



LEGISLATIVE SUMMARY

BILL C-7: AN ACT TO AMEND THE CRIMINAL CODE (MEDICAL ASSISTANCE IN DYING)

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Legislative Summary of Bill C-7
(Legislative Summary)

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LEGISLATIVE SUMMARY OF BILL C-7: AN ACT TO AMEND THE CRIMINAL CODE (MEDICAL ASSISTANCE IN DYING)

1 BACKGROUND

Bill C-7, An Act to amend the Criminal Code (medical assistance in dying) was introduced in the House of Commons by the Minister of Justice on 24 February 2020 and received first reading that same day.¹

The bill includes the federal response to the September 2019 Superior Court of Quebec decision in *Truchon c. Procureur général du Canada*,² which related to the federal *Criminal Code* (the Code) provisions on medical assistance in dying (MAID)³ and Quebec's *Act respecting end-of-life care*.⁴ That decision declared that the Code requirement that a person could be eligible for MAID only if natural death was "reasonably foreseeable" was contrary to the *Canadian Charter of Rights and Freedoms*.

The amendments to the Code that are proposed in Bill C-7 also address some issues that have been raised since the Code provisions on MAID were first introduced in 2016. The bill amends the Code provisions on MAID by establishing a separate set of procedural safeguards for individuals whose natural death is not reasonably foreseeable and making some amendments to the safeguards that apply in the case of individuals whose natural death is reasonably foreseeable.

The bill also amends the eligibility criteria by establishing that mental illness is not an illness, disease or disability for the purpose of determining eligibility for MAID.

Following the tabling of Bill C-7, the Department of Justice presented a report on the results of consultations that had been held by the federal government in January and February 2020. Those consultations sought input from Canadians on issues relating to MAID, including whether MAID should be available to a person whose sole underlying condition is a mental illness.⁵

1.1 CARTER V. CANADA (ATTORNEY GENERAL) AND STUDIES IN THE WAKE OF CARTER

The Code provisions relating to MAID were first introduced in 2016 by Bill C-14, An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying).⁶ Bill C-14 was introduced in response to the February 2015 Supreme Court of Canada decision in *Carter v. Canada (Attorney General)*.⁷ In *Carter*, the Court declared that sections 241(b) and 14 of the Code, which prohibited assistance in terminating life, infringed upon the Charter

right to life, liberty and security of the person for individuals who want access to an assisted death. As a result, the provisions were found to be invalid. The Court suspended the declaration of invalidity for one year, and then for an additional four months at the request of the Attorney General of Canada.

In August 2015, the federal government established the External Panel on Options for a Legislative Response to *Carter v. Canada*. Although the panel was initially mandated both to carry out consultations on issues relating to assisted dying and to provide recommendations on legislative options, its mandate was revised to summarizing the key findings of the consultations instead. Those findings were released in December 2015.⁸ The Provincial–Territorial Expert Advisory Group on Physician-Assisted Dying was also established in August 2015; it presented its final report, containing 43 recommendations, on 30 November 2015.⁹

In December 2015, a special joint committee was established, consisting of members of Parliament and senators. The Special Joint Committee on Physician–Assisted Dying met in January and February of 2016 and its report, adopted by a majority of committee members, set out recommendations for a legislative framework on assisted dying.¹⁰ The report emphasized the need for the federal government to work collaboratively with the provinces on this issue. While many of the committee’s recommendations were reflected in Bill C-14, two exceptions later formed the basis of separate reviews:

- 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).

The special joint committee also recommended that a psychiatric condition should not be a bar to eligibility (recommendation 3). Although individuals with a psychiatric condition or mental illness were not specifically excluded from being eligible for MAID, an expert panel that considered mental illness in the context of MAID noted that “[m]ost people with a mental disorder as their sole underlying medical condition cannot satisfy the current eligibility criteria for MAID.”¹¹

1.2 BILL C-14, AN ACT TO AMEND THE CRIMINAL CODE AND TO MAKE RELATED AMENDMENTS TO OTHER ACTS (MEDICAL ASSISTANCE IN DYING)¹²

Bill C-14 was introduced in the House of Commons on 14 April 2016 and received Royal Assent on 17 June 2016.¹³ 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 (NPs) who provide MAID and persons who assist them, such as 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 is also 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));
- 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)).

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 (respectively sections 241.31(4) and 241.31(5)).

The final version of Bill C-14 included a requirement that one or more independent reviews be conducted on three circumstances under which MAID is currently restricted:

- MAID for mature minors;
- advance requests for MAID; and
- requests for MAID where mental illness is the sole underlying condition.¹⁴

Reviews were carried out by three separate working groups of the Council of Canadian Academies, each of which released a report in December 2018.¹⁵

The *Regulations for the Monitoring of Medical Assistance in Dying*, which outline the reporting requirements relating to MAID requests, came into force in November 2018.¹⁶

1.3 COURT CHALLENGES TO THE CODE AMENDMENTS

There have been two high-profile challenges to the Code's MAID provisions. Julia Lamb, who has spinal muscular atrophy type 2, challenged the law as being too restrictive in requiring that a person be in an "advanced state of irreversible decline" and that a person's "natural death has become reasonably foreseeable."¹⁷ The case, however, was adjourned after the Attorney General of Canada put forward expert evidence suggesting that Julia Lamb would likely be found to meet the criterion of having a reasonably foreseeable natural death.¹⁸

The second high-profile case was brought by Jean Truchon and Nicole Gladu. Jean Truchon had cerebral palsy and was diagnosed with severe spinal stenosis and myelomalacia in 2012. Nicole Gladu was diagnosed with post-polio syndrome at the age of 47. As Quebec residents, they challenged both the Code requirement that their natural deaths be "reasonably foreseeable" and the Quebec assisted dying law requirement that they be "at the end of life." Both had made a request for MAID and had been found to meet all of the eligibility criteria except for those requirements.¹⁹

On 11 September 2019, the Superior Court of Quebec declared that the Code provision that required a person's natural death to be "reasonably foreseeable" in order for that person to receive MAID 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 that section of the Code and the section of the Quebec assisted dying law that required a person to be "at the end of life" in order to receive MAID were contrary to the equality rights

provisions contained in section 15 of the Charter. Accordingly, those sections of those laws were declared invalid, with that declaration suspended for six months. The applicants were granted a constitutional exemption permitting them to access MAID during the suspension period. The initial suspension period was extended by four months (to 11 July 2020) at the request of the Attorney General of Canada. Neither the federal government nor the Government of Quebec appealed the ruling.

2 DESCRIPTION AND ANALYSIS

Bill C-7 contains four clauses. Key clauses are discussed in the following section.

As with Bill C-14, which introduced the first set of MAID amendments to the Code, Bill C-7 has a preamble that addresses a broad range of issues. Some of the provisions in the preamble are similar to those in the first bill, while others are new. For example, Bill C-7 refers to Canada's obligations under the *United Nations Convention on the Rights of Persons with Disabilities*, which Bill C-14 did not. The preamble in Bill C-7 also addresses the evolution of the law as a consequence of the *Truchon* case, stating that Parliament no longer sees the need to limit MAID to individuals whose natural death is reasonably foreseeable (though acknowledging the need for extra safeguards in cases where such death is not reasonably foreseeable).

2.1 THE "NATURAL DEATH HAS BECOME REASONABLY FORESEEABLE" CRITERION (CLAUSE 1(1))

Currently, section 241.2(2)(d) of the Code requires that the person's

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.

As noted above, the *Truchon* decision found that provision to be unconstitutional.

In response to *Truchon*, clause 1(1) of Bill C-7 repeals section 241.2(2)(d) of the Code so that a person's natural death no longer has to be reasonably foreseeable in order for that person to be eligible for MAID. As explained further below, however, the bill provides for different safeguards according to whether a person's natural death is or is not reasonably foreseeable.

2.2 MENTAL ILLNESS AS THE SOLE UNDERLYING CONDITION (CLAUSE 1(2))

Section 241.2(1)(c) of the Code lists a grievous and irremediable condition as a requirement for a person to be eligible for MAID. Section 241.2(2) defines a

grievous and irremediable condition, one of whose elements is having a “serious and incurable illness, disease or disability.” The Department of Justice stated in *Legislative Background: Medical Assistance in Dying (Bill C-14)* that

people with a mental illness or physical disability would not be excluded from the regime but would ... be able to access medical assistance in dying [only] if they met all of the eligibility criteria.²¹

That document recognizes that requests for MAID due to mental illness are complex and require additional study.

As noted above, after Bill C-14 received Royal Assent, the Council of Canadian Academies was tasked with studying three issues, one of which was requests for MAID where mental illness is the sole underlying condition. Their report acknowledges that some individuals may satisfy the current criteria for MAID due to their mental illness, but others will not. It notes, however, that it will be rare that individuals whose sole underlying condition is mental illness will meet the eligibility criteria.²²

While *Truchon* did not involve individuals with a mental illness as the sole underlying condition, the elimination of the requirement for natural death to be reasonably foreseeable could have permitted MAID for more people with a mental illness as their sole underlying condition than is currently the case. However, clause 1(2) of the bill adds a new section 241.2(2.1) to the Code, which states that a mental illness is not an illness, disease or disability for the purposes of section 241.2(2)(a). This means that a mental illness alone is not enough to qualify for MAID under Bill C-7, even if the other criteria are satisfied. According to the Minister of Justice, this issue is too complex to address in the context of a court-imposed time limit and should instead be addressed during the statutory parliamentary review of the MAID law, which should begin in June 2020.²³

2.3 TWO SETS OF SAFEGUARDS (CLAUSES 1(3) TO 1(7))

Bill C-7 makes several changes to the safeguards in place when MAID is provided. Currently, one set of safeguards applies for all cases of MAID. The bill creates two sets of safeguards, one for requests where natural death is foreseeable and another for requests where it is not. Some of the safeguards are the same whether natural death is foreseeable or not, while others are different. Only those safeguards that are amended or added by Bill C-7 are discussed here.

In both situations, Bill C-7 establishes that only one person is required to witness the signing of the request, instead of the two witnesses that are currently required (amended section 241.2(3)(c) and new section 241.2(3.1)(c) of the Code).

The 10-day waiting period that is currently required between the signing of a request for MAID and the day that MAID is provided is eliminated from the requirements where natural death is foreseeable (amended section 241.2(3)(g)). The Minister of Justice, in his speech at second reading, stated that during public consultations the government heard that individuals have given MAID a lot of consideration by the time they make a written request, and that the waiting period unnecessarily prolongs suffering.²⁴

For requests where natural death is not reasonably foreseeable, the bill introduces a 90-day waiting period between when the first assessment is made and the provision of MAID, unless both of the physicians or NPs are of the opinion that the person's loss of capacity is imminent. If loss of capacity is imminent, the physician or NP who is to provide MAID determines the waiting period that is appropriate in the circumstances (new section 241.2(3.1)(i)).

Currently, consent must be verified in all cases, immediately prior to MAID being provided. Where natural death is reasonably foreseeable, the bill permits this final consent to be waived (new sections 241.2(3.2) to 241.2(3.5) of the Code). The specific requirements that apply in such situations are discussed in the next section.

For requests where natural death is not reasonably foreseeable, one of the physicians or NPs assessing eligibility is now required to have expertise in the condition that is causing the person's suffering (new section 241.2(3.1)(e)).

When natural death is not reasonably foreseeable, the bill also requires that the patient be informed of the means available to relieve their suffering, including, where appropriate, counselling services, mental health and disability support services, community services and palliative care. The patient must also be offered consultations with relevant professionals who provide those services (new section 241.2(3.1)(g)). Finally, the physicians or NPs must discuss the reasonable and available means to relieve the person's suffering with the person and agree that the person has given serious consideration to those means (new section 241.2(3.1)(h)). The Minister of Justice stated that these additional requirements were added to "clarify the notion of informed consent for these kinds of cases."²⁵

The current safeguards and the two sets of safeguards proposed in Bill C-7 are outlined in the table below.

Table 1 – Comparison of the Current Safeguards with the Safeguards Provided in Bill C-7 When Natural Death Is or Is Not Foreseeable

Current Safeguards: Section 241.2(3) of the <i>Criminal Code</i>	Safeguards in Bill C-7 When Natural Death Is Foreseeable: Amended Section 241.2(3) and New Sections 241.2(3.2) to 241.2(3.5) of the <i>Criminal Code</i>	Safeguards in Bill C-7 When Natural Death Is Not Foreseeable: New Section 241.2(3.1) of the <i>Criminal Code</i>
The physician or nurse practitioner (NP) is of the opinion that the person meets all the criteria set out in section 241.2(1).	No change	No change
The request is made in writing, and signed and dated by the person after they were informed that they have a grievous or irremediable medical condition.	No change	No change
The request is signed and dated before two independent witnesses.	The request is signed and dated before one independent witness. ^a	The request is signed and dated before one independent witness. ^a
The person is informed that they may, at any time and in any manner, withdraw their request.	No change	No change
Another physician or NP provides a written opinion confirming that the person meets the criteria.	No change	Another physician or NP provides a written opinion confirming that the person meets the criteria. If the first physician or NP does not have expertise in the condition that is causing the person's suffering, the written opinion must be provided by a physician or NP with that expertise.
The second physician or NP is independent from the first.	No change	No change
There are at least 10 clear days between the day that the request is signed and the day that medical assistance in dying (MAID) is provided (unless the person's death or loss of capacity to provide informed consent is imminent).	Section repealed	There are at least 90 clear days between the day on which the first assessment begins and the day on which medical assistance in dying is provided, or – if the assessments have been completed and both of the physicians or NPs are of the opinion that the loss of the person's capacity to provide consent to receive medical assistance in dying is imminent – any shorter period that the physician or NP who is to provide MAID considers appropriate in the circumstances.

Current Safeguards: Section 241.2(3) of the <i>Criminal Code</i>	Safeguards in Bill C-7 When Natural Death Is Foreseeable: Amended Section 241.2(3) and New Sections 241.2(3.2) to 241.2(3.5) of the <i>Criminal Code</i>	Safeguards in Bill C-7 When Natural Death Is Not Foreseeable: New Section 241.2(3.1) of the <i>Criminal Code</i>
Immediately before providing MAID, the person is given the opportunity to withdraw the request, and the physician or NP ensures that the person is giving their express consent.	Immediately before providing MAID, the person is given the opportunity to withdraw the request, and the physician or NP ensures that the person is giving their express consent. However, this verification of final consent may be waived if certain criteria are met (see section 2.4 of this Legislative Summary for details).	Immediately before providing MAID, the person is given the opportunity to withdraw the request, and the physician or NP ensures that the person is giving their express consent. However, this verification of final consent may be waived if certain criteria are met. The scenarios in which a waiver of the verification can occur are more limited than when natural death is reasonably foreseeable (see section 2.4 of this Legislative Summary for details).
If the person has difficulty communicating, reasonable measures must be taken to provide a reliable means by which the person may understand the information that is provided to them and communicate their decision.	No change	No change
No equivalent	No equivalent	The person has been informed of the means available to relieve their suffering, including, where appropriate, counselling services, mental health and disability support services, community services and palliative care, and has been offered consultations with relevant professionals who provide those services or that care.
No equivalent	No equivalent	Both of the physicians or NPs have discussed with the person the reasonable and available means to relieve the person's suffering and agree with the person that the person has given serious consideration to those means.

Notes: a. The provision regarding who can be a witness is changed by clause 1(8) of the bill as well. See section 2.5 of this Legislative Summary for further details.

Sources: Table created by authors based on a comparison of the existing law with Bill C-7. See [Criminal Code](#), R.S.C. 1985, c. C-46, s. 241.2(3); and [Bill C-7, An Act to amend the Criminal Code \(medical assistance in dying\)](#), 1st Session, 43rd Parliament.

2.4 FINAL CONSENT WAIVER (CLAUSE 1(7))

Currently, a person must have the capacity to consent immediately before MAID is provided. The high-profile case of Audrey Parker, who had cancer that had spread to her brain, illustrates the impact of this requirement. She was eligible for MAID but was concerned that she might lose capacity before she received an assisted death and would, thus, lose eligibility. For this reason, she chose to receive MAID in November 2018, although she would have preferred to wait until after Christmas of that year, as stated in a highly publicized video that she made before her death.²⁶ Justice Minister David Lametti is reported to have cited Ms. Parker's case as inspiration for the changes outlined in Bill C-7 regarding final consent prior to receiving MAID.²⁷

New section 241.2(3.2) of the Code outlines the criteria for waiving the requirement for consent to be given immediately before MAID is provided. This option is possible only when natural death is reasonably foreseeable and all the following criteria are satisfied:

- Before the person loses the capacity to consent to MAID,
 - they satisfied the criteria for MAID and all the relevant safeguards;
 - they entered into an arrangement in writing with the physician or NP for a substance to be administered to cause their death on a specified day;
 - they were informed by the physician or NP of the risk of losing the capacity to consent prior to the specified day; and
 - in the written arrangement, they consented to the administration of a substance to cause their death on or before the specified day if they lost capacity to consent prior to that day.
- The person has lost capacity to consent to MAID.
- The person neither demonstrates refusal by words, sounds or gestures, nor resists the administration of the substance. The bill clarifies this provision by stating
 - that involuntary words, sounds or gestures made in response to contact do not constitute refusal or resistance (new section 241.2(3.3)); and
 - that once the person demonstrates refusal or resistance, MAID cannot be provided to them based on the written arrangement (new section 241.2(3.4)).
- The substance is administered in accordance with the terms of the arrangement.

New section 241.2(3.5) of the Code introduces a provision relating to advance consent in the specific case of self-administration, which is available both in cases where natural death is reasonably foreseeable and where it is not. There have been situations in which self-administration did not result in death, but the person then lost

the capacity to consent to have a physician or NP administer a substance to cause their death. Consent to practitioner-administered MAID after self-administration has not resulted in death could be understood as providing advance consent, which is not currently legal in Canada. There are differences of opinion as to whether, in such cases, a physician or NP is permitted to administer a substance to cause the death of the person based on the current law.²⁸

The new provision would clarify what is permitted and would allow a physician or NP to administer a substance when a person has self-administered and lost the capacity to consent but has not died, if the following conditions are met:

- Before the person lost the capacity to consent to MAID, the person entered into an agreement in writing with the physician or NP providing MAID that
 - requires the physician or NP to be present at the time of the self-administration; and
 - allows the physician or NP to administer a second substance to cause the person's death if the person lost capacity to consent and did not die within a specified period after self-administration.
- The person self-administered the first substance but did not die within the specified period and has lost capacity to consent to MAID.
- The second substance is administered to the person in accordance with the terms of the arrangement.

2.5 WHO CAN BE A WITNESS (CLAUSE 1(8))

Section 241.2(5) of the Code outlines who can witness the signing of a request for MAID. Currently, among other restrictions, no one directly involved in providing health care services or personal care to the person making the request can act as a witness.

New section 241.2(5.1) allows such individuals to act as a witness if the provision of care is their primary occupation and they are paid to provide that care. However, the proposed change would not permit the physician or NP providing MAID or the physician or NP providing the second assessment to act as a witness.

2.6 FILING INFORMATION (CLAUSE 3)

Bill C-14 required Health Canada to develop regulations to establish a monitoring regime for MAID. Those regulations require reporting when MAID is provided, when a person who has requested MAID is referred to another physician or NP, when a person is found to be ineligible, when a person withdraws the request and when a

person dies of another cause. Currently, information about those cases is collected by Health Canada only if a written request for MAID is submitted. However, referral, ineligibility, withdrawal of a request or death by another cause may occur after an assessment but before the written request is made. Under the current monitoring regime, those cases would not be documented. Revised section 241.31(1) of the Code would expand the cases requiring filing of information to include any case in which an assessment takes place, not only cases in which a written request has been submitted to the physician or NP.

Clause 3 of Bill C-7 also introduces a new section 241.31(1.1). That section requires any person responsible for carrying out preliminary assessments of eligibility for MAID to file the required information, just as physicians and NPs are currently expected to do, unless they are exempted from doing so in the regulations. Similarly, under revised section 241.31(2), a pharmacist, and now also a pharmacy technician, who dispenses a substance in connection with the provision of MAID must file the required information.

2.7 TRANSITIONAL PROVISION (CLAUSE 4)

The requirements in the current version of the Code will continue to apply to requests for MAID signed and dated before the Royal Assent of Bill C-7, except for the following changes, which will be applied to all cases upon Royal Assent:

- There is no 10-day waiting period in cases where natural death is reasonably foreseeable (that is, the change to section 241.2(3)(g) of the Code applies in all cases).
- The final consent can be waived (new sections 241.2(3.2) to 241.2(3.5) apply in all cases).

3 COMMENTARY

After Bill C-7 was introduced, reviews were mixed. For example, some see the proposed increased access to MAID for some individuals as positive,²⁹ while others have voiced concerns that the bill goes beyond what was required by the *Truchon* decision, or objected to expanding MAID beyond end-of-life scenarios.³⁰ The British Columbia Civil Liberties Association (BCCLA), a co-litigant in Julia Lamb's case, endorses some of the changes. However, the organization has expressed concern about other provisions in the bill, which they say result in a law that is "overly complex and adds additional, confusing hurdles for some patients, and flatly bars other patients."³¹ The concern has also been raised that the bill does not protect the conscience rights of health care professionals.³²

3.1 REASONABLY FORESEEABLE NATURAL DEATH

Concerns have been expressed by Dr. Stefanie Green, president of the Canadian Association of MAiD Assessors and Providers, and Jocelyn Downie, a professor of law and medicine who studies and advocates for MAiD, that the bill might narrow the concept of reasonably foreseeable natural death, requiring death to be more imminent than previously interpreted. They state that reasonably foreseeable natural death is currently understood as meaning that a person is on a trajectory toward death, though death could be a few years away.³³ In contrast to that interpretation, in his speech at second reading in the House of Commons, the Minister of Justice stated:

As enacted by Parliament in 2016, reasonable foreseeability of natural death refers to a death that is expected in the relative near term. It means that in light of all the person's medical circumstances, his or her death is expected in a relatively short period of time. Natural death is not reasonably foreseeable just because an individual is diagnosed with a condition that will eventually cause death many years or decades into the future.³⁴

Another academic, Dr. Thomas McMorrow, has called for a clear time frame to be added to the legislation to address any confusion about how far in the future natural death can be while still being considered reasonably foreseeable. He suggests that a 12- or 18-month prognosis could be appropriate.³⁵

Concerns have also been expressed that, in some cases, determining which of the two streams applies to a patient could be challenging for practitioners.³⁶ Some doctors have expressed concern that the expansion of MAiD eligibility to include individuals whose natural death is not reasonably foreseeable may discourage some providers from continuing to provide MAiD because of the moral, psychological and emotional burden involved in assessing eligibility when a person might have decades left to live.³⁷

Some religious organizations have also expressed concerns about this expansion of MAiD eligibility.³⁸ Disability and religious organizations have expressed concern about the societal implications of removing the requirement that natural death be reasonably foreseeable and the message this sends to people living with a disability and the broader society. The Canadian Association for Community Living, an advocacy organization for people with intellectual disabilities, for example, sees the provision of MAiD to people who are not at the end of life as discrimination; the organization maintains that the bill “puts the lives of people with a disability at risk.”³⁹

The Christian Legal Fellowship has expressed concern that new safeguards for cases in which natural death is not reasonably foreseeable do not go far enough, since they require only that individuals be offered treatment and consultation with relevant

professionals, rather than requiring that they actually seek consultation and undergo treatment prior to requesting MAID. The organization calls for the government to “provide Canadians with medical assistance in *living* [emphasis in the original]” before expanding eligibility for MAID and removing safeguards.⁴⁰

3.2 MENTAL ILLNESS AS THE SOLE UNDERLYING CONDITION

Whether to allow individuals with mental illness as their sole underlying condition to be eligible for MAID is a topic that is hotly debated both within the psychiatric community and among the Canadian population more generally.⁴¹ The Council of Canadian Academies working group that reported on the issue had several areas of disagreement on issues relevant to the application of any law that might expand access to MAID for people living with mental illness. For example, members of the group could not agree on whether it is possible to distinguish between a person who wishes to die by suicide due to the symptoms of their mental disorder and a person with a mental disorder who is able to make an autonomous, well-considered decision to request MAID.⁴²

Professor Downie has stated that the exclusion of mental illness as a sole underlying condition is discriminatory and stigmatizing. She also says this change to the law removes access to MAID for people who are currently eligible under the law.⁴³ In contrast, the Expert Advisory Group on Medical Assistance in Dying, a newly formed group of experts including psychiatrists, academics and people with lived experience of mental illness, has spoken positively of this measure.⁴⁴

3.3 FINAL CONSENT WAIVER

While some organizations and commentators, such as the BCCLA, are pleased with the waiver of final consent, others have expressed concerns.⁴⁵ At least one academic, Dr. Thomas McMorrow, has raised concerns that there is no limit to how long in advance a person can arrange in writing for MAID to be provided if they lose capacity. Natural death must be reasonably foreseeable for final consent to be waived, except in the context of self-administration that does not lead to death. However, there is no specific time frame in which natural death is understood to be reasonably foreseeable. Theoretically, the arrangement could be made for years into the future, calling into question the person’s continued intention to receive MAID. Dr. McMorrow calls for a time limit on the validity of any agreement to waive final consent.⁴⁶

The Christian Legal Fellowship notes that *Truchon* did not require Parliament to address the issue of advance consent, since it was not an issue in that case.⁴⁷ The Canadian Conference of Catholic Bishops has also expressed concern about the subjective and difficult nature of ascertaining whether a patient still consents based on the rules proposed in Bill C-7.⁴⁸

3.4 WAITING PERIOD

Concerns have been raised that the 90-day waiting period between the first assessment and the provision of MAID for anyone whose natural death is not reasonably foreseeable will require individuals to suffer intolerably while waiting.⁴⁹

At the same time, concerns have also been expressed about the removal of the 10-day waiting period for cases where natural death is reasonably foreseeable. The Christian Legal Fellowship, for example, has argued that the statistics on MAID applicants who later change their mind demonstrate a need for a period of reflection.⁵⁰

3.5 EXPERTISE IN A PERSON'S CONDITION WHERE NATURAL DEATH IS NOT FORESEEABLE

Concern has been expressed by at least one practitioner that this requirement could limit access to MAID, particularly in rural and remote areas of the country where such expertise may not be available.⁵¹

NOTES

1. [Bill C-7, An Act to amend the Criminal Code \(medical assistance in dying\)](#), 1st Session, 43rd Parliament.
2. [Truchon v. Attorney General of Canada](#), 2019 QCCS 3792 (CanLII). [Unofficial translation]
3. [Criminal Code](#), R.S.C. 1985, c. C-46, ss. 241.1–241.4.
4. Quebec's law relating to medical assistance in dying (MAID) received Royal Assent in June 2014. Quebec, [Act respecting end-of-life care](#), R.S.Q., c. S-32.0001.
5. Department of Justice, [Medical assistance in dying: January and February 2020 Consultations](#).
6. This Legislative Summary provides a concise background to these issues. More detailed information about MAID in Canada is available in the following Library of Parliament publications: Marlisa Tiedemann, [Assisted Dying in Canada after Carter v. Canada](#), Publication no. 2019-43-E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 29 November 2019; 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; and 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. Information on MAID outside Canada is available in 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.
7. [Carter v. Canada \(Attorney General\)](#), 2015 SCC 5.
8. Department of Justice, [Consultations on Physician-Assisted Dying – Summary of Results and Key Findings](#).
9. Provincial–Territorial Expert Advisory Group on Physician-Assisted Dying, [Final Report](#), 30 November 2015.
10. Parliament of Canada, Special Joint Committee on Physician-Assisted Dying, [Medical Assistance in Dying: A Patient-Centred Approach](#), 1st Session, 42nd Parliament, February 2016.
11. Expert Panel Working Group on MAID Where a Mental Disorder Is the Sole Underlying Medical Condition, [The State of Knowledge on Medical Assistance in Dying Where a Mental Disorder Is the Sole Underlying Medical Condition](#), Council of Canadian Academies, December 2018, p. 62.

12. Most of this section is taken from Marlis Tiedemann, [Assisted Dying in Canada after Carter v. Canada](#), Publication no. 2019-43-E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 29 November 2019.
13. [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).
14. This requirement was added during the study of the bill by the House of Commons Standing Committee on Justice and Human Rights.
15. Expert Panel Working Group on MAID for Mature Minors, [The State of Knowledge on Medical Assistance in Dying for Mature Minors](#), Council of Canadian Academies, December 2018; Expert Panel Working Group on Advance Requests for MAID, [The State of Knowledge on Advance Requests for Medical Assistance in Dying](#), Council of Canadian Academies, December 2018; and Expert Panel Working Group on MAID Where a Mental Disorder Is the Sole Underlying Medical Condition (2018).
16. [Regulations for the Monitoring of Medical Assistance in Dying](#), SOR/2018-166.
17. British Columbia Civil Liberties Association [BCCLA], [Lamb v. Canada: the Death with Dignity Case Continues](#).
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 \(Re: Lamb and BCCLA v. AGC\)](#), 6 September 2019.
19. *Truchon c. Procureur général du Canada*.
20. Ibid.
21. Department of Justice, "[IV. Eligibility Criteria for Medical Assistance in Dying](#)," *Legislative Background: Medical Assistance in Dying (Bill C-14)*.
22. Expert Panel Working Group on MAID Where a Mental Disorder Is the Sole Underlying Medical Condition (2018), p. 36.
23. House of Commons, [Debates](#), 1st Session, 43rd Parliament, 26 February 2020, 1605 (The Honourable David Lametti, Minister of Justice).
24. Ibid., 1600.
25. Ibid., 1605.
26. Dying With Dignity Canada, "[Audrey Parker's last message to Canadians](#)," *YouTube*, 6 February 2019.
27. Andrea Gunn, "[Audrey's amendment: Changes to assisted dying legislation await judgment by Parliament](#)," *Chronicle Herald* [Halifax], 25 February 2020.
28. Francis Bakewell, "[Medical Assistance in Dying \(MAID\) in the ED: Implications for EM practice](#)," *Canadiem*, 22 June 2016; F. Bakewell and V. N. Naik, [Complications with Medical Assistance in Dying \(MAID\) in the Community in Canada: Review and Recommendations](#), Canadian Association of MAID Assessors and Providers [CAMAP], White Paper, 28 March 2019; and CAMAP and University of Ottawa, Faculty of Medicine, [Final Report: 2nd Annual Medical Assistance in Dying Conference 2018](#), 2018, p. 15.
29. See, for example, Gunn (2020).
30. See, for example, Peter Mazereeuw, "[Terms for assisted dying review murky, as Liberals, Tories look ahead to summertime study](#)," *Hill Times*, 2 March 2020; and Brian Dryden, "[Group claims physicians being 'bullied'](#)," *Catholic Register*, 21 March 2020.
31. BCCLA, "[BCCLA reacts: New MAID legislation a mixed bag for patients' rights and compassionate care](#)," News release, 4 March 2020.
32. See, for example, Brian Dryden, "[Feds expanding euthanasia access to those not near death](#)," *B.C. Catholic*, 25 February 2020.
33. Joan Bryden, The Canadian Press, "[Assisted dying bill gets mixed reviews, raises fears of more restrictions](#)," *CTV News*, 26 February 2020.
34. House of Commons (2020), 1605.
35. Thomas McMorow, "[To make prudent changes to our assisted-death law, we first need clarity](#)," *Policy Options*, 5 March 2020.

36. Bryden (2020).
37. Andrea Frolic, William Harper and Marianne Dees, "[Expanded rights to medical assistance in dying are pointless without better support for MAiD providers](#)," *CBC News*, 23 February 2020.
38. Stephanie Babych, "[Calgary bishop organizes campaign arguing against expanding MAiD](#)," *Calgary Sun*, 25 February 2020; and Ray Pennings, "[Statement regarding Bill C-7 on medical assistance in dying](#)," News release, Cardus, 24 February 2020.
39. Canadian Association for Community Living, "[Medical Assistance in Dying Bill Violates Equality Rights of People with Disabilities – It Must be Stopped](#)," News release, 28 February 2020.
40. Derek Ross, "[Summary and Analysis of Bill C-7: Proposed MAiD law is not the compassionate response to suffering that Canada needs](#)," Christian Legal Fellowship Blog, 28 February 2020.
41. For arguments in support of expanding legislation, see Halifax Group, [MAiD Legislation at a Crossroads: Persons with Mental Disorders as Their Sole Underlying Medical Condition](#), Institute for Research on Public Policy Report, January 2020; for arguments against, see Centre for Addiction and Mental Health, [Submission to the Department of Justice on the Consultations on Medical Assistance in Dying \(MAiD\): Eligibility Criteria and Request Process](#), 27 January 2020; and K. Sonu Gaind, "[Assisted suicide: We are poised to soon be ending lives of nondying people](#)," *Toronto Star*, 24 February 2020.
42. Expert Panel Working Group on MAiD Where a Mental Disorder Is the Sole Underlying Medical Condition (2018), p. 197.
43. Bryden (2020).
44. Expert Advisory Group on Medical Assistance in Dying, "[Expert Advisory Group Supports Safeguards Protecting Canadians with Mental Illness](#)," News release, 25 February 2020.
45. BCCLA (2020).
46. McMorrow (2020).
47. Ross (2020).
48. Canadian Conference of Catholic Bishops, "[Response by the Canadian Conference of Catholic Bishops to the tabling of Bill C-7: 'An Act to Amend the Criminal Code \(medical assistance in dying\)'](#)," News release, 26 February 2020.
49. Bryden (2020); and BCCLA (2020).
50. Ross (2020).
51. Ibid.