decision in *Carter v. Canada (Attorney General)*, 2015 SCC 5, which concluded that the *Criminal Code* sections prohibiting a physician's assistance in terminating life infringed the Charter rights to life, liberty and security of the person for consenting adults who suffered from a grievous, irremediable medical condition that caused intolerable suffering.

The term "medical assistance in dying" is now a defined term in the *Criminal Code*. The definition includes the active administration of a substance by a physician or nurse practitioner, or "the prescribing or providing" of a substance for self-administration. In order to access medical assistance in dying, an individual must meet the following criteria:

- be at least 18 years of age;
- with an incurable illness, disease or disability;
- in an advanced state of irreversible decline; and
- "their natural death has become reasonably foreseeable".

The definition as drafted imposes the additional criteria of "irreversible decline" and a foreseeable "natural death". There are no provisions that allow for medical assistance in dying for minors or mature minors and no provisions that would allow an advance directive consenting to medical assistance in dying.

More specifically, Bill C-14 amended the *Criminal Code* to:

- 1) create exemptions from the offences of culpable homicide, aiding suicide and of administering a noxious thing, in order to permit physicians and nurse practitioners to provide medical assistance in dying and to permit other healthcare providers, such as pharmacists and nurses, to assist in the process;

Suite 2250  
10104 – 103 Avenue  
Edmonton, Alberta  
T5J 0H8

Tel 780.448.9275  
Fax 780.423.0163  
shoresjardine.com

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- 2) specify the eligibility criteria and the safeguards that must be respected before medical assistance in dying may be provided to a person;
- 3) require that physicians, nurse practitioners and in some circumstances pharmacists to, provide information for the purpose monitoring of medical assistance in dying, and
- 4) create new offences for failing to comply with the safeguards, for forging or destroying documents related to medical assistance in dying, for failing to provide the required information and for contravening the regulations.

#### PROTECTION FOR THE HEALTHCARE TEAM

The Supreme Court's decision in *Carter* provided clear protection from prosecution for physicians involved in assisted dying but did not address the other healthcare providers which are involved.

In contrast, the amendments provide exemptions from prosecution for physicians, nurse practitioners, nurses, pharmacists and other healthcare providers who may provide assistance in the provision of medical assistance in dying. Further, the exemptions from prosecution apply so long as the healthcare provider had a reasonable (even if mistaken) belief of patient consent or reasonable (even if mistaken) belief of any other eligibility requirement for the lawful provision of medical assistance in dying.

Notably, the amendments explicitly state that the provision of healthcare services must be provided with reasonable knowledge, skill and in accordance with any provincial laws, rules or standards. This would include any professional standards of practice or applicable protocols and any provincial legislation.

Nothing in the amendments attempts to reduce the ability of a healthcare provider to exercise their own Charter right to refuse to participate in medical assistance in dying based on their own conscientious objection.

#### OFFENCES

Forgery or destruction of documents related to the provision of medical assistance in dying is now an offence. Failing to comply with the safeguards for medical assistance in dying (informed consent, independent second opinion and "clear days" requirement) is an offence.

#### ADDITIONAL AMENDMENTS

Bill C-14 also contains a number of consequential amendments to other acts to address the impact of medically assisted death on certain pension and benefit statutes and requires that the Act be reviewed within 5 years.

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