

Nidus Personal Planning Resource Centre and Registry
Chart Comparing the Supreme Court of Canada Declaration and
Proposed Federal Legislation on Medical Assistance in Dying

NOTE: This chart is formatted in legal size (14 X 8.5 inches) and landscape orientation. This chart was linked in an [Ask Joanne](#) post providing other details and resources.

Issues by Category	Supreme Court of Canada Decision in Carter v. Canada	Bill C-14-3 Proposed Federal Legislation	JUNE 6, 2016 – NO LEGISLATION SCC Declaration + Provincial Regulatory Bodies
<p>General purpose and reference</p>	<p>Declares physician assistance in terminating life is unconstitutional in specific cases and Criminal Code prohibitions are no longer in effect as of Feb. 7/16 – this was extended until June 6/16. [See last column of chart for wording of declaration.]</p> <p>Individuals may seek an exemption from Criminal Code prohibitions from the Superior Court in their province or territory if they wish to request physician assistance in dying between Feb. 7 and June 6.</p>	<p>Adds exemption for medical assistance in dying to the Criminal Code.</p> <p>Bill C-14:</p> <ul style="list-style-type: none"> • Makes amendments (changes) to the Criminal Code of Canada [s. 14, 241, 245]; and • Adds new sections to the Criminal Code of Canada specific to medical assistance in dying [s. 227, 241.1, 241.2, 241.3, 241.31, 241.4]; and • Makes amendments to related legislation with regard to medical assistance in dying – the Pension Act, the Corrections and Conditional Release Act, Canadian Forces Members and Veterans Re-establishment and Compensation Act. <p>NOTE: The Criminal Code still prohibits anyone from encouraging or counseling someone to commit suicide or to assist them. The Supreme Court of Canada declaration and proposed legislation only allows assistance in dying by specific health professionals/practitioners in specific circumstances.</p>	<p>From Carter v. Canada: “Section 241(b) and s. 14 of the <i>Criminal Code</i>...are of no force or effect to the extent that 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.” [147]</p> <p>In its decision, on January 15, 2016, to grant the government a four month extension, the Supreme Court of Canada stated: “The declaration of invalidity of ss. 241(b) and 14 was suspended for 12 months, until February 6, 2016.” [1]</p> <p>The BC College of Physicians and Surgeons is the key regulatory body on this issue. They published a standard dated June 6, 2016. Links are provided below or go to www.cpsbc.ca – click Standards and Guidelines (on left) > scroll and click on Standards (under By Nature of Advice) > Medical Assistance in Dying. You may also find a link at their homepage.</p> <p>The BC government has amended regulations under the Health Professions Act to support the College.</p>
<p>Age criteria</p>	<p>Adult [127]. In BC, the age of adulthood is 19 yrs.</p>	<p>18 years or older. [241.2(1)(b)]</p>	<p>Adult = age 19 years or older in BC.</p>

	Carter v. Canada	Bill C-14-3	SCC declaration & Regulatory Bodies
Who may assist (without being charged under the Criminal Code)	<p>Refers only to physicians for assisted death [127]*</p> <p>* Read article by University of Northern BC Nursing about lack of physicians in some BC communities.</p>	<p>Medical practitioner (in BC = physician) or nurse practitioner (in BC = registered nurse with advanced training and must use NP designation) is allowed to provide medical assistance in dying. [241(2)] [Definitions see 241.1]</p> <p>Any other person or party may assist a physician or nurse practitioner. [241(3)]</p> <p>Specific exemption for pharmacist who acts on prescription from physician or nurse practitioner. [241(4)]</p>	<p>Standard of BC College of Physicians and Surgeons and FAQs (or find directions from College website on page 1 under heading for this column)</p> <p>Update from the BC College of Pharmacists (or go to http://www.bcpharmacists.org/ - look for Latest News and link on homepage.</p> <p>Update on MAiD from BC College of Registered Nurses for Nurse Practitioners</p> <p>The BC Government Criminal Justice Branch has issued guidelines to prosecutors with regard to the participation of other health care providers assisting physicians with medical assistance in dying.</p>
Role of health care professionals		<p>Clarification that health care professionals (e.g. psychologist, social worker, therapist) may provide information on the law related to medical assistance in dying. [241(5.1)]</p>	
Aiding a person to administer prescribed substance		<p>Specific exemption that any person can aid in the process if it is an explicit request for the purpose of helping that person to self-administer a substance prescribed according to requirements of medical assistance in dying. [241(5)]</p>	
How assistance is provided		<p>Administered by physician or nurse practitioner or prescribed by either of those practitioners for self-administration. [241.1(a) & (b)]</p>	<p>Standard of BC College of Physicians and Surgeons – the physician can administer the prescribed substance or a patient can self-administer the prescribed medication. If it is self-administered, the substance must be provided by the physician and the physician must be in attendance when it is self-administered, until the moment of death.</p>

	Carter v. Canada	Bill C-14-3	SCC declaration & Regulatory Bodies
Eligibility: requirements of person who requests	Competent adult person who clearly consents to the termination of life. [127]	Eligible for health services funded by a government in Canada; [241.2(1)(a)] At least 18 years of age and capable of making decisions with respect to their health. [241.2(1)(b)]	BC's Health Care Consent and Care Facility Admission Act applies to adults and outlines the elements of informed consent and how incapability is determined [sec.7 & 8]. <ul style="list-style-type: none"> See Nidus fact sheet – www.nidus.ca > Information > Health Care Consent > More HCC Resources > Health Care Consent: Your Rights and the Law <p>BC's Health Care Consent and Care Facility Admission Act may need amendments to include reference to consent to medical assistance in dying? May also need special provision for age 18 if federal legislation comes into effect?</p>
Eligibility: requirements for condition	"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." *“Irremediable” does not require the patient to undertake treatments that are not acceptable to the individual.” [127]	1. Have a grievous and irremediable medical condition (<i>as determined by a physician or nurse practitioner</i>), which requires meeting all of the following criteria: [241.2(1) & (2)] a) a serious and incurable illness, disease or disability; b) advanced state of irreversible decline in capability; c) that illness, disease or disability or that state of decline causes the individual enduring physical or psychological suffering that is intolerable to the individual and that cannot be relieved under conditions that they consider acceptable; and d) the individual’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. 2. Make a voluntary request for medical assistance in dying. [241.2(1)(d)] 3. Can give informed consent for medical assistance in dying. [241.2(1)(e)]	Carter definition of eligibility: <ul style="list-style-type: none"> Grievous and irremediable medical condition (including an illness, disease or disability) that causes enduring suffering that is intolerable to the individual. as interpreted in the Standard of BC College of Physicians and Surgeons

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Safeguards and Procedures	<p>“We agree with the trial judge that the risks associated with physician-assisted death can be limited through a carefully designed and monitored system of safeguards.” [117]</p>	<p>Physician and nurse practitioner must: [241.2(3)]</p> <ol style="list-style-type: none"> 1. Be of the opinion that all eligibility criteria has been met. 2. Be sure the individual’s request was made in writing: <ol style="list-style-type: none"> a) after they have been informed by a physician or nurse practitioner that they have a grievous and irremediable medical condition. b) signed and dated by the individual making it (or someone who qualifies to sign on their behalf) 3. Signed and dated by the individual In the presence of two independent witnesses who must also sign and date the request. 4. Be sure the person requesting knows they can revoke (withdraw/cancel) their request. 5. Be sure another independent physician or nurse practitioner has confirmed in writing that the person fits the eligibility criteria. 6. Allow 10 days from request to administration or prescribing unless initial physician or nurse practitioner believes it should be shorter due to imminent death or loss of capacity. 7. Immediately before providing assistance (directly or prescription) the person is given the opportunity to revoke the request and if not, they give specific consent to receive medical assistance in dying. 8. Take all measures necessary to assist a person who has difficulty communicating to understand the information and communicate their decision. 	<p>Standard of BC College of Physicians and Surgeons state:</p> <p>Two physicians required – an attending and a consulting physician. Cannot be related to the patient, should be independent of each other and at least one must be licensed in BC (both licensed for independent practice in Canada). Must have qualifications, training and experience to determine eligibility (diagnosis and prognosis) and to provide assistance.</p> <p>Both physicians must:</p> <ul style="list-style-type: none"> • determine eligibility; • provide specified information and document it in patient’s medical record and give copy to patient; • document additional information in medical record including specialist’s report on patient’s condition and patient’s oral and written requests. <p>Patient must provide written request. The guidelines set out what must be included and who can witness and for what purpose.</p> <p>In most cases 10 days is a reasonable waiting period.</p> <p>Patient must be given opportunity to revoke request for MAiD.</p> <p>NOTE: BC’s Health Care Consent and Care Facility Admission Act allows adults capable of informed consent to refuse health care that is offered even if it results in death [sec 4(a)]. The Act includes a duty to communicate in an appropriate manner [sec 8].</p>

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Right of physician not to be required to provide assistance	<p>“In our view, nothing in the declaration of invalidity which we propose to issue would compel physicians to provide assistance in dying. The declaration simply renders the criminal prohibition invalid. ...we underline that the Charter rights of patients and physicians will need to be reconciled.” [132]</p>	<p>An individual is not compelled to provide or assist with medical assistance in dying [241.2 (9)]</p>	<p>The judges in the Carter case said physicians would not be compelled to provide or assist when Criminal Code prohibitions are no longer in effect for physician assistance with terminating life.</p> <p>Standard of BC College of Physicians and Surgeons say that physicians who object do not have to provide assistance or determine eligibility for assistance. They are expected to provide information for patients to make informed decisions and names of physicians who can provide assistance.</p>
Classes of people not included	<p>Excluded:</p> <ul style="list-style-type: none"> • Minors (as defined by the law of the province/territory). [127] • Adults who are not considered mentally competent (at time of making request or at time of receiving assistance). [127] 	<p>Excluded:</p> <ul style="list-style-type: none"> • Those under 18 years of age. • Those who are not considered mentally competent to consent at the time medical assistance in dying is provided. • Those who request medical assistance with dying due to their mental illness. <p>The federal Minister of Health must initiate a review of these excluded classes within 180 days of the legislation being proclaimed. [9.1]</p>	<p>Excluded:</p> <ul style="list-style-type: none"> • Those under 19 years of age. • Adults who are not considered mentally competent (at time of making request or at time of receiving assistance).