MAiD on the Island: Updates on Medical Assistance in Dying

Public information meeting – Victoria, BC
Report by Oona Iverson

On Oct. 1, 2016, the Victoria Chapter of Dying With Dignity Canada (DWDC) and Victoria MP Murray Rankin held a public meeting to discuss the many challenges that Canadians still face in accessing medical aid in dying (MAiD), now legal under the federal law, Bill C-14.1

However, medically assisted dying is available to only some of the people who would originally have been eligible under the Supreme Court of Canada’s Carter decision. The national advocacy group DWDC is working to surmount these challenges that face so many Canadians who still cannot exercise their Charter right to an assisted death.

Restrictive eligibility criteria

The most obvious barrier to accessing MAiD is Bill C-14’s restrictive eligibility criteria. The law permits MAiD only in a much more limited set of circumstances than those outlined in Carter. (See the More information section at the end of this report.)

The most problematic portion of the bill – which DWDC is actively fighting – is the restriction that limits MAiD only to persons whose natural death is determined to be “reasonably foreseeable.” The narrowness of this restriction means that, in order to comply with the law, many people will have to wait for their condition to advance well past the point the Supreme Court identified – i.e., the point at which the individual’s suffering has become unbearable to them – before they can assert their right to choose medically assisted death. They must, in other words, be very near death.

Expert speakers

Speakers at the October meeting included:

• Victoria NDP MP Murray Rankin2
• Dr. David Robertson (Co-chair, Island Health MAiD Working Group)
• Dr. Stefanie Green (Victoria MAiD provider)
• Noreen Campbell (legally approved MAiD candidate and DWDC Disability Advisory Council Member)
• Ellen Agger (DWDC Victoria Chapter Co-chair); and
• Dr. Adrian Fine (DWDC Physician’s Advisory Council Member)

1 The Supreme Court of Canada’s ruling in Carter v. Canada was originally intended to come into effect in February 2016. It was extended by four months after the Liberal government requested more time to form legislation to implement the ruling. It became law on June 17, 2016.
2 Mr. Rankin served as Vice Co-chair of Parliament’s Special Joint Committee on Physician-Assisted Dying that produced the Feb. 25, 2016 report Medical Assistance in Dying: A Patient-Centred Approach.
The panel discussed both the theoretical and practical problems with the new legislation.

Mr. Rankin emphasized that it was apparent from the first version of Bill C-14 that the legislation would be “woefully inadequate” – so much so that, under the bill, the very parties whose cases helped change the law would not themselves qualify for medical aid in dying.

Moreover, as Dr. Green noted, the language used in Bill C-14 is so vague as to provide virtually no guidance to physicians. On the one hand, there is a sense that all of our deaths are “reasonably foreseeable.” On the other, “reasonably foreseeable” is neither a prognosis nor a timeline, and leaves doctors concerned that they may be legally vulnerable if they apply the term in cases where a patient’s death cannot be judged with any degree of certainty to be imminent.

Ms. Campbell spoke from her own experience as both a nurse educator (now retired) and a patient who has been approved for MAiD. She explained that this criteria leads to a situation in which those whose illnesses follow a relatively predictable, terminal route sometimes consider themselves “lucky” to have an illness that passes the eligibility test. This lets them have the option to choose MAiD when the time is appropriate.

She also spoke about how there is no more vulnerable a person than someone who is suffering intolerably – making reference to the aspects of C-14 that are meant to protect “the vulnerable.”

Ms Agger spoke about the upcoming *Shine a Light Campaign* to be launched by DWDC this fall. The campaign will attempt to uncover barriers to accessing MAiD across the country with an eye to reducing those barriers.

**Autonomy and the Canadian Charter**

Another important consideration in challenging C-14 is the fact that it ignores the very principle at work in *Carter*: the protection of autonomy that is enshrined in the Charter’s Section 7 guarantee of life, liberty and security of the person. This helped form the basis for *Carter’s* provision for medically assisted dying in cases where the person making the request “has a grievous and irremediable medical condition…that causes enduring suffering that is intolerable to the individual.”

Far from being overbroad, as some critics have charged, *Carter’s* deliberate emphasis on the inherently subjective nature of suffering is perfectly narrow. It focuses on the reported experience of the unique person, and rightly demands that we take that person to be the final and sole authority on that experience.

Bill C-14’s failure to do so is part of the basis for the current constitutional challenge set out in *Lamb v. Canada*. Julia Lamb, who has spinal muscular atrophy but whose condition does not make her eligible for MAiD under the current law as her death is not “reasonably foreseeable,” is fighting C-14 with the help of the BC Civil Liberties Association. She argues
that it is a violation of her Charter rights. Ms. Lamb’s case will go to the Supreme Court in the spring of 2017.

**Expanding the federal law**

Currently, it is not possible to request MAiD through an advance directive, although a majority of those supporting end-of-life choice strongly support such a provision. MAiD is also unavailable to people whose sole underlying illness is psychiatric in nature. DWDC hopes to eventually see these restrictions modified so that advance consent can be obtained for MAiD in cases of neurodegenerative diseases affecting cognitive function, such as Alzheimer’s Disease and other forms of dementia. Many MAiD advocates want the legislation changed to allow otherwise competent individuals who suffer from psychiatric illnesses to access MAiD if they choose.

DWDC hopes to be involved with upcoming federal reviews, included in C-14, on advance requests, those with mental illness as a sole diagnosis and mature minors.

Unfortunately, it is likely to be a very long road to changes to these particular restrictions. Even the Netherlands, which has some of the world’s most liberal laws around when physician-assisted death can be accessed, retains the restriction that the person requesting MAiD must be competent both at the time the request occurs, and at the time MAiD is administered.

Apart from the problematic eligibility criteria, there are less obvious barriers to accessing medically assisted dying. These include geographical, physical and economic constraints. Often those wishing to access MAiD live far from a physician or nurse practitioner who is able and willing to assist; the cost and logistics of visiting an out-of-province MAiD provider – or one in another city – are significant hurdles for many.

Another hurdle that is quickly becoming apparent across Canada is the refusal of many health care institutions, including faith-based ones, to offer MAiD services on site.3

DWDC Victoria is supporting those individuals seeking MAiD by connecting them with physicians who perform the service. Dying With Dignity Canada is also intervening in a court challenge in 2017 to the College of Physicians & Surgeons of Ontario requirement that doctors who object to MAiD provide effective referral to others providing MAiD services. DWDC hopes to help make effective referral a requirement across the country.

Individuals seeking MAiD on Vancouver Island should also be aware that there are multiple avenues for accessing the service, including:

- approaching your family physician (who, in BC, must provide a transfer of care if they will not provide the service themselves)

3 As of late October 2016, a family physician in Comox Valley on Vancouver Island, Dr. Jonathan Reggler, is again raising the issue of refusal of access to MAiD in Catholic St. Joseph’s General Hospital, the only hospital in the region.
• self-referral to local MAiD providers: [http://www.solacebc.ca/](http://www.solacebc.ca/) or [http://www.westcoastad.ca/](http://www.westcoastad.ca/); and
• through Island Health’s MAiD information line: [http://www.viha.ca/MAID](http://www.viha.ca/MAID)

Dr. Robertson and Dr. Green both stressed that a refusal from a doctor who has a personal objection to MAiD is not the last word, and those seeking help or more information should consult the above resources.

With the help of the DWDC Victoria Chapter and the efforts of Island Health, BC is leading the country in effectively providing MAiD to those seeking a peaceful, self-determined and dignified end to life. While there is much more work to be done, there is a compassionate, dedicated and knowledgeable community of advocates to be found throughout Vancouver Island and the Gulf Islands.

We are optimistic that our interventions will continue to be successful in the coming months.

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**More information**

**Who is eligible for medical assistance in dying?**

According to legislation governing medical assistance in dying in Canada, in order for a doctor to provide a person with assistance to die, the person must meet all of the following criteria:

- Be eligible for health services funded by the federal or provincial government
- Be at least 18 years old and mentally capable
- Have a grievous and irremediable medical condition (serious illness, disease or disability)
- Be in an advanced state of decline that cannot be reversed
- Be suffering unbearably from your illness, disease, disability or state of decline
- Be at a point where your natural death has become reasonably foreseeable, which takes into account all of your medical circumstances
- Make the request for medical assistance in dying without outside pressure or influence, and provide informed consent

Doctors in B.C. must abide by the standards set out by the College of Physicians and Surgeons of BC. To ensure strong safeguards to protect vulnerable patients, the College has published standards for doctors on how best to care for patients seeking medical assistance in dying. For more information on the process to determine eligibility, see the College standards.

Source: [www.viha.ca/maid](http://www.viha.ca/maid) (Island Health)
Process for requesting the service

The process for requesting medical assistance in dying requires the following steps to be completed.

- Talk to your physician or nurse practitioner about end-of-life care options in relation to your medical condition or circumstances.
- Your physician or nurse practitioner must make a determination that your medical condition is grievous and irremediable.
- You must make and sign a written request or fill in and sign a form indicating you wish to seek medical assistance in dying.
  - If you are unable to write, another adult can sign the request on your behalf under your clear direction.
  - This adult must:
    - be at least 18 years of age;
    - understand what it means to request medical assistance in dying; and
    - not benefit from your death
- Your request must be signed by 2 independent witnesses. An independent witness must be 18 years of age and understand what it means to request medical assistance in dying.
  - To be considered independent means that the witnesses cannot:
    - benefit from your death
    - be an owner or operator of a health care facility where you live or are receiving care
    - be directly involved in providing you with health or personal care
- Your physician or nurse practitioner must make sure that you are eligible to receive medical assistance in dying according to all of the listed conditions.
- A second physician or nurse practitioner must also provide a written second opinion confirming that you are eligible.
- The physician or nurse practitioner providing the original assessment and the one giving the second opinion must be independent.
  - To be considered independent means that neither of them:
    - holds a position of authority over the other
    - is knowingly benefitting from your death
- You must have waited a period of at least 10 days between signing your request and when the service is provided. An exception may be made if:
  - your death is fast approaching
  - you might soon lose your capacity to provide informed consent
- You may withdraw your request at any time in the process. You are also not obligated to proceed with medical assistance in dying even if you are deemed eligible for the service. If you choose to continue, you will be given a final opportunity to withdraw your request just before receiving medical assistance in dying.