



Canadian Public Health Association Summary of Evidence

# Medical Assistance in Dying

April 2016

## Purpose

To summarize the available information concerning medical assistance in dying<sup>†,‡</sup> in Canada from a public health perspective.

## Introduction

In February 2015, the *Supreme Court of Canada* struck down a previous case ruling that prohibited assisted suicide. In that decision, the Court found that prohibition infringed on the rights of Canadians.<sup>1</sup> The Court ruled that new legislation must be prepared within one year, but required further study of the issue and consultation with provinces. This deadline was subsequently extended by four months to June 2016.<sup>2</sup> As legislation is being developed, the Canadian Public Health Association's (CPHA) Board of Directors decided to advocate for a public health perspective on medical assistance in dying.

## Background

In order to discuss this issue, it is important to define relevant terms, including:

- *Palliative care*, which is the general term for the provision of end-of-life care. This type of care aims to "provide comfort and dignity for the person living with the illness, as well as the best quality of life for both this person and his or her family."<sup>3</sup> It meets the needs of the individual and his/her family in terms of physical, psychological, social, cultural, emotional and spiritual care while assisting individuals to live out their remaining time in comfort and dignity.<sup>3</sup>
- *Medical assistance in dying* is defined as care consisting in the provision, by a medical professional, of "medications or substances to an end-of-life patient, at the patient's request, in order to relieve their suffering by hastening death."<sup>4</sup>
- *Euthanasia* is defined as the deliberate action undertaken by one person with the intention of ending the life of another person to relieve that person's suffering where that act is the cause of death.<sup>4</sup>

Given this distinction, it should be noted that the focus of this summary is on medical assistance in dying and *not* euthanasia.

### *The International Situation*

Assisted dying is legal in Switzerland, Netherlands, Belgium, Luxembourg<sup>5-7</sup> and Columbia,<sup>8</sup> while in the United States assisted dying is legal in Oregon,<sup>9</sup> Washington,<sup>10</sup> Montana,<sup>11</sup> Vermont,<sup>12</sup> and California.<sup>13</sup> All countries and American states, with the exception of Switzerland, require that the person requesting this service be a resident of the country/state, and provide limitations to accessing the service. The limitations are summarized in Annex I. It should be noted that *euthanasia* is also legal in the Netherlands, Belgium, Luxembourg, and Colombia, but is not legal in any of the United States.

The American Public Health Association (APHA) issued a position statement in support of assisted dying, but noted the need for safeguards to prohibit its misuse.<sup>14</sup> These safeguards include limiting the choice to mentally competent, terminally ill patients. This position is further underlined when recent information from the Netherlands concerning the assisted

<sup>†</sup> Medical assistance in dying is the terminology recommended by the Special Joint Committee on Physician-Assisted Dying for use in future legislation.

<sup>‡</sup> Other common terms include: "assisted dying", "physician-assisted dying", "physician-assisted suicide", and "assisted suicide". For the purposes of this summary, the term "medical assistance in dying" will be used unless the source document used other language. It should be noted that the 1993 Supreme Court ruling chose to use the term "assisted suicide", while the 2015 decision used a variety of language including assisted dying.

suicide (the paper's terminology) of patients with psychiatric disorders is considered. Such requests were found to involve considerable physician judgement; usually involving multiple physicians who did not always agree.<sup>15</sup> APHA's support is based on the recognition that people have the right to self-determination at the end of life and for their decisions to be honoured. APHA believes that all people have the right to die with dignity and be informed of all their care options.<sup>14</sup>

#### *The Canadian Situation*

Discussion concerning this issue is predicated on two cases that were adjudicated by the Supreme Court of Canada: *Rodriguez v. British Columbia, 1993*<sup>16</sup> and *Carter v. Canada, 2015*.<sup>1</sup> The arguments used in these two cases are summarized in Annex II. Following the 2015 ruling to strike down the prohibition of medical assistance in dying under s.7 of the Charter,<sup>†,17</sup> provinces and non-governmental organizations began developing protocols to define the boundaries for medical assistance in dying. The Canadian Medical Association and the Canadian Nurses Association note the importance for this option in providing care at the end of life and the need for regulations surrounding the action,<sup>17-19</sup> while the College of Physicians and Surgeons of Ontario have approved preliminary guidelines to physicians concerning procedures and eligibility for individuals seeking assistance in dying.<sup>20,21</sup>

Quebec is the only province with legislation concerning medical assistance in dying, which was promulgated on June 5, 2014. This bill, known as *An Act Respecting End-of-life Care*, allows individuals who are suffering from a serious and incurable illness to seek medical aid in dying.<sup>22</sup> The Quebec Act addresses the role of health and social service agencies, requires that these agencies consult with institutions in order to determine the rules governing assisted dying, and that they have the responsibility to fully inform the population of all their end-of-life options.<sup>22</sup> A subsequent *Canadian Journal of Public Health* editorial noted that "The Canadian public health community must take a public position with regard to this law."<sup>23</sup>

On February 25, 2016, the "Special Joint Committee on Physician-Assisted Dying" tabled their report, which provided a series of recommendations and broad support for medical assistance in dying, and provided specific direction concerning:

- Recognition of the value of Aboriginal practices and their use in the treatment of Aboriginal patients;
- The need for improvements in palliative care;
- Provision of better support for individuals with mental health issues and individuals with dementia;
- Preventing individuals from seeking medical assistance in dying due to a lack of community supports; and
- Substantive and procedural safeguards to prevent abuse.<sup>4</sup>

† Section 7 of the Canadian Charter of Rights and Freedoms provides that "the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice."<sup>16</sup>

## **Discussion**

### *The Supreme Court of Canada Arguments*

The reasons for identifying physician assistance in dying as a public health issue may include the changing societal norms concerning the issue and the fundamental principle of social justice. The two court cases noted above have shaped the debate and should be examined to provide insight.

In *Rodriguez v. British Columbia (1993)*,<sup>16</sup> the Court based its decision on societal concepts of fundamental justice, with the trial judge prohibiting assisted suicide (the Court's language) as it was justifiable under s.1<sup>‡</sup> of the *Charter*, although the decision recognized the validity of s.7 and s.15<sup>§</sup> arguments. In the Court's view at the time, societal norms valued preservation of life under all circumstances over Section 7 and 15 concerns.

The second case, *Carter v. Canada (2015)*,<sup>1</sup> found that the prohibition against assisted dying is no longer justified under s.1 of the *Charter* as a result of changing societal views on fundamental justice. In the Court's view, society now advocates and values individual rights and the right to die with dignity. Thus the previous prohibition violates s.7 rights of individuals for three reasons:

- *Right to life*: prohibition may cause an individual to end his/her life earlier than necessary, knowing that he/she may not be able to independently do so later;
- *Right to liberty*: prohibition imposed on the liberty of an individual as he/she did not have the right to non-interference from the state with regards to medical decisions; and
- *Right to security*: prohibition impinged an individual's sense of security because it restricted control over his/her bodily integrity.

### *A Public Health Consideration*

The principles of social justice and health equity, along with considerations related to addressing the social determinants of health, are foundational to public health practice. Based on the criteria noted above, medical assistance in dying could be considered a public health concern rooted in the fundamental principle of social justice and the application of public health ethics.

*Social justice* is defined as "a concept of a society that gives individuals and groups fair treatment and an equitable share of the benefits of society. In this context, it is based on the concepts of human rights and equity."<sup>24</sup> Prohibiting medical assistance in dying would be a violation of the rights of Canadians and by extension contradicts the principle of social

‡ "The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society." Section 1, *Canadian Charter of Rights and Freedom, 1982*.<sup>16</sup>

§ "Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability." Section 15, *Canadian Charter of Rights and Freedom, 1982*.<sup>16</sup>

justice, as individuals should have the right to make autonomous medical decisions related to their bodies. In addition, maintaining a high quality of life (as determined by the individual) can be difficult for individuals suffering from incurable, degenerative medical conditions. Individuals may feel that having assistance with daily, personal tasks is an assault on their rights, privacy, dignity and self-esteem.<sup>1</sup> From a public health perspective, promoting a high quality of life should involve multiple end-of-life care options and empower individuals to make personal health care choices.

*Public health ethics* balance the rights of the individual with the good of the broader society. This concept is embedded within a broader framework to secure health for all and to narrow inequities in health.<sup>25</sup> It involves the consideration of societal principles, beliefs and values to plan public health action.<sup>26</sup> Principles of enhancing human dignity, extending compassion to all, relieving suffering, empowering the individual, promoting the health and wellbeing of both individual and community, and respecting diversity align with the ethical principles of clinical care, i.e., autonomy, justice, beneficence and non-maleficence in relation to supporting the right of the patient to self-determination as he or she is dying, particularly when there

is unbearable suffering and loss of dignity. These principles extend also to the community and, as such, reflect the principles of public health ethics.

These concepts underlie the argument that assisted dying is a public health concern, as ethical public health actions ensure, in part, that the population has access to health care options that fit their needs. With the noted change in societal views, a public health perspective includes supporting safe and equitable access to medical assistance in dying.

In order to do so, the following considerations should be in place:

- Adequate and equitable access to high-level palliative care, and expert knowledge of pain control with minimal side effects on levels of consciousness;
- Adequate and equitable access to social support;
- Independent and expert assessment of each case by persons with no conflicts of interest;
- Respect for personal values, and absence of coercion;
- Monitoring and assurance of provider competencies;
- Monitoring and assurance of prevention of abuse; and
- Independent oversight and annual accountability with public reporting.

### Suggested Citation

Canadian Public Health Association. Canadian Public Health Association Summary of Evidence: Medical Assistance in Dying. Ottawa, ON: CPHA, 2016.

### About CPHA

Founded in 1910, the Canadian Public Health Association (CPHA) is the independent voice for public health in Canada with links to the international community. As the only Canadian non-governmental organization focused exclusively on public health, CPHA is uniquely positioned to advise decision-makers about public health system reform and to guide initiatives to help safeguard the personal and community health of Canadians and people around the world. CPHA is a national, independent, not-for-profit, voluntary association. CPHA's members believe in universal and equitable access to the basic conditions which are necessary to achieve health for all.

#### *Our Vision*

A healthy and just world

[www.cpha.ca](http://www.cpha.ca)

#### *Our Mission*

CPHA's mission is to enhance the health of people in Canada and to contribute to a healthier and more equitable world.

## REFERENCES

1. Carter v. Canada (Attorney General), 2015, 1 SCR 331, 2015. Available at: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14637/index.do> (Accessed January 13, 2016)
2. Fine, Sean. Supreme Court seeks compromise to allow doctor-assisted death. *The Globe and Mail*. 2016 January 11. Available at: <http://www.theglobeandmail.com/news/national/supreme-court-to-hold-hearing-on-assisted-death/article28104831/> (Accessed January 13, 2016)
3. Canadian Hospice Palliative Care Association. FAQ – What is Palliative Care. 2016. Available at: <http://www.chpca.net/family-caregivers/faqs.aspx> (Accessed on February 8, 2016)
4. Parliament of Canada, 2016. Medical Assistance in Dying: A Patient Centred Approach. Report of the Special Joint Committee on Physician-Assisted Dying. Available at: [http://www.parl.gc.ca/Content/HOC/Committee/421/PDAM/Reports/RP8120006/421\\_PDAM\\_Rpt01\\_PDF/421\\_PDAM\\_Rpt01-e.pdf](http://www.parl.gc.ca/Content/HOC/Committee/421/PDAM/Reports/RP8120006/421_PDAM_Rpt01_PDF/421_PDAM_Rpt01-e.pdf) (Accessed March 17, 2016).
5. Dignitas. Countries with End-of-life help laws and/or regulations, 2016. Available at: [http://www.dignitas.ch/index.php?option=com\\_content&view=article&id=54&lang=en](http://www.dignitas.ch/index.php?option=com_content&view=article&id=54&lang=en) (Accessed January 18, 2016)
6. Belgian Act on Euthanasia. *Ethical Perspectives* 2002; 9, 2-3: 193. Available at: <http://www.ethical-perspectives.be/viewpic.php?LAN=E&TABLE=EP&ID=59> (Accessed January 18, 2016)
7. Nicol, J, Tiedemann, M & Valiquet, D. Euthanasia and Assisted Suicide: International Experiences. Library of Parliament Research Publications. 2011. Available at: <http://www.parl.gc.ca/content/lop/researchpublications/2011-67-e.htm> (Accessed January 18, 2016)
8. Patients Right Council. Colombia Law. 2016. Available at: <http://www.patientsrightscouncil.org/site/colombia/> (Accessed January 18, 2016)
9. Oregon Health Authority. Death with Dignity Act – Oregon Revised Statute. 2016. Available at: <http://public.health.oregon.gov/ProviderPartnerResources/EvaluationResearch/DeathwithDignityAct/Pages/ors.aspx> (Accessed January 18, 2016)
10. Washington State Department of Health. Death with Dignity Act. 2016. Available at: <http://www.doh.wa.gov/YouandYourFamily/IllnessandDisease/DeathwithDignityAct> (Accessed January 18, 2016)
11. Baxter v. Montana. 2009 WL 5155363 (Mont. 2009). Available at: [http://euthanasia.procon.org/files/baxtr\\_v\\_mont\\_sum.pdf](http://euthanasia.procon.org/files/baxtr_v_mont_sum.pdf) (Accessed January 18, 2016)
12. Vermont General Assembly. Title 18: Health - Chapter 113: Patient choice at end of life. 2016. Available at: <http://legislature.vermont.gov/statutes/chapter/18/113> (Accessed January 18, 2016)
13. California Legislative Information. Assembly Bill 15: End of Life. 2016. Available at: [https://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=201520162AB15](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201520162AB15) (Accessed January 18, 2016)
14. American Public Health Association. Patients' Rights to Self-Determination at the End of Life. 2008. Available at: <https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2014/07/29/13/28/patients-rights-to-self-de-termination-at-the-end-of-life> (Accessed January 27, 2016)
15. Kim, Scott Y.H., DeVries, Raymond G., and Peteet, John, R. 2016. Euthanasia and Assisted Dying of Patients with Psychiatric Disorders in the Netherlands 2011-2014. *JAMA Psychiatry* 2015. 2887. Published online, February 10, 2016.
16. Rodriguez v. BC: Rodriguez v. British Columbia (Attorney General), 1993, 3 SCR 519 Available at: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1054/index.do> (Accessed January 13, 2016)
17. Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11. Available at: <http://laws-lois.justice.gc.ca/eng/const/page-15.html> (Accessed January 18, 2016)
18. Canadian Medical Association. Developing a Canadian approach to assisted dying. 2015. Available at: <https://www.cma.ca/En/Pages/end-of-life.aspx> (Accessed January 27, 2016)
19. Canadian Nurses Association. Canadian Nurses Association welcomes Supreme Court of Canada ruling on medically assisted dying. 2015. Available at: <https://www.cna-aic.ca/en/news-room/news-releases/2015/canadian-nurses-association-welcomes-supreme-court-of-canada-ruling-on-medically-assisted-dying> (Accessed January 27, 2016)
20. Loriggio, P. Ontario doctors receive interim guidelines for assisted dying. *Globe and Mail*, 2016 January 26. Available at: <http://www.theglobeandmail.com/news/national/ontario-doctors-receive-interim-guidelines-for-assisted-dying/article28403859/> (Accessed January 27, 2016)
21. College of Physicians and Surgeons of Ontario. Physician-Assisted Death: College Consults on Interim Guidance. 2015. Available at: <http://www.cpso.on.ca/Whatsnew/News-Releases/2015/Physician-Assisted-Death-College-Consults-on-Inter> (Accessed January 27, 2016)
22. Quebec National Assembly. Bill 52 – An act respecting end-of-life care. 2015. Available at: <http://www.assnat.qc.ca/en/travaux-parlementaires/projets-loi/projet-loi-52-41-1.html> (Accessed January 18, 2016)
23. Potvin, Louise, 2014. End-of-life care: a public health matter. *Canadian Journal of Public Health* 105 (3): 156-157.
24. Public Health Agency of Canada. Glossary of Terms. 2016. Available at: <http://www.phac-aspc.gc.ca/php-ppsp/ccph-cesp/glos-eng.php> (Accessed January 27, 2016)
25. Faden, R., Shebaya, S. Public Health Ethics. *The Stanford Encyclopedia of Philosophy* (Spring 2015 Edition), Edward N. Zalta (ed.) 2015 Feb 19. Available at: <http://plato.stanford.edu/entries/publichealth-ethics/> (Accessed on February 8, 2016)
26. Centers for Disease Control and Prevention. Scientific Integrity: Public Health Ethics. 10 Apr 2015. Available at: <http://www.cdc.gov/od/science/integrity/phethics/> (Accessed on February 4, 2016)

**ANNEX I: Countries Where Medical Assistance in Dying is Legal**

<b>Country/State</b>	<b>Year Effective</b>	<b>Conditions</b>
<b>INTERNATIONAL</b>		
Switzerland <sup>5</sup>	1942	<b>Resident:</b> No <b>Conditions:</b> Able to seek medical assistance in dying as long as the motives are not “selfish” * <i>No clear regulations or protocols</i>
Netherlands <sup>5</sup>	2002	<b>Resident:</b> Yes <b>Minimum Age:</b> 16 (with parental assent) <b># months till death:</b> N/A – anyone with “unbearable suffering” <b>Requests to physician:</b> consult with two physicians * <i>Euthanasia is legal</i>
Belgium <sup>6</sup>	2002	<b>Resident:</b> Yes <b>Minimum Age:</b> None <b># months till death:</b> None – serious and incurable disorder <b>Requests to physician:</b> consult with two physicians * <i>Regulations only refer to euthanasia and NOT medical assistance in dying</i> * <i>No age limit for minors BUT must be conscious of their decision, terminally ill and close to death; and must also obtain assent from parents</i>
Luxembourg <sup>7</sup>	2009	<b>Resident:</b> Yes <b>Minimum Age:</b> 18 <b># months till death:</b> None – serious and incurable disorder <b>Requests to physician:</b> consult with two physicians * <i>Euthanasia is legal</i>
Colombia <sup>8</sup>	1997	Laws were passed to legalize but no protocol Euthanasia protocols passed in 2015 to allow for regulations of the practice * <i>Euthanasia is legal</i>
<b>UNITED STATES</b>		
Oregon <sup>9</sup>	1997	<b>Resident:</b> Yes <b>Minimum Age:</b> 18 <b># months till death:</b> 6 months <b>Requests to physician:</b> (1) first verbal request, (2) second verbal request – after 15 days, (3) written request
Washington <sup>10</sup>	2008	<b>Resident:</b> Yes <b>Minimum Age:</b> 18 <b># months till death:</b> 6 months <b>Requests to physician:</b> (1) first verbal request, (2) second verbal request – after 15 days, (3) written request Montana <sup>11</sup> 2009 <b>Resident:</b> Yes * <i>No conditions/protocol – need permission from court</i>
Vermont <sup>12</sup>	2013	<b>Resident:</b> Yes <b>Minimum Age:</b> 18 <b># months till death:</b> 6 months <b>Requests to physician:</b> (1) first verbal request, (2) second verbal request – after 15 days, (3) written request
California <sup>13</sup>	2015	<b>Resident:</b> Yes <b>Minimum Age:</b> 18 <b># months till death:</b> 6 months <b>Requests to physician:</b> (1) first verbal request, (2) second verbal request – after 15 days, (3) written request

## ANNEX II: Assisted Suicide Cases in Canada

There are two significant Canadian cases in which medical assistance in dying was brought before the Supreme Court. The first was in 1993 (*Rodriguez v. British Columbia*), when the judge ruled in favour of prohibiting assisted suicide.<sup>19</sup> The second case was in early 2015 (*Carter v. Canada*) with two parties: (1) Gloria Taylor, who suffered from ALS, and (2) Ms. Carter and Mr. Johnson, a married couple, who accompanied Ms. Carter's mother, Kathleen ("Kay") Carter to Switzerland to peacefully end her life. Following the second case, the judge struck down the 1993 decision and allowed assisted suicide to be legal in Canada.<sup>1</sup>

<b>Court Case</b>	Rodriguez v. British Columbia (Attorney General) <sup>16</sup> 1993, 3 SCR 519
<b>Argument</b>	<p>Three core arguments relating to s.7, s.12 and s.15 were made in this case.</p> <ol style="list-style-type: none"> <li>1. Prohibiting assisted suicide violates s.7 in Charter           <p style="margin-left: 20px;">Ruling: Judge agreed that Ms. Rodriguez was deprived of her right to security in making a choice regarding her body and in her autonomy. However, the fundamentals of justice need to be taken into account and whether this aligns with the societal concept of justice. The judge found that allowing assisted suicide <i>did not align</i> with societal concepts of justice and allowing it would erode the belief in sanctity of life and there are concerns over the protecting of vulnerable individuals.</p> </li> <li>2. Prohibiting assisted suicide subjects Ms. Rodriguez to cruel and unusual punishment, which is in violation with s.12 in the Charter           <p style="margin-left: 20px;">Ruling: Judge found that her argument <i>does not hold</i> because there is no "treatment" as the state does not control the individual.</p> </li> <li>3. Prohibiting assisted suicide discriminates against disabled individuals and violates s.15 in Charter           <p style="margin-left: 20px;">Ruling: Judge found that it does violate rights under s.15 <i>but</i> could be justified under s.1 of the Charter. Judge determined that the prohibition is justified under s.1 because there is a reasonable limit and creating an exception for certain groups would go on to create inequality.</p> </li> </ol> <p>Overall: Trial judge found that assisted suicide does not violate s.7 and s.15 of the Charter, but is not justifiable under s.1.</p>
<b>Outcome</b>	Assisted suicide prohibited
<b>Court Case</b>	<i>Carter v. Canada</i> (Attorney General) <sup>1</sup> 2015, 1 SCR 331
<b>Argument</b>	<p>Overall: Trial judge found that prohibition against physician-assisted dying violates the s.7 rights of competent adults who are suffering intolerably as a result of a grievous and irremediable medical condition and concluded that this infringement is not justified under s.1 of the <i>Charter</i>.</p> <p>Reasons to overturn 1993 ruling are related to new societal concepts:</p> <ol style="list-style-type: none"> <li>1. Sanctity of life is no longer viewed as a requirement to preserve life at <i>all</i> costs.</li> <li>2. Prohibition is not in accordance with current principles of fundamental justice because the ruling applies to all Canadians.</li> <li>3. Laws will still be able to protect vulnerable populations while allowing competent adults, who are seriously ill or suffering, to access physician assisted suicide.</li> </ol>
<b>Outcome</b>	Previous ruling overturned – assisted suicide decriminalized