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An Act to amend the Criminal Code as it relates to medically-assisted death and to establish the Commission on End of Life Care in Canada

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Based on the SCC decision in *Carter v. Canada,* the Final Report of the Provincial-Territorial Expert Advisory Group on Physician-Assisted Dying, and a comparative review of legislation in all permissive regimes and analysis of available academic and grey literature

SUMMARY

This enactment amends the law to ensure that the *Criminal Code* does not prohibit medically-assisted death where the assistance meets the requirements set out in the Act. It also ensures that the incidence and circumstances of medically-assisted death in Canada are well monitored and the vulnerable are well protected.

An Act to amend the Criminal Code as it relates to medically-assisted death and to establish the Commission on End of Life Care in Canada

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

1. The following be added to s.14:

    "except as provided in s.241.1."

2. The heading preceding s.241 is replaced by the following:

    “Medically-Assisted Death”

3. The following new section be added following s.241:

241.1(1) In this section and s.241.2,

“advance directive” means directions given by a capable individual concerning what and/or how and/or by whom decisions should be made in the event that, at some time in the future, the individual becomes incapable of making health care decisions;

"assistance" means the provision of a prescription for a lethal dose of medication or a lethal injection for the purpose of medically-assisted death;

“assisting healthcare provider” means the physician, other healthcare provider

acting under the direction of a physician, or nurse practitioner who is asked to provide assistance with death to a person seeking medically-assisted death;

“capable” means able to understand the subject-matter in respect of which a decision must be made and able to appreciate the consequences of that decision or lack of a decision, and “capacity” has a similar meaning as the context requires;

“Commission” means the Commission on End of Life Care in Canada;

“consulting healthcare provider” means a healthcare provider who is qualified by specialty or experience to form a professional opinion about the matter on which he has been consulted and who is not the assisting or reviewing healthcare provider;

“end of life care” means withholding or withdrawal of potentially life-sustaining care, palliative sedation, medically-assisted death, and palliative care;

"euthanasia" means the intentional ending of the life of a person, by another person, in order to relieve the first person's suffering;

“grievous” means very severe or serious;

“healthcare provider” means a regulated health professional;

“insured person” means a person who is lawfully entitled to receive publicly-funded health services without charge in Canada;

“irremediable” means cannot be alleviated by means acceptable to the person;

“mature minor” means a person under the age of majority who has capacity to make an informed decision about medically-assisted death and sufficient independence to make a voluntary decision;

“medically-assisted death” means medically-assisted suicide and voluntary euthanasia that is performed by a physician, other healthcare provider acting under the direction of a physician, or nurse practitioner;

“medically-assisted suicide” means the act of intentionally ending one’s life with the assistance of a physician, other healthcare provider acting under the direction of a physician, or nurse practitioners;

“Minister” means the Minister of Justice of Canada;

“palliative care” means care provided to people of all ages who have a life-limiting illness, with little or no prospect of cure, and for whom the primary treatment goal is quality of life. The care is aimed at alleviating suffering – physical, emotional, psychological, or spiritual – rather than curing. It aims

neither to hasten nor to postpone death, but affirms life and regards dying as a normal process. It recognizes the special needs of patients and families at the end of life, and offers a support system to help them cope;

“palliative sedation” means the intentional administration of deep and continuous sedation combined with the withholding or withdrawal of artificial hydration and nutrition where the purpose is to alleviate suffering where this will not, or may but is not certain to, shorten the life of the person;

“patient” means an individual under the care of a healthcare provider;

“patient information form” means the form prescribed by the Commission to gather demographic data and reasons for seeking medically-assisted death;

“physician” means a medical practitioner as defined in the legislation of the province or territory in which the assistance is provided;

“potentially life-shortening symptom relief” means the administration of drugs designed for symptom relief in dosages which the healthcare provider knows may but are not certain to hasten death where the healthcare provider’s intention is to ease suffering;

“potentially life-sustaining care” means care that has the potential to sustain the life of a person including but not limited to, health care and oral and artificial hydration and nutrition;

“request” means something asked for by a person orally or in writing;

“Regional Review Committee” means a committee established by the Commission to retrospectively review all cases of medically-assisted death to determine compliance with this Act;

“reviewing healthcare provider” means the healthcare provider who is asked to provide a second opinion as to whether the person seeking medically-assisted death has met the criteria for access to medically-assisted death;

"voluntary euthanasia" means euthanasia performed in accordance with the wishes of a competent individual where those wishes have been made known through a valid declaration.

“withdrawal of potentially life-sustaining care” means intentionally ceasing care that has the potential to sustain a persons’ life;

“withholding of potentially life-sustaining care” means intentionally refraining from commencing care that has the potential to sustain a person’s life.

No offence where conditions and requirements met

(2) No physician, other healthcare provider acting under the direction of a physician, or nurse practitioner is guilty of an offence under this Act where the physician, other healthcare provider acting under the direction of a physician, or nurse practitioner provides palliative sedation to a patient with a valid consent from the patient (if competent or through a valid advance directive if incompetent) or the patient's statutory substitute decision-maker (if incompetent and without a valid advance directive).

(3) No physician, other healthcare provider acting under the direction of a physician, or nurse practitioner is guilty of an offence under this Act where the physician, other healthcare provider acting under the direction of a physician, or nurse practitioner provides potentially life-shortening symptom relief to a patient with a valid consent from the patient (if competent or through a valid advance directive if incompetent) or the patient's statutory substitute decision-maker (if incompetent and without a valid advance directive).

(4) No physician, other healthcare provider acting under the direction of a physician, or nurse practitioner is guilty of an offence under this Act where the physician, other healthcare provider acting under the direction of a physician, or nurse practitioner meets the requirements set out in sections [*numbers*] and where the physician, other healthcare provider acting under the direction of a physician, or nurse practitioner provides assistance to a person who:

(a) is an insured person;
(b) has a grievous and irremediable medical condition (including an illness, disease or disability) that is causing enduring suffering that is intolerable to the individual based on their assessment of their personal circumstances; and
(c) has personally given a clear and valid consent to medically-assisted death.

i) A clear consent under this section is one made through a valid declaration of the request for medically-assisted death that is in force.

a) In order to be valid, a declaration shall be on a Form prescribed by the Commission, in writing, dated and signed by the patient and in the presence of a witness who shall also sign or, where the patient is physically unable to sign, by a person who is not a relative of the patient on behalf of the patient at the patient's direction and in the patient's presence, and in the presence of a witness who shall also sign.

b) A valid declaration may be made prior to the onset of the enduring intolerable suffering.

c) If completed before the onset of enduring intolerable suffering, the declaration must clearly stipulate the conditions or symptoms which the patient considers constitute enduring intolerable suffering.

d) The declaration shall come into force after being signed by the assisting healthcare provider, the patient making the declaration, and the witness.

e) The declaration shall cease to be in force if it has been revoked. The following conditions apply to revocations:

   i) only the patient who made the declaration can revoke it;
   ii) a patient may revoke a declaration at any time;
   iii) a written, oral, or other indication or withdrawal of consent is sufficient to revoke the declaration; and
   iv) in the event of a declaration being revoked, the assisting healthcare provider shall ensure that a note recording its revocation is made clearly on the declaration that is in the patient's medical record.

b) A valid consent under this section is:

i) free from coercion and undue influence;
ii) informed, in particular with respect to the diagnosis, prognosis for the illness, the consequences of the request being respected, the feasible alternative treatments including, but not limited to, comfort care, palliative or hospice care, symptom relief, and palliative sedation and the right to revoke the request at any time; and
iii) made by an individual capable at the time of making the declaration.

Required assessments

(5) Before providing medically-assisted death, the assisting healthcare provider shall:

(a) have reviewed the patient's record and examined the patient;
(b) be of the opinion (based on their own assessment of the patient or their own assessment of the patient in combination with the opinion of a consulting healthcare provider) that the patient has met all the criteria of section [*number*]
(c) have discussed the patient's request with anyone the patient has nominated for such a discussion;

(d) have concluded that the patient has had the opportunity to discuss the request with the persons they wished to contact;
(e) have obtained the opinion of a reviewing healthcare provider confirming that the criteria set out in section [*number*] have been met; and
(f) have requested that the patient complete, or provide the information necessary for completion of, a Patient Information Form.

(6) The assisting healthcare provider may base his or her opinion on an examination of and communication with the patient conducted remotely.

Second opinions

(7) The reviewing healthcare provider shall review the patient's record, examine the patient, and provide the second opinion in writing. Before providing the second opinion, the reviewing healthcare provider shall be of the opinion (based on their own assessment of the patient or their own assessment of the patient in combination with the opinion of a consulting healthcare provider) that the patient has met all the criteria of section [*number*].

(8) The reviewing physician, other healthcare provider acting under the direction of a physician, or nurse practitioners may base his or her opinion on an examination of and communication with the patient conducted remotely.

Failure to meet the conditions

(10) If the assisting healthcare provider determines that the conditions set out in sections *[numbers]* have not been met, the assisting healthcare provider shall inform the patient of the reasons for that determination. The patient is not precluded from seeking another assisting healthcare provider.

(11) If the reviewing healthcare provider determines that the conditions set out in sections [*numbers*] have not been met, the reviewing healthcare provider shall inform the patient and assisting healthcare provider of the reasons for that determination. The assisting healthcare provider is not precluded from seeking another reviewing healthcare provider.

Witnesses

(12) The following persons cannot act as a witness for the purposes of this Act:

a) a person who is a relative (by blood, marriage, or adoption);
b) an employee (who is also a healthcare provider), owner, or operator of the organization or facility in which the patient making the request is receiving treatment, or a patient or resident;
c) a healthcare provider who has been involved in the care of the patient; and

d) someone at the time of acting as a witness entitled to any portion of the estate upon death under any will or by operation of law.

Time

(13) Health care providers performing functions under this section have a duty to perform these functions in a timely manner.

Immunity in criminal proceedings

(14) A person is immune from liability in criminal proceedings for acts or omissions in good faith and without negligence in providing or intending to provide medically-assisted death.

Consent of Attorney General

(15) A prosecution for an offence under this Act may not be instituted except with the consent of the Attorney General of Canada.

Notice to interested authorities

(16) The Commission may notify any interested authority, such as a professional licensing or disciplinary body established under the laws of Canada or a province or territory, of the identity of a person who is charged with an offence under this section or who there are reasonable grounds to believe may have acted in breach of any professional code of conduct or standard.

Offences and penalties

(17) A person commits an offence if he willfully falsifies or forges a declaration made under this Act with the intent or effect of causing the person's death. A person guilty of an offence under this subsection shall be liable, on conviction, to a fine not exceeding [*amount*].

(18) A witness commits an offence if he willfully puts his name to a statement he knows to be false. A person guilty of an offence under this subsection shall be liable on conviction to a fine not exceeding [*amount*].

(19) A person commits an offence if he willfully conceals or destroys a declaration or revocation made under this Act. A person guilty of an offence under this subsection shall be liable on conviction to a fine not exceeding [*amount*].

(20) A healthcare provider involved in the care of a person commits an offence if he takes any part whatsoever in assisting a person to die or in giving an opinion in respect of such a person, or acts as a witness if he has grounds for believing that he will benefit financially or in any other way as the result of the death of the

person. A healthcare provider guilty of an offence under this subsection shall be liable on conviction to a fine not exceeding [*amount*].

Regulations of Governor in Council

(21) The Governor in Council may make regulations for carrying into effect the purposes and provisions of this Act and, in particular, may make regulations:

(a) defining any word or expression used but not defined in this Act;

(b) further defining or re-defining any word or expression defined in this Act;

(c) respecting the giving of consent for medically-assisted death described in section [*number*];

(d) respecting the creation and maintenance of records by any person in relation to an activity for which a declaration is required under section [*number]*;

(e) respecting the establishment of the Regional Review Committee system;

(f) empowering the Commission, in the manner set out in the regulations, to require any person described in sections [*numbers*] to provide to the Commission or Regional Review Committee any records that the person is required by the regulations to create or maintain, and any additional information related to the activity described in sections [*numbers*], and requiring that person to provide to the Commission or Regional Review Committee those records and that information within the time and in the manner set out in the regulations.

Incorporation by reference

(22) The regulations may incorporate any document by reference, regardless of its source, either as it reads on a particular date or as it is amended from time to time.

Documents in one language

(23) Where a document that is available in both official languages has been incorporated by reference as amended from time to time, an amendment to one language version of that document is not incorporated until the corresponding amendment is made to the other language version.

Statutory Instruments Act

(24) A document does not become a regulation within the meaning of the Statutory Instruments Act merely because it is incorporated by reference.

Substantial similarity

(25) The Governor in Council may, by order, if satisfied that legislation of a province that is substantially similar to this Act and regulations under this Act applies to an organization, a class of organizations, an activity or a class of activities, exempt the organization, activity or class from the application of sections [numbers] in respect of the application of sections [numbers]

241.2 The Commission on End of Life Care in Canada is hereby established as a body corporate that may exercise powers and perform duties only as an agent of Her Majesty in right of Canada.

(1) The Objects of the Commission are:

- (a) setting policies and standards on the provision of and access to medically-assisted death;
- (b) supporting the development and delivery of education on moral, legal, and clinical aspects of medically-assisted death to health care providers, legal professionals, and the public;
- (c) developing and managing a system of Regional Review Committees to retrospectively review all cases of medically-assisted death to determine compliance with this Act;
- (d) supporting the development and maintenance of a network of healthcare providers with nodes across the country to ensure support, consultation, and education for healthcare providers providing medically-assisted death and access to medically-assisted death for patients;
- (e) reporting to the public on medically-assisted death in Canada by generating and making available to the public an annual report on:
    - (i) activities of the Commission; and
    - (ii) information submitted to the Commission by Regional Review Committees;
- (f) conducting or commissioning research it deems necessary in accordance with relevant federal, provincial, and territorial law and policy;
- (a) soliciting the opinion of individuals or groups on any end of life care issue;
- (b) calling on outside experts to consult on any end of life care issue; and
- (c) making recommendations to the Minister about potential law and policy reform with respect to end of life care in Canada.
- (d) carrying out any other mandate given to it by the Minister.

(2) The Commission consists of a Chair and ten other Commissioners to be appointed by the Minister with at least the following distribution:

- a) Two members are to be physicians (one of which shall be from the palliative care community);
- b) Two members are to be persons with a law degree and expertise in health law;
- c) Two members are to be lay members of the public;
- d) One member is to be a nurse;

e) One member is to be a pharmacist;
f) One member is to be health care ethics expert;
g) One member is to be a health administrator.

(4) The Chair is the Chief Executive Officer of the Commission and presides at meetings of the Commission.

(5) The Chair is to be appointed by the Minister.

(6) The Commissioners shall elect one of themselves as Vice-Chair of the Commission.

(7) If the Chair is absent or unable to act, or if the office of Chair is vacant, the Vice-Chair has all the powers, duties and functions of the Chair.

(8) The Chair is to be paid the remuneration that is fixed by the Minister.

(9) The Commissioners, other than the Chair, are to be paid the fees that are fixed by the Minister.

(10) A Commissioner is entitled to be paid reasonable travel and living expenses incurred by the Commissioner while absent from the Commissioner's ordinary place of residence in the course of performing duties under this Act.

(11) The Commissioners may make by-laws respecting generally the conduct and management of the work of the Commission.

(12) The Chair and Commissioners are responsible for the overall management of the Commission and may, with the approval of the Minister, make by-laws for the regulation of its proceedings and generally for the conduct of its activities.

Order of Governor in Council

4. The provisions of this Act come into force on [*date*].

Regulation pursuant to *An Act to amend the Criminal Code as it relates to medically-assisted death and to establish the Commission on End of Life Care in Canada*

Regional Review Committee System

The Regional Review Committee system is hereby established. As many Committees as are required given the number of medically-assisted deaths each year shall be appointed by the Commission on End of Life Care in Canada.

The mandate of the Committees is to review all cases of medically-assisted death to determine compliance with this Act.

A Committee shall consist of four members, including one health law expert who also chairs the Committee, one physician, one expert on ethical or moral issues, and one public representative. A Committee shall also comprise alternate members from each of the categories mentioned in the first sentence.

The Chair, the members, and the alternate members shall be appointed by the Commission for a period of three years. They may be reappointed once for a period of three years.

The Chair, the members and the alternate members may tender their resignation to the Commission at any time.

The Chair, the members and the alternate members may be dismissed by the Commission on the grounds of unsuitability, incompetence, or other compelling reasons.

The Chair, the members and the alternate members shall be paid an attendance fee and a travel and subsistence allowance in accordance with current government regulations, insofar as these expenses are not covered in any other way from the public purse.

The members and alternate members of the Committee are obliged to maintain confidentiality with regard to all the information that comes to their attention in the course of their duties, unless they are required by a statute or regulation to disclose the information in question or unless the need to disclose the information in question is a logical consequence of their responsibilities.

A member of the Committee sitting to review a particular case shall disqualify her/himself if there are any facts or circumstances which could jeopardise the impartiality of his/her judgment. Any disqualified member shall be replaced by an alternate member.

The Committee shall adopt its findings by a simple majority of votes.

The Committee may adopt findings only if all its members who reviewed the case have taken part in the vote.

The Committee may meet by videoconference.

The Chairs of the Regional Review Committees shall meet at least twice a year in order to discuss the methods and operation of the committees. A representative of the provincial/territorial prosecution services, the Colleges of Physicians and Surgeons, Nurses, and Pharmacists and Health Authorities shall be invited to attend these meetings. The Review Committees may invite representatives of any other organizations to attend these meetings.

Each Regional Review Committee shall review the documentation submitted by physicians, other healthcare providers acting under the direction of a physician, or nurse practitioners under section [*number*] to ensure compliance with *An Act to amend the Criminal Code as it relates to medically-assisted death and to establish the Commission on End of Life Care in Canada [the Act].* The Committee may request the assisting healthcare provider to supplement his report either orally or in writing, if this is necessary for a proper assessment of the case. The Committee may obtain information from any person, institution, or private facility with relevant information if this is necessary for a proper assessment of each case.

Where the Committee determines that the healthcare provider acted in compliance with the Act, the healthcare provider shall be informed and the file shall be closed. Where a physician, other healthcare provider acting under the direction of a physician, or nurse practitioner is thought to have potentially violated the Act or the *Criminal Code* or the professional standards for medically-assisted death, the Regional Review Committee shall report this to the appropriate regulatory body for investigation and response under its professional self-regulatory powers. Any subsequent reporting by a regulatory body to the police shall follow the regulatory body's normal processes with respect to reporting suspected violations of provincial or federal legislation.

The Committee shall notify the assisting healthcare provider of its findings within six weeks of receiving the report referred to in section [*number*], giving reasons. This time limit may be extended once for a maximum of six weeks. The Committee shall notify the assisting healthcare provider accordingly.

Where the Committee determines that any other person or institution or private facility did not comply with the Act, it shall direct a report to the relevant authority.

Each Regional Review Committee shall conduct a yearly review of medical certificates of death in the region on which the manner of death was noted to be medically-assisted death. For any case not already reviewed under s. [*number*],

the Regional Review Committee shall report the case to the relevant College of healthcare providers or police as appropriate so that they can take steps within their respective jurisdictions to respond to the failure to submit the required documentation and investigate whether the Act was violated in any other ways and whether professional standards or the *Criminal Code* were violated.

Each Regional Review Committee shall prepare a yearly report on the medically-assisted death provided in the region. The report shall state the number of times each category of medically-assisted death was provided in the region. It shall provide summaries of the information gathered through the Patient Information Form requested under s. [*number*]. The report shall be sent, not later than 30 June each year, to the Commission and is to be included in an Annual Report on Medically-Assisted Death in Canada published by the Commission not later than 30 August each year.