

Part 2

MAID: PROPOSED LEGISLATION

Future Practice

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An Act to Amend the Criminal Code (medical assistance in dying)

Technical Briefing
February 24, 2020

Minister of Justice and Attorney General of Canada
Minister of Employment, Workforce Development and Disability Inclusion
Minister of Health

- C-7 An Act assistance
 - <https://e=E&bil>
- 1st reading
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July 11, 2020



Background

- June 2016: Former Bill C-14 decriminalized medical assistance in dying (MAID) for adults with decision-making capacity who are intolerably suffering and whose natural deaths are reasonably foreseeable, following the Supreme Court of Canada's decision in *Carter v Canada*.
- December 2018: Reports of the Council of Canadian Academies on MAID for mature minors, advance requests and requests where mental disorder is the sole underlying condition are tabled.
- September 2019: Superior Court of Québec declares unconstitutional the eligibility criterion of "reasonable foreseeability of natural death." The ruling, which applies only in Québec, was not appealed. The Court suspends the declaration of invalidity for six months (until March 11, 2020).
- February 2020: Introduction of this bill, in response to Superior Court of Québec *Truchon* decision.
- June 2020: Former Bill C-14 required a Parliamentary Review of the MAID regime and the state of palliative care to begin 5 years after coming into force (June 2020).

Overview of main changes to MAID regime

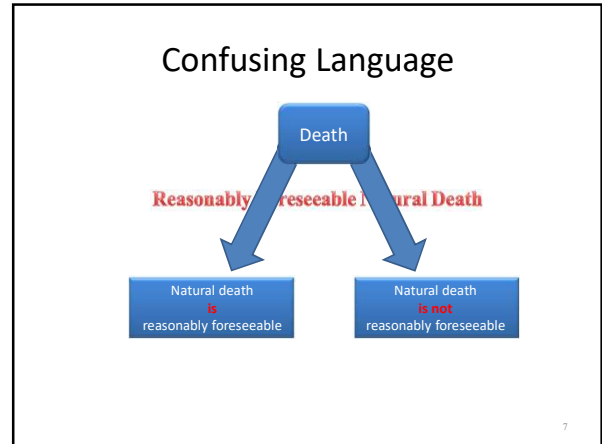
- The Bill proposes amendments to the *Criminal Code* MAID provisions in relation to the following issues:
 - Eligibility criteria;
 - Safeguards;
 - Waiver of final consent;
 - Monitoring regime.

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Changes to Eligibility Criteria

Current Eligibility Criteria	Proposed Eligibility Criteria
18+ years of age, has decision-making capacity and eligible for publicly funded health care services	18+ years of age, has decision-making capacity and eligible for publicly funded health care services
Voluntary request for MAID	Voluntary request for MAID
Informed consent to receive MAID given after patient informed of means available to relieve suffering	Informed consent to receive MAID given after patient informed of means available to relieve suffering
Person has "grievous and irremediable medical condition", meaning all of the following criteria: <ul style="list-style-type: none"> serious and incurable illness, disease or disability; in an advanced state of irreversible decline in capability; has enduring physical or psychological suffering that is intolerable to them and cannot be relieved under conditions that they consider acceptable; their natural death has become reasonably foreseeable. 	Person has "grievous and irremediable medical condition", meaning all of the following criteria: <ul style="list-style-type: none"> serious and incurable illness, disease or disability; in an advanced state of irreversible decline in capability; and has enduring physical or psychological suffering that is intolerable to them and that cannot be relieved under conditions that they consider acceptable. (reasonable foreseeability of natural death criterion repeated)
	For purposes of MAID eligibility, a mental illness is not a "serious and incurable illness, disease or disability" (new).

6



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MAID safeguards: Natural death is reasonably foreseeable

Current safeguards	Proposed changes to safeguards
Patient must make a written request that must be witnessed and signed by two independent witnesses.	Patient must make a written request that must be witnessed and signed by one independent witness (eased safeguard).
Two independent practitioners must confirm all eligibility criteria.	Two independent practitioners must confirm all eligibility criteria.
Person must be informed that they can withdraw request at any time, by any means.	Person must be informed that they can withdraw request at any time, by any means.
Mandatory 10-day reflection period after written request is signed, unless death or loss of capacity imminent.	(10-day reflection period safeguard removed)
Immediately before MAID is provided, person must be given opportunity to withdraw consent, and must confirm consent to receive MAID.	Immediately before MAID is provided, person must be given opportunity to withdraw consent, and must confirm consent to receive MAID, except if waived (consent is given in advance).

8

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MAID safeguards: Natural death is not reasonably foreseeable

- The Bill proposes a different set of safeguards where natural death is **not** reasonably foreseeable:
 - o Patient must make a written request that is witnessed and signed by **one** independent witness (eased safeguard);
 - A paid personal or health care worker can be an independent witness (eased safeguard);
 - o Two independent practitioners must confirm all eligibility criteria are met;
 - **One** of the two practitioners assessing eligibility must have **expertise** in the condition that causes the person's suffering (new safeguard);
 - o Person must be informed that they can withdraw request at any time, by any means;
 - o Minimum period of **90 days** for assessment of request, which can be shortened if loss of capacity is imminent and assessments are complete (new safeguard);
 - o Person must be informed of counselling, mental health supports, disability supports, community services and palliative care, and be offered consultation with relevant professionals, as available and applicable (clarification of informed consent);
 - o Practitioners agree with the person that they have discussed and appropriately considered reasonable means of alleviating their suffering (clarification of informed consent);
 - o Immediately before MAID is provided, person must be given opportunity to withdraw consent, and must confirm consent to receive MAID.

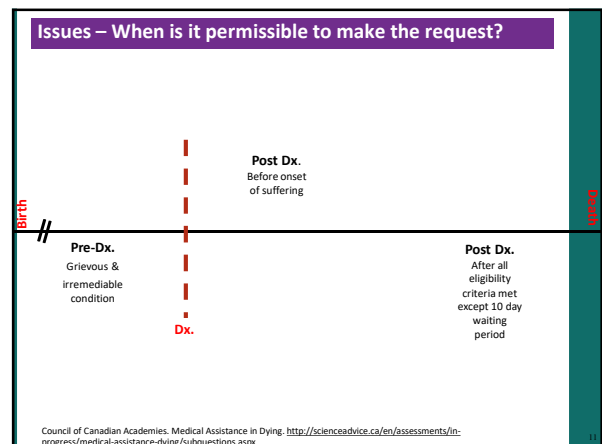
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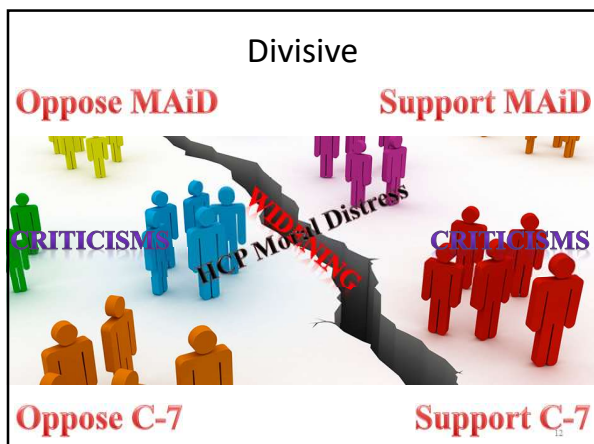
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Waiver of final consent where natural death is reasonably foreseeable

- The Bill would permit the provision of MAID to persons who are no longer able to consent to it at the time it is to be provided:
 - o Person's natural **death must be reasonably foreseeable**;
 - o Person must be assessed as **eligible** for MAID and MAID procedure must be **scheduled**;
 - o Person must be informed that they are at **risk of losing decision-making capacity** before the scheduled date;
 - o Practitioner must agree to provide MAID on the scheduled day if patient has lost capacity (or earlier, after loss of capacity, if agreed);
 - o Person **gives consent in writing** to receive MAID on the scheduled day if they are no longer able to consent on that day (this waives the requirement that consent be expressed immediately before MAID is provided).
- if, on the day of MAID procedure, the person **has capacity to consent to MAID**, the practitioner must give the person the opportunity to withdraw their request and ensure that the person gives express consent to receive MAID (existing safeguard requiring final consent).
- if, on the day of MAID procedure, the person **has lost capacity to consent to MAID**, the practitioner can provide MAID on the basis of the consent given earlier:
 - o Consent given in advance is invalidated if the person demonstrates, by words or gestures, refusal or resistance to the administration of MAID at the time of the procedure.

10





5 Year Review

- Commences June 2020
- 12 months
- Report to Parliament
- Further legislation
 - Probable late 2021?
 - Mature minors
 - Mental illness as sole underlying reason for request
 - Advance consent (expansion)

