REGISTERED NURSES AND NURSES PRACTITIONERS - AIDING IN MEDICAL ASSISTANCE IN DYING (MAID)

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Overview

- History of MAID
- Revisions to *Criminal Code*
- Role of RN and NP in MAID
14. No person is entitled to consent to have death inflicted on him, and such consent does not affect the criminal responsibility of any person by whom death may be inflicted on the person by whom consent is given.

241. Everyone who… (b) aids or abets a person to commit suicide, whether suicide ensues or not, is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.
The SCC upheld the prohibition on assisted suicide by a narrow majority of 5-4.

In 1993 no Western country expressly permitted assistance in dying.

The majority of the SCC relied on the following evidence:

- The general widespread acceptance of a moral and ethical distinction between passive and active euthanasia;
- The lack of any “halfway measure” to protect the vulnerable; and
- The “substantial consensus” in Western countries that a blanket prohibition is necessary to protect against the slippery slope.
The impetus for changes to the *Criminal Code* arose in 2009 when Gloria Taylor was diagnosed with a fatal neurodegenerative disease, amyotrophic lateral sclerosis (ALS). Ms. Taylor did not want to “live in a bedridden state, stripped of dignity and independence”... she did not want her life to end violently and wanted “the legal right to die peacefully, at the time of [her] own choosing, in the embrace of [her] family and friends”.

The *Criminal Code* provisions prevented Ms. Taylor from choosing the manner in which she wished to die. Ms. Taylor brought a claim before the British Columbia Supreme Court challenging the constitutionality of the *Criminal Code* provisions that prohibit assistance in dying.

She was joined in her claim by others, including Lee Carter, who, to achieve her mother’s goal to die with dignity took her mother to Switzerland where assisted dying is permitted.
In a decision cited as *Carter v. Canada (Attorney General)*, the British Columbia Supreme Court determined that the prohibition against physician-assisted dying violated Ms. Taylor’s constitutional rights.

The British Columbia Court of Appeal overturned this decision.
In February 2015, six years after Ms. Taylor was diagnosed, the Supreme Court of Canada (Canada’s highest court) struck down the section of the Criminal Code prohibiting physician-assisted dying (PAD).

The decision applies to a competent adult who:

I. Clearly consents to the termination of life; and

II. Has a grievous and irremediable medical condition (including an illness, disease or disability) that causes enduring and suffering that is intolerable to the individual in the circumstances of his or her condition.
What changed between the Rodriquez decision in 1993 and the *Carter* decision in 2015:

- By 2010 eight jurisdictions permitted some form of assisted dying: the Netherlands, Belgium, Luxembourg, Switzerland, Colombia, and in the USA, Oregon, Washington, Montana;
- Quebec’s An Act Respecting End-of-Life Care, CQLR, c. S-32.0001.
Evidence presented at the Trial Division in the *Carter* included:

- General compliance with regulation with safeguards that protect the vulnerable;
  Societal consensus that withholding or withdrawal of lifesaving or life-sustaining medical treatment is ethically acceptable;
- No ethical distinction between physician-assisted death and other end-of-life practices whose outcome is likely to result in death.
The Supreme Court of Canada suspended the application of its ruling for one year, to February 6, 2016, to give governments the opportunity to develop new laws and practices for MAID.

In January, 2016, the SCC granted a further four month extension to the suspension of its ruling.
Amendments to the Criminal Code

• In response to the SCC ruling in *Carter v. Canada (Attorney General)*:
  
  ➢ On June 17, 2016 the federal government passed legislative amendments in *An Act to Amend the Criminal Code* and to make related amendments to other Acts.
  
  ➢ Amendments to the *Criminal Code* create an exemption for health care professionals to aid in MAID.
Role of RN and NP in MAID

- The RN scope of practice in MAID is limited to *aiding* in the provision of MAID.

- The NPs current scope of practice is also limited to aiding in the provision of MAID.

- Once authorized in accordance with the *Registered Nurse Act, 2008*, NP’s will not only be able to aid in MAID but also *provide* MAID.
RN and NP may aid in providing nursing care and perform activities within their scope of practice such as:

- Providing information about MAID *upon* the client’s request to clients/families;
- Providing support to clients and families;
- Inserting an intravenous line (with an order);
- Preparing the medication(s) for MAID.
Conscientious Objection

- ARNNL recognizes an RN’s or NP’s freedom of conscience which is consistent with the *Carter* decision.

- If nursing care is requested that is in conflict with the nurse’s moral beliefs and values but in keeping with professional practice, the nurse provides safe, compassionate, competent and ethical care until alternate care arrangements are in place to meet the persons needs or desires. If nurses can anticipate a conflict with their conscience they have an obligation to notify their employers or, if the nurse is self-employed, persons receiving care in advance so that alternate care arrangements can be made. (CNA Code of Ethics, 2008, p.19)
• Physician(s) prescribe and/or administer the substance(s).
• Failure to comply with any federal law, provincial law, rule or the standard of care may nullify the exemption in aiding in MAID.
• Revised law permits health-care professionals to provide information about the lawful provision of MAID to a patient/client:
  ➢ It is important for RNs and NPs to understand that there is a difference in the context in which the term “counsel” is being used in MAID and the therapeutic relationship.
RN’s and NP’s who choose to aid in MAID need to:

- Familiarize themselves with the wording of the new *Criminal Code* provisions;
- Review any guiding documents from other regulatory bodies (i.e. the College of Physicians and Surgeons of NL, the Newfoundland and Labrador Pharmacy Board);
- Determine the employer’s position in permitting MAID in the employment setting and be aware of any applicable policies, guidelines, procedures and/or processes in place to guide the nurse’s practice in MAID;
- Review current Canadian Nurses Protective Society (CNPS) resources related to MAID; and
- Seek legal advice as needed to understand the relevant provisions of the *Criminal Code* and other laws (CNPS, 2016).


