

Medical Assistance in Dying (MAID) Information Brochure

Saskatoon Council on Aging & Pro Bono Students Canada

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An Overview of Medical Assistance in Dying (MAID)

Medical Assistance in Dying (MAID) is an end-of-life care option, the process being that a physician or nurse practitioner administers a lethal dose of drugs to intentionally cause the death of a competent adult, at their request, who wants to end their suffering.¹ This document will give an overview of the following topics: 1) A legislative history of MAID in Canada; 2) The Statistics of MAID in Saskatchewan; 3) The MAID process; and 4) Frequently Asked Questions about MAID. Please note, this document is a guideline and is not to be used in place of medical or legal advice. For more information, please contact your healthcare provider, or call the Saskatchewan Health Authority at 811 and select number 5, or toll-free at 1-833-473-6243.

#1) Medically Assisted Death in Canada: A Legislative History

Criminal Code Suicide & Assisted Suicide provisions:

First introduced in 1892, the *Criminal Code of Canada* prohibited the taking of one's own life, stating “Every one who attempts to commit suicide is guilty of an indictable offence and liable to two years' imprisonment.”²

In 1972 the Criminal Code was amended to repeal the attempted suicide provision. Then Minister of Justice and Attorney General of Canada, MP Otto Emil Lang stated, “we have removed, as well, the offence of attempted suicide, again on the philosophy that this is not a matter which requires a legal remedy, that it has its roots and its solutions in sciences outside of the law and that certainly deterrent under the legal system is unnecessary.”³

Reiterated by and ultimately summarizing the changing view Canadians had toward suicide, MP John Douglas Campbell MacLean said, “Now we are taking the same human approach with regard to the problem of attempted suicide and we are placing it more in the field of a medical and social problem rather than a criminal one.”⁴

While suicide was decriminalized in 1972, assisted suicide was still considered a punishable offence under section 241(1)(b) of the *Criminal Code*.⁵ Under this section, aiding suicide was an indictable offense liable to the max imprisonment of 14 years.

¹ Government of Canada, *Medical assistance in dying*, (Government of Canada, 2021), online: < <https://www.canada.ca/en/health-canada/services/medical-assistance-dying.html> > (2 February 2022). [Government of Canada].

² *Criminal Code*, RSC 1985, c C-46 at s 239.

³ “Criminal Law Amendment Act. 1972 Amendments to Criminal Code, Criminal Records Act, National Defence Act, Parole Act and Visiting Forces Act”, Government Order, *House of Commons Debates*, (27 April 1972) at Hon. Otto E Lang.

⁴ “Criminal Law Amendment Act. 1972 Amendments to Criminal Code, Criminal Records Act, National Defence Act, Parole Act and Visiting Forces Act”, Government Order, *House of Commons Debates*, (27 April 1972) at Hon. John Douglas Campbell MacLean.

⁵ See *ibid* at s 241.

The Rodriguez Case:⁶

In 1993, Sue Rodriguez's case challenging Section 241(1)(b) of the *Criminal Code* for being unconstitutional and against the *Canadian Charter of Rights and Freedoms* reached the Supreme Court of Canada. Sue Rodriguez was diagnosed with amyotrophic lateral sclerosis (ALS) and sought to have physician assisted suicide before the disease severely interrupted her quality of life. Despite losing in a 5:4 decision declaring it was constitutionally valid to prohibit assisted suicide, Rodriguez's case further brought the issue of assisted suicide to the Canadian public. Further supported by the court which stated that while "...the matter is essentially a policy decision that should be left to Parliament to resolve," "...if no external interference or intervention could be demonstrated, the act of attempting suicide could no longer give rise to criminal liability" leaving the door open to considering the validity of assisted suicide.

The Latimer Case:⁷

A year later in 1994, the Robert Latimer case gripped Saskatchewan as the public followed the unfolding of Robert Latimer's "mercy killing" of his 12-year-old disabled daughter, who suffered from severe brain damage and recurring seizures. The Saskatchewan Court of Queen's Bench found Robert Latimer guilty of second-degree murder. With the Canadian public divided on whether they sympathized or decried the actions of Robert Latimer, the debate on the ethics of assisted suicide led to a national conversation that further pushed medically assisted death closer to becoming a forefront national issue.

"Between 1991 and 2010, the House of Commons and its committees debated no less than six private member's bills seeking to decriminalize assisted suicide. None was passed."⁸

"In 2011, the Royal Society of Canada published a report on end-of-life decision-making and recommended that the Criminal Code be modified to permit assistance in dying in some circumstances. The Québec National Assembly's Select Committee on Dying with Dignity issued a report in 2012, recommending amendments to legislation to recognize medical aid in dying as appropriate end-of-life care."⁹

Legalization in Québec - Bill 52:¹⁰

In 2014 the Province of Québec passed Bill 52, *An Act Respecting End-of-Life Care*. The Act allows for the right to end-of-life care, which includes both palliative care and medical aid in dying. When it came into force in 2015, Québec became the first province in Canada to legalize medically assisted death.

⁶ *Rodriguez v British Columbia (Attorney General)*, [1993] 3 SCR 519, 107 DLR (4th) 342 (SCC).

⁷ *R. v Latimer*, 2001 SCC 1, [2001] 1 SCR 3.

⁸ House of Commons, Standing Committee on Justice and Human Rights, *Evidence*, 42-1, No 13 (4 May 2016) at 1605 (Mr. Michel Racicot)

⁹ *Carter v Canada (AG)*, 2015 SCC 5, [2015] 1 SCR 331.

¹⁰ Bill 52, *An Act Respecting End-of-Life Care*, CQLR 2014, c S-32.0001.

The Carter Case:¹¹

In this key case, the Supreme Court of Canada held that the criminal laws prohibiting MAID limited one's right to life, liberty, and security of the person under section 7 of the *Canadian Charter of Rights and Freedoms*. Kay Carter, who was suffering from an extremely painful degenerative condition called spinal stenosis, asked for her family to apply and undergo MAID in Switzerland. In 2015, Lee Carter and Hollis Johnson (Kay Carter's daughters), William Shoichet (a physician willing to perform the procedure), Gloria Taylor (diagnosed with ALS) and British Columbia Civil Liberties Association's case reached the Supreme Court of Canada where they challenged the constitutionality of section 14 (illegal to consent to death) and section 241(1)(b) of the *Criminal Code*. The Supreme Court stated in the *Carter* decision that it was unconstitutional to "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." The Court called for Parliament to create new legislation to respond to this case and ultimately allow MAID in Canada.

Bill C-14: Medical Assistance in Dying (MAID) Act:¹²

In response to *Carter*, in June 2016, the Parliament of Canada passed federal legislation, Bill C-14, known as the *Medical Assistance in Dying (MAID) Act*. This *Act* allows eligible Canadian adults, with a reasonably foreseeable death, to request medical assistance in dying. The *Act* established the procedural safeguards and eligibility criteria for medically assisted suicide. Some eligibility requirements at that time included that the person must be at least 18 years old, have made a voluntary request for MAID, have sufficient decision-making capabilities in regard to their health, and have a serious and incurable illness, disease, or disability that is in an advanced state of irreversible decline and natural death has become reasonably foreseeable. Some safeguards at the time included that two independent medical or nurse practitioners were to confirm that the person requesting MAID met all eligibility requirements, the request was to be made in writing and signed and dated in the presence of two witnesses, there was a 10-day waiting period between the written request date and the date of MAID being administered, and that the patient must be given the opportunity to withdraw consent before MAID is administered.

The Truchon Case:¹³

Three years later in 2019, in the Québec Superior Court, Jean Truchon and Nicole Gladu, who both had degenerative diseases causing "intolerable suffering", had been declared ineligible for medical assistance in dying because their natural death was not "reasonably foreseeable". They challenged the constitutional validity of the requirements in s. 241.2(2)(d) of the *Criminal Code* and subsection 3 of the first paragraph of s. 26 of the Act respecting end-of-life care, which

¹¹ *Carter v Canada*, 2015 SCC 5, [2015] 1 SCR 331.

¹² Bill C-14, *An Act to Amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying)*, 1st Sess, 42nd Parl, 2016 (assented to 17 June 2016).

¹³ *Truchon v Canada (AG)*, 2019 QCCS 3792.

respectively require that their natural death be reasonably foreseeable or that they be at the end of life in order to obtain such assistance.” The Québec Superior Court agreed with Truchon and Gladu, and found the “reasonable foreseeability of natural death” eligibility criterion in the *Criminal Code*, as well as the “end-of-life” criterion from Québec’s *Act Respecting End-of-Life Care*, to be unconstitutional. In the end, this case founded the new principle that the law no longer required a person’s natural death to be reasonably foreseeable as an eligibility criterion for MAID. This was made law by the Québec government in March 2020.

Bill C-7: *An Act to amend the Criminal Code (medical assistance in dying)*:¹⁴

On October 5, 2020, the Minister of Justice and Attorney General of Canada introduced Bill C-7: *An Act to amend the Criminal Code (medical assistance in dying)* in Parliament, which proposes changes to Canada’s law on medical assistance in dying. This Bill was proposed in response to the *Truchon* case, which sought to broaden access to MAID by getting rid of the requirement that one’s natural death must be reasonably foreseeable. In March 2021, the new Bill C-7 legislation was passed that expanded eligibility for MAID, which went further than just allowing MAID access to those whose deaths are not reasonably foreseeable, but also with the potential to allow those with mental illness as the sole underlying condition to apply for MAID (this would not come into effect until March 17, 2023).

Eligibility Criteria:

As of March 17, 2021, persons who wish to receive MAID must satisfy the following eligibility criteria:

1. be 18 years of age or older and have decision-making capacity
2. be eligible for publicly funded health care services
3. make a voluntary request that is not the result of external pressure
4. give informed consent to receive MAID
 - person has consented to receiving MAID after receiving all information needed to make the decision
5. Have a grievous and irremediable medical condition
 - have a serious and incurable illness, disease or disability (excluding a mental illness until March 17, 2023)
 - be in an advanced state of irreversible decline
 - have enduring and intolerable physical or psychological suffering that cannot be alleviated under conditions the person considers acceptable

¹⁴ Bill C-7, *An Act to amend the Criminal Code (medical assistance in dying)*, 2nd Sess, 43rd Parl, 2021 (assented to 17 March 2021).

Safeguards:

There are also updates to the procedural safeguards included in the MAID process. Currently, the safeguards are as follows:¹⁵

- Procedural safeguards for persons whose natural death is reasonably foreseeable:
 - request for MAID must be made in writing: a written request must be signed by one independent witness, and it must be made after the person is informed that they have a “grievous and irremediable medical condition.” (a paid professional personal or health care worker can be an independent witness)
 - two independent doctors or nurse practitioners must provide an assessment and confirm that all of the eligibility requirements are met
 - the person must be informed that they can withdraw their request at any time, in any manner
 - the person must be given an opportunity to withdraw consent and must expressly confirm their consent immediately before receiving MAID (however, this “final consent” requirement can be waived in certain circumstances)
 - Note: the requirement for a minimum 10-day reflection period is now removed. This means that individuals whose natural death is reasonably foreseeable no longer have to wait 10 days between the approval of their MAID request and receiving MAID.
- Procedural safeguards for persons whose natural death is not reasonably foreseeable
 - (*indicates safeguards specific to those requests):
 - request for MAID must be made in writing: a written request must be signed by one independent witness, and it must be made after the person is informed that they have a “grievous and irremediable medical condition” (a paid professional personal or health care worker can be an independent witness)
 - two independent doctors or nurse practitioners must provide an assessment and confirm that all of the eligibility requirements are met
 - *if neither of the two practitioners who assesses eligibility has expertise in the medical condition that is causing the person’s suffering, they must consult with a practitioner who has such expertise
 - the person must be informed that they can withdraw their request at any time, in any manner
 - *the person must be 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 person and the practitioners must have discussed reasonable and available means to relieve the person’s suffering, and agree that the person has seriously considered those means

¹⁵ See *Government of Canada, supra* note 1.

- *the eligibility assessments must take at least 90 days, but this period can be shortened if the person is about to lose the capacity to make health care decisions, as long as both assessments have been completed
- immediately before MAID is provided, the practitioner must give the person an opportunity to withdraw their request and ensure that they give express consent

What is yet to be addressed:

With the legalization of medically assisted death in Canada, the debate remains active as outstanding questions remain on whether to extend MAID to other members of Canadian society, such as citizens with Dementia, Mental Health challenges, disabilities that prohibit communication, children, etc.

#2) MAID in Saskatchewan: The Statistics

*All Statistics retrieved from Health Canada¹⁶

- 157 Saskatchewan Residents received MAID in 2020
- Deaths attributed to MAID made up 1.6% of total deaths in SK in 2020
- MAID By Condition in Canada 2019-2020:
 - Cancer 69% (Most common: Lung Cancer 24.2%, Colon 12.2%, Pancreas 8%)
 - Cardiovascular 13.8%
 - Respiratory 11.3% (ALS 35%, Parkinson's 18%, MS 9.7%)
 - Neurological 10.2%
 - Other Condition 8.7%
 - Multiple Comorbidities 7.8%
 - Other Organ Failure 6.6%
- MAID By Age:
 - Average 73.4
 - 56-64: 13.4%
 - 65-70: 20.4%
 - 71-75: 15.3%
 - 76-80: 11.5%
 - 81-85: 9.6%
 - 86-90: 12.7%
 - 91+: 8.3%
- By Gender:
 - Men: 56.7%
 - Women: 43.3%
- The nature of Suffering of those who Received MAID in 2020
 - Top main issues cited:
 - Loss of ability to engage in meaningful activities 84.9%
 - Loss of ability to perform activities of daily living 81.7%
 - Inadequate control of pain (or concern) 57.4%
- MAID Recipients Who Received Palliative Care and Disability Support Services, 2020
 - Persons who received palliative care 82.8%
 - 54.8% received palliative care for 1 month or more
- MAID deaths by Setting 2019-2020
 - 45.9% Private Residence
 - 42% Hospital
 - 13.2% Palliative Care centre
 - 6.4% Residential Care Facility

¹⁶ Health Canada, *Second Annual Report on Medical Assistance in Dying in Canada 2020*. (June 2021) online: Health Canada < <https://www.canada.ca/en/health-canada/services/medical-assistance-dying/annual-report-2020.html>>

- MAID Deaths: Urban vs Rural, 2020 in SK
 - 71.3% Urban
 - 28.7% Rural
- Who Delivers MAID
 - 21.7% Family Medicine
 - 26.8% Psychiatry
 - 36.9% Nurse Practitioner
- Maid Requests vs. Withdrawn
 - 90.8% Requests that resulted in a medically-assisted death
 - *Canada wide: In 2020, 232 patients withdrew their request for MAID, representing 2.5% of all written requests
 - Changed their mind 66.4%
 - Palliative measures are sufficient 47.8%
 - Other 12.1%
 - Family members do not support MAID 7.8%
 - Unknown reason 1.3% W
 - Withdrawal immediately before MAID 22.0%
- Timing of Death Following Submission of the Written Request (Patient Died of Another Cause), 2020
 - 56% Less than 10 Days
 - 23.8% 11 to 30 days
 - 20.2% Over 30 Days

#3) The MAID Process

Introduction:

Maid is an extremely deep and complex personal matter. MAID is an end-of-life care option, the process being that a physician or registered nurse administers a lethal dose of drugs to intentionally cause the death of a competent adult, at their request, who wants to end their suffering.¹⁷ For information, phone: 811 and select number 5 or Toll-Free: 1-833-473-6243 (the Saskatchewan Health Authority).

Eligibility Requirements:

The amended federal legislation no longer requires a person's natural death to be reasonably foreseeable as an eligibility criterion for MAID. Under the amended federal legislation, an individual needs to meet the following criteria to be considered eligible for MAID.

A patient must meet all of the eligibility requirements as set out in the legislation, discussed under the "**Eligibility Criteria**" section above.

After contacting the MAID Team and Meeting the Eligibility Requirements:

- Connecting the patient with the MAID team to speak with a nurse about their medical history and arrange to review their medical records. The MAID team may also ask the patient and their health-care providers to complete a medical questionnaire.
- If, after review of medical records and/or questionnaire, the patient is likely to meet the legal criteria, the MAID team will arrange for the two independent MAID practitioner reviews required by law. Both MAID practitioners must agree the patient meets criteria.
 - Your physician or nurse practitioner must make sure that you are eligible to receive medical assistance in dying according to all the listed criteria. A second physician or nurse practitioner must also provide a written opinion confirming that you are eligible. The physician or nurse practitioner providing the original assessment and the one giving the second opinion must be independent. To be considered independent means that neither of them: holds a position of authority over the other could knowingly benefit from your death is connected to the other or to you in a way that could affect their objectivity
- Completing a written request for medical assistance in dying that has been signed by one witness.
- For patients whose natural death is not foreseeable, the law requires a minimum ninety (90) day assessment period and expert input regarding the cause of the patient's suffering.
- At the time of arranging the provision of medical assistance in dying, the patient must be competent and able to provide consent for an assisted death.
- **The patient is free to change their mind at any time prior to drug administration.**

¹⁷ See *Government of Canada, supra* note 1.

What is the step-by-step process on the day of MAID administration?¹⁸

- **Where does MAID occur?**
 - The MAID provider will work with you (and any friends or family that you want involved) to plan the day, time, and location of the MAID procedure. You may choose to have MAID administered anywhere where it is safe for both the patient and for the health practitioner, and that is out of the public eye. This may include at your home, a friend or family member's home, a local health facility, a special care or nursing home, or a hospice.
- **When does MAID occur?**
 - The health provider administering MAID will do their best to accommodate what day and time the patient would like it to occur.
- **Do I get to decide who is in the room?**
 - Yes. Your MAID Provider will speak with you about who you would like to be present at the time MAID is administered.
- **How long does it take?**
 - The entire process from when the MAID provider arrives to set up, get consent again, and begin the MAID administration until after the Doctor declares the death takes approximately an hour. The MAID provider may stay longer if the family chooses to have them assist with removal of the body.
 - The actual death occurs very quickly. Once the MAID IV drugs have begun, the patient will lose the ability to speak in about 45 seconds, and death will normally occur within 3-5 minutes.
- **What type of MAID will be used?**
 - Intravenous MAID is used to inject the drugs into the patient. IV infusions of 4 drugs are given in sequence as IV push doses. These drugs are the same types of drugs used in the Operating Room during surgery to put patients to sleep, but are in higher doses for MAID.
 - The MAID provider will be the one to administer the drugs in the IV. The MAID provider must be present to guarantee death - there is never a failure of death.
 - Oral MAID is not used in Saskatchewan.
- **How does death occur?**
 - The patient will stop breathing after administration of the drugs.
- **What does MAID feel like?**
 - The process of MAID is said to be quick and painless. Dr. Timothy Holland, a Nova Scotia MAID assessor and provider, said for patients the procedure is "a relaxing drift into sleep."

¹⁸ Note: Information in this section is provided by Dr. Lilian Thorpe, geriatric psychiatrist of Saskatchewan Health Authority; and Michelle Fisher, Provincial MAID Program Manager at Saskatchewan Health Authority.

#4) Frequently Asked Questions about MAID

1. What if a mental illness is the only medical condition leading you to consider MAID, am I eligible?

- Those with mental illness as the sole underlying medical condition are not eligible to seek MAID in Canada at this time. The exclusion will remain in effect until March 17, 2023. This temporary exclusion provides the Government of Canada and health professional bodies more time to consider how MAID can be provided safely to those whose only medical condition is a mental illness. To support this work, the government will initiate an expert review to consider protocols, guidance and safeguards for those with a mental illness seeking MAID, and will make recommendations within a year (by March 17, 2022). After March 17, 2023, people with a mental illness as their sole underlying medical condition will have access to MAID if they meet all of the eligibility requirements and the practitioners fulfil the safeguards that are put in place for this group of people. If you have a mental illness along with other medical conditions, you may be eligible to seek MAID. Eligibility is always assessed on an individual basis, taking into account all of the relevant circumstances. However, you must meet all the criteria to be eligible for medical assistance in dying.

2. Can a person in an early stage of dementia or Alzheimer's request access to MAID for when they reach a later stage of the disease?

- Yes, but only if certain requirements are met. If a person living with dementia or Alzheimer's is requesting MAID, and they are at risk of losing capacity prior to the date that MAID would be administered, they can now submit a waiver of final consent provided that:
 - o The person's natural death is reasonably foreseeable,
 - o The person has been assessed and approved to receive MAID,
 - o The person has been deemed eligible for MAID after being assessed by a qualified healthcare provider, and
 - o The person has an arrangement in writing with their practitioner to waive final consent and have a set date for when MAID would be administered.

What does a waiver of final consent do?

- With a waiver of final consent in place, a person would no longer have to give express consent when the date arrives for MAID to be administered. This means that a person living with dementia and requesting MAID would not feel that they must set a date for MAID earlier than they would want, due to fear of losing capacity before their preferred date.
- Once a date to receive MAID is set, the person requesting MAID can still change it if they are deemed capable of providing consent. MAID can be provided before the set date but not after.

Can MAID be refused by the person living with dementia after the date is set?

- Yes. The agreement to waive final consent will be invalid if the person, after having lost decision-making capacity, demonstrates refusal or resistance to the administration of MAID by words, sounds or gestures.

What about advance requests?

- Advance requests are currently not permitted under Canadian law for people living with dementia. In an advance request, a person would stipulate the conditions under which they would want to receive MAID at a future time along the disease progression. The waiver of final consent is different from an advance request, as a person must be assessed and approved for MAID and set a date.

Can I sign an advance request for MAID?

- In Saskatchewan, you can complete an Advance Consent Arrangement Form ONLY if your death is reasonably foreseeable.
- This will have to be done with discussions with the Provincial MAID Program and practitioners if you are found eligible. This does not act as a will or an advance care directive.

3. Can people with intellectual disabilities access MAID?

- The current law states that an eligibility requirement for MAID is that one must be capable of making decisions regarding their health. Whether someone who has an intellectual disability has the required capacity to make their own healthcare decisions is to be made by assessments of the healthcare provider.

4. Can I get access to MAID in Rural Saskatchewan?

- Yes. No matter where you are in Saskatchewan, if you want MAID you will get it.
- You do not need a formal referral from another health professional, family doctor, etc.; you may contact the provincial MAID program directly and they will make sure that they send someone to where you are.
- In 2020, 71.3% of MAID administration occurred in urban centres; 28.7% was in rural areas.

5. What religious concerns are there with MAID?

- It depends on the religion. There have been faith leaders who have had MAID administered to them, as well as some who have been present for MAID of another person. There are some religious denominations that do not support MAID, but often still work to make accommodations and provide support for families and individuals.

6. Can anyone else make the decision of whether or not I get MAID?

- No, the patient is the sole decision-maker in deciding whether MAID will proceed. This decision cannot be overridden by anyone, including spouses, family members, or healthcare workers.

7. Can I change my mind about receiving MAID?

- Yes, the patient can change their mind and stop MAID at any time before the drugs are administered. The patient may choose to withdraw their consent to the MAID procedure overall, or may choose to move their MAID administration to a later date.

8. Where can I get further information?

- To receive information or to access forms on/for medical assistance in dying, please contact the provincial medical assistance in dying program or visit the website.
- The provincial medical assistance in dying program operates Monday-Friday 8:00 – 4:30 p.m. We are closed on weekends and statutory holidays.
- Phone: 811 and select number 5 Toll-Free: 1-833-473-6243
- Website: www.saskhealthauthority.ca