

Mature Minors, Advance Requests & Mental Illness as a Sole Underlying Condition: Protecting the Vulnerable or Discrimination?

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Mental Health - Care & Research
Santé mentale - Soins et recherche

Carter v Canada 2015

The Supreme Court of Canada struck down provisions of the Criminal Code that prohibited physician assisted death

The provisions infringed on the right of individuals to life, liberty and security in the Canadian Charter of Rights & Freedoms

Carter v Canada 2015

s.14 and s. 241(b) are of no force or effect (invalid) 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

Criminal Code

s.14 and s. 241(b) provisions became invalid in February 2016

Supreme Court of Canada grants a 4-month extension for provincial and territorial governments to develop legislation

During the Four Month Extension...

Supreme Court of Canada granted an exemption to those who wish to exercise their rights so that they may apply to the superior court of their jurisdiction for relief in accordance with the criteria set out in Carter 2015

Application from a person with mental illness as the sole condition

Canada took the position that the applicant did not meet the Carter 2015 criteria for two reasons:

1. the applicant's illness however severe, is not regarded as terminal;
2. the applicant's illness has at its root a psychiatric condition

The judge disagreed and granted the application on May 5, 2016

The Appeal

The Attorneys General of Canada and British Columbia appealed to the Court of Appeal of Alberta

The three issues on Appeal:

1. Does the constitutional exemption granted in Carter 2016 apply only to applicants whose medical conditions are terminal?
2. Are persons suffering psychiatric conditions and who otherwise comply with the criteria in Carter 2015 excluded from the ambit of the constitutional exemption?
3. The appellants argue that the medical evidence presented was insufficient to support the conclusion that EF had a grievous and irremediable medical condition that causes enduring suffering that is intolerable to EF

Does the constitutional exemption only apply to those with terminal illness?

[33] As Canada fairly conceded, the language of the declaration itself is broad and rights based. Nowhere in the descriptive language is the right to physician assisted death expressly limited only to those who are terminally ill or near the end of life. Canada accepts that a dictionary definition of “grievous and irremediable” medical condition could include conditions that are not life-threatening or terminal.

Are those with psychiatric illness as the sole condition precluded from MAID?

The Appeal Court supported the motions judge ruling that paragraph 127 of the Carter decision ensures that persons with a psychiatric disorder are not deprived of exercising their rights, provided they can establish that they are both competent and clearly consent.

Persons with a psychiatric illness are not explicitly or inferentially excluded if they fit the criteria.

Did the medical evidence support the criterion of a grievous & irremediable medical condition?

The Appeal Court supported the finding of the motions judge that the medical condition was grievous & irremediable citing:

- that none of the treatments EF had undergone over nine years had provided a remedy
- the physical symptoms suffered by EF as a result of her medical condition deprived her of any quality of life
- despite the diagnosis having an underlying psychiatric component, this does not discount the “real and horrific” physical symptoms

Medical Assistance in Dying Bill C-14

June 2016

To be eligible for MAID, one must meet **all** of the following criteria:

- eligible for health services funded by the federal government, or a province or territory
- at least 18 years old and mentally competent. This means being capable of making health care decisions for yourself.
- have a grievous & irremediable medical condition
- make a voluntary request for MAID that is not the result of outside pressure or influence
- give informed consent to receive MAID

Grievous and Irremediable Medical Condition

To be considered as having a grievous and irremediable medical condition, you must meet **all** of the following criteria:

- have a serious illness, disease or disability
- be in an advanced state of decline that cannot be reversed
- experience unbearable physical or mental suffering that cannot be relieved under conditions that you consider acceptable
- be at a point where your natural death has become reasonably foreseeable
 - this takes into account all of your medical circumstances and does not require a specific prognosis as to how long you have left to live
- You do not need to have a fatal or terminal condition to be eligible for medical assistance in dying.

Informed Consent

This means you have consented to MAID after you have received all of the information you need to make your decision, including:

- your medical diagnosis
- available forms of treatment
- available options to relieve suffering, including palliative care
- you must be able to give informed consent both:
 - at the time of your request
 - immediately before MAID is provided
- you can withdraw your consent at any time

Mental Health as the Sole Medical Condition

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

- Life span of mental health clients
- Complexity of medical co-morbidities
- Social determinants of health

Mental Health as the Sole Medical Condition

Applicant Suffers from Schizophrenia

- OHIP
- 55 year old & mentally competent
- schizophrenia for 30 years
 - limited improvement in positive symptoms and no sustained improvement in negative symptoms despite traditional & emerging treatments
 - Exceedingly poor quality of life
 - Cardiorespiratory disease
- voluntary request
- Has good insight & is aware of existing and research-based treatments & able to provide informed consent

Eligibility

- eligible for funded health services
- at least 18 years old and mentally competent
- have a grievous & irremediable medical condition
- make a voluntary request for MAID that is not the result of outside pressure or influence
- give informed consent to receive MAID

Mature Minors

Legally, MAID is only available to those who meet all the criteria including being at least 18 years old and mentally competent

Explicitly excludes mature minors

Mature minor is the term for the statutory, regulatory, or common law policy accepting that an minor patient may possess the maturity to choose or reject a particular health care treatment, sometimes without the knowledge or agreement of parents, and should be permitted to do so

Mature Minor Scenario

17 year old with a 4 year history of traditional and non-tradition treatments without sustainable improvement for an opiate addiction. Long history of marginalized living conditions, work in the sex trade & a legal history with crimes associated with her addiction.

Mature Minor Scenario

16 year old with leukemia that has not responded to treatment and the patient has elected not to have additional treatment. Horrendous pain alleviated only with medications that limit any engagement.

Advance Requests

Legally, MAID is only available to those who meet all the criteria including being able to:

- make a voluntary request for MAID that is not the result of outside pressure or influence
- give informed consent to receive MAID at the time of the request and at the time of the intervention

An advance directive is a communication process that leads to a pre-determined set of instructions or a decision-making process for others to follow based on your previously stated values and wishes for end of life care

Suffering may become intolerable once the illness has progressed beyond the point at which the individual was able to make a voluntary request and provide informed consent

The loss of autonomy and independence may be the most profoundly distressing

Advance Requests Scenario

- 72 year old who has a history of cardiac disease and a previous stroke at age 68 years
- Advance directive for no CPR in the event of a cardiac or respiratory arrest
- Would like to access MAID should he have an arrest that leaves him unable to speak, feed himself and ambulate on his own

Advance Request Scenario

85 year old woman widow diagnosed with dementia at age 80 years

Aware of her decline and deeply distressed by the loss of autonomy

Fears the disinhibition that her mother experienced as she entered her 90s as well as the horror of not recognizing he loved ones

What is Next

- Council of Canadian Academies
- Report anticipated by end of 2018
- Three issues:
 1. Mature Minors
 2. Advance Requests
 3. Psychiatric Illness as Sole Medical Condition