



MEDICAL ASSISTANCE IN DYING (MAID) LAWS IN CANADA*

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Medical assistance in dying (“**MAID**”) laws are relatively recent in Canada. Laws authorizing MAID were first introduced in Canada in 2016 and later amended in 2021. Further amendments, which were initially set to come into effect in March 2023, have been postponed for at least an additional year. MAID is a complex topic and the laws surrounding it require a delicate balance of competing considerations – from preserving a person’s dignity to protecting those who are vulnerable. It is not surprising, therefore, that MAID laws have been subject to considerable review and development since their inception. It is expected that MAID laws will continue to evolve as the concept develops and lawmakers’ understanding of the various complexities continues to grow.

Since the introduction of MAID laws, a total of **31,664** Canadians have died with MAID between 2016 to 2021. In 2021, **10,064** Canadians died with the procedure, accounting for 3.3% of deaths in Canada that year.

History

The Supreme Court of Canada in the landmark decision in *Carter v Canada*, **2015 SCC 5** unanimously ruled that section 14 and paragraph 241(b) of the *Criminal Code* which prohibited medically assisted suicide violated section 7 of the Charter protecting the life, liberty and security of the person. In June 2016, Parliament passed Bill C-14 which amended parts of the Criminal Code to allow physicians and nurse practitioners to administer MAID to eligible adults in accordance with specified safeguards. Under this law, a criterion in determining whether an individual had a “grievous and irremediable medical condition” for the purposes of MAID eligibility was that their natural death was “reasonably foreseeable.”

In March 2021, Parliament passed Bill C-7 after the Superior Court of Quebec’s decision in *Truchon v Canada*,



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[2019 QCCS 3792](#). In *Truchon*, the Superior Court found that the “reasonably foreseeable” death requisite was unconstitutional. As a result, the eligibility criteria was expanded even further and two sets of safeguards were created: one for those whose deaths are reasonably foreseeable and one for those whose deaths are not reasonably foreseeable.

The 2021 amendments temporarily excluded from MAID eligibility any person whose sole underlying medical condition is a mental illness. The temporary exclusion was set to expire in March 2023, but has been extended for another year, as further detailed below. The purpose of the temporary exclusion and extension is to give the government more time to consider expert recommendations in this area.

Current Eligibility for MAID

Under ss. 241.2(1) of the *Criminal Code*, [RSC 1985, c C-46](#), a person is eligible to receive MAID if they meet the following criteria:

- (i) they are eligible for publicly funded health care services in Canada;
- (ii) they are at least 18 years old and capable of making health care decisions by themselves;
- (iii) they have a “grievous and irremediable medical condition”;
- (iv) they have made a voluntarily request for MAID; and
- (v) they have given informed consent to receive MAID after being informed of the means that are available to relieve their suffering, including palliative care.

Pursuant to ss. 241.2(2) of the *Criminal Code*, a person is considered to have a “grievous and irremediable medical condition” if:

- (i) they have a serious and incurable illness, disease or disability (excluding mental illness until March 17, 2024);
- (ii) they are in an advanced state of irreversible decline in capabilities; and
- (iii) their illness, disease or disability or state of decline causes them enduring physical or psychological suffering that is intolerable to them and cannot be relieved under conditions that they consider acceptable.

Mental Illness

Expanding MAID to individuals whose sole underlying condition is a mental illness is a complex issue. It was expected that as of March 17, 2023, MAID would be available to such individuals, provided that they met all other eligibility criteria. However, in order to allow for further discussion of this nuanced matter and consideration of the [final report](#) of the Special Joint Committee on MAID, which was released in February 2023, the federal government [passed legislation](#) implementing a one-year extension of the temporary exclusion of such individuals from MAID eligibility.

Accordingly, as of March 17, 2024 (unless additional extensions are introduced), MAID will be available to Canadians whose sole underlying medical condition is a mental illness, provided that they meet all other eligibility criteria.

Safeguards

Death reasonably foreseeable

Where a MAID applicant's death is reasonably foreseeable, certain procedural safeguards must be met under ss. 241.2(3) of the *Criminal Code*. Before a physician or nurse practitioner can provide MAID under this circumstance, in addition to other requirements, they must ensure that there are:

- assessments carried out by two physicians or nurse practitioners;
- a signed written request for MAID by the applicant;
- an opportunity for the applicant to withdraw their request immediately before MAID is provided; and
- a final consent given immediately before MAID is provided (which final consent can be waived in certain circumstances).

Death not reasonably foreseeable

Where a MAID applicant's death is not reasonably foreseeable, there are extra safeguards in place under ss. 241.2(3.1) of the *Criminal Code*, in addition to those set out above. The additional safeguards include:

- a 90-day mandatory assessment period;
- one of the two assessors having expertise in the condition that is causing the person's suffering;
- the applicant is informed of available and appropriate means to relieve their suffering, including counselling services, mental health and disability support services, community services, and palliative care, and must be offered consultations with professionals who provide those services;
- the applicant and practitioners discussed reasonable and available means to relieve the person's suffering, and agree that the person has seriously considered those means; and
- a final consent given immediately before MAID is provided (which final consent cannot be waived).

Advance Consent vs Advance Request

Bill C-7 waived the requirement for eligible persons whose natural death is reasonably foreseeable to provide final consent immediately before receiving MAID. A person who has been approved to receive MAID but loses capacity to consent to it at the time of the procedure may give consent in advance in writing to their health care practitioner. In contrast, an advance request for MAID is when a person is not presently eligible but wishes to access the procedure in the future in the event they become incapable and meet the eligibility criteria. Currently, advance requests for MAID are prohibited. The Canadian Council of Academies (CCA) published an [independent report](#) about the different frameworks to introduce advance requests for MAID, while also identifying issues notably being the time gap between when a request is made and when the procedure is administered. In the future, advance requests for MAID may be permitted, though it is anticipated that much consideration and contemplation will occur before such time.

Conclusion

For more information on MAID, refer to the [Government of Canada's MAID website](#) and the [Government of Ontario's MAID website](#) and speak to your legal and medical advisors.