

# MEDICAL ASSISTANCE IN DYING (MAiD): SOME CANADIAN DEVELOPMENTS

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## I INTRODUCTION

The changes to the *Criminal Code of Canada* with respect to the provision of medical assistance in dying (MAiD) was one of the high profile and progressive social reforms introduced by the Government of Canada in 2016. A full and detailed analysis of the history of the initiative is beyond the scope of this article. Suffice it to say that the issue has been debated in Canada, and elsewhere, over a long period, has attracted no small amount of litigation, commentary and literature, and is going to continue to be a controversial topic for the foreseeable future.<sup>1</sup> The issue is also affecting jurisdictions beyond Canada including several countries in Europe, a number of states in the United States and, quite recently, the State of Victoria in Australia.<sup>2</sup> It is fair to say that Canada's contribution to the debate has been and will continue to be significant and, therefore, of great interest both nationally and internationally.<sup>3</sup>

## II THE JOURNEY THROUGH THE CANADIAN COURTS

There is little doubt that a key moment in the Canadian debate came in the early 1990s with both the release of the Final Report of the Special Senate Committee on Euthanasia and Assisted Suicide (1994) and the Supreme Court of Canada decision in the case of Susan

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<sup>1</sup> See, e.g., Special Senate Committee on Euthanasia and Assisted Suicide, *Of Life and Death: Final Report, June 1995* <https://sencanada.ca/content/sen/committee/351/euth/rep/lad-e.htm>; *Legislative Background: Medical Assistance in Dying (Bill C-14)* (Department of Justice Canada, 2016) <https://www.justice.gc.ca/eng/rp-pr/other-autre/ad-am/ad-am.pdf>; R Carter and B. Rodgerson, 'Medical assistance in dying: journey to medical self-determination' (2018) 55(3) *Alberta Law Review*, 55-3, 777 – 803; see, generally, Jocelyn Downie, *End of Life Law and Policy in Canada*, Health Law Institute, Dalhousie University, Nova Scotia, Canada, eol.law.dal.ca. See, also, R M Gordon *The 2020 Annotated B.C. Incapacity Planning, Adult Guardianship, Medically Assisted Dying, and Related Legislation* Toronto: Carswell Thomson Reuters, 2020).

<sup>2</sup> The State of Victoria passed the *Voluntary Assisted Dying Act* (61/2017) in November 2017. The Act came into force on June 19<sup>th</sup> 2019.

<sup>3</sup> Amongst other things, in Canada, MAiD is a nation-wide, federal, legislative initiative affecting all 10 provinces and 3 territories each of which has responsibility for related areas such as adult guardianship, incapacity planning, health care, professional regulation, social services, and child and youth services. This creates layers of complexity not found in single, as opposed to multiple jurisdictions within a federal system, especially since legislation may vary from one province to another.

Rodriguez.<sup>4</sup> Ms. Rodriguez suffered from amyotrophic lateral sclerosis (A.L.S., a.k.a., Lou Gehrig's disease) and wished to die with dignity. She wanted a physician to install an intravenous line containing a substance that would allow her to end her life, when she chose to do so. She sought but was denied an order declaring invalid the then s 241 of the *Criminal Code of Canada*<sup>5</sup> (aiding and abetting suicide) claiming the s violated provisions of the *Canadian Charter of Rights and Freedoms*.<sup>6</sup> Ms. Rodriguez eventually took her own life with the assistance of others in 1994.<sup>7</sup>

Medical assistance in dying continued to be an active issue throughout the late 1990s but did not reach the Canadian courts again until the early 2000s with the so-called 'Carter' case.<sup>8</sup> The plaintiffs, who included a woman suffering from amyotrophic lateral sclerosis (ALS) as well as two persons who had helped a family member obtain an assisted death in a clinic in Switzerland, applied for a declaration that s 241(b) of the *Criminal Code* was unconstitutional. The BC Supreme Court granted the application but suspended its order for one year to allow the government to amend the legislation to make it comply with the *Charter*. The court gave the woman with ALS a special constitutional exemption to allow her to obtain a physician assisted death during the period of the suspension of the order.

The decision of the BC Supreme Court in *Carter* was subsequently overturned by the British Columbia Court of Appeal. The Court of Appeal decision was, then, in turn appealed to the Supreme Court of Canada.<sup>9</sup> In February, 2015 the Supreme Court of Canada unanimously issued the following declaration:

s 241(b) and s 14 of the *Criminal Code of Canada* **un**justifiably infringe upon s 7 of the *Charter* and are of no force or effect to the extent that they prohibit *physician-assisted death for a competent adult person who (i) clearly consents to the termination of life and (ii) 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*

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<sup>4</sup> *Rodriguez v British Columbia (Attorney General)* [1993] 3 S.C.R. 519.

<sup>5</sup> *Criminal Code*, RSC 1985, c. C-46.

<sup>6</sup> *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c. 11.

<sup>7</sup> See L. Hobbes-Birnie and S Rodriguez *Uncommon Will: The Death and Life of Sue Rodriguez*. Toronto: Macmillan Canada, 1994).

<sup>8</sup> *Carter v. Canada (Attorney-General)* 2012 BCSC 886; reversed 2013 BCCA 435.

<sup>9</sup> *Carter v Canada (Attorney-General)* 2015 SCC 5.

The decision was suspended for 12 months but this was later extended to June 2016.<sup>10</sup> The Supreme Court of Canada also endorsed the granting of constitutional exemptions under prescribed circumstances by the superior courts of the provinces.

During the 12 months following February 2015, the federal and provincial governments had the opportunity to consider what, if any, responses to muster in order to address the Supreme Court of Canada's decision. The principal response came from the federal government in the form of amendments to the *Criminal Code of Canada* through the *Medical Assistance in Dying Act*.<sup>11</sup> The response was informed significantly by two major reports on the topic - the 2015 *Provincial/Territorial Expert Advisory Group on Physician Assisted Dying: Final Report*,<sup>12</sup> and the 2016 *Report of the Special Joint Committee on Physician Assisted Dying*.<sup>13</sup> In addition, the Province of Quebec set a powerful precedent by introducing and passing legislation in support of its policy of providing a spectrum of services for end of life (i.e., palliative) care which included medical assistance in dying.<sup>14</sup>

At the time of writing (March 2020) it seems highly likely that changes *will* occur to expand, rather than limit, MAiD and that some changes will occur this Spring.<sup>15</sup> A mandatory review of MAiD is required by 10 of the new legislation and is expected to address several issues which have arisen since the legislation came into force especially those identified in the reports from the Council of Canadian Academies commissioned by the Government of Canada in 2016.<sup>16</sup>

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<sup>10</sup> *Carter v Canada (Attorney-General)* 2016 SCC 4.

<sup>11</sup> *Medical Assistance in Dying Act* S.C. 2016, c.3.

<sup>12</sup> Provincial/Territorial Expert Advisory Group on Physician-Assisted Dying (Canada), *Provincial/Territorial Expert Advisory Group on Physician Assisted Dying: Final Report, November 30, 2015* [http://www.health.gov.on.ca/en/news/bulletin/2015/docs/eagreport\\_20151214\\_en.pdf](http://www.health.gov.on.ca/en/news/bulletin/2015/docs/eagreport_20151214_en.pdf)

<sup>13</sup> Special Joint Committee on Physician-Assisted Dying, Parliament of Canada, *Medical Assistance in Dying: A Patient Centred Approach*, 2016 <https://www.parl.ca/DocumentViewer/en/42-1/PDAM/report-1>

<sup>14</sup> *An Act Respecting End-of-Life Care*, CQLR c.S-32.0001, in force December 2015.

<sup>15</sup> See, Bill C-7, *An Act to amend the Criminal Code (Medical Assistance in Dying)*. First Reading, February 24th 2020. It is highly likely that this amending statute will come into force by the early Summer 2020.

<sup>16</sup> The Expert Panel Working Group on MAiD for Mature Minors, *The State of Knowledge on Medical Assistance in Dying for Mature Minors* (Ottawa: The Council of Canadian Academies, 2018) <https://cca-reports.ca/wp-content/uploads/2018/12/The-State-of-Knowledge-on-Medical-Assistance-in-Dying-for-Mature-Minors.pdf>; The Expert Panel Working Group on Advance Requests for MAiD, *The State of Knowledge on Advance Requests for Medical Assistance in Dying* (Ottawa: The Council of Canadian Academies, 2018) <https://cca-reports.ca/wp-content/uploads/2019/02/The-State-of-Knowledge-on-Advance-Requests-for-Medical-Assistance-in-Dying.pdf>; The Expert Panel Working Group on MAiD Where a Mental Disorder is the Sole Underlying Medical Condition, *The State of Knowledge on Medical Assistance in Dying Where a Mental Disorder is the Sole Underlying Medical*

### III CONSTITUTIONAL EXEMPTIONS POST-CARTER

Constitutional exemptions were granted by the superior courts of several provinces while waiting for the Government of Canada to introduce and pass the 2016 legislation. These cases are of importance not only because they constitute a part of the history of MAiD legislation in Canada but also because they highlight some of the issues which have arisen in practice and that are likely to be addressed in the forthcoming review.

The first application for a constitutional exemption was made to the Alberta Court of Queen's Bench in February 2016. In *Re H.S.*,<sup>17</sup> a 66 year old woman with amyotrophic lateral sclerosis sought a physician-assisted death on the basis of the *Carter* criteria: she was an adult who was competent to make the decision; who clearly consented to the termination of her life, and who had a grievous and irremediable medical condition that caused her enduring and intolerable suffering which could not be alleviated by any treatment acceptable to her. The court held that *H.S.* was qualified for a physician-assisted death (i.e., a 'PAD', the term 'MAiD' was not used at the time) and granted the request. The assistance was provided in Vancouver where medical practitioners were willing and able to offer the procedure. There then followed a stream of applications for exemptions in Ontario<sup>18</sup> Manitoba,<sup>19</sup> Saskatchewan,<sup>20</sup> Alberta (involving psychiatric disorder as the sole underlying medical condition),<sup>21</sup> and British Columbia.<sup>22</sup> Quebec had already received a constitutional exemption for its comprehensive legislation - *An Act Respecting End-of-Life Care*<sup>23</sup> - which came into force in December 2015.

Of particular importance was the 2016 decision of the Ontario Superior Court in *A.B. v Canada (Attorney General)*.<sup>24</sup> This was the second exemption application in Canada and the first in the Province of Ontario. The application was heard in March

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*Condition* (Ottawa: Council of Canadian Academies, 2018) <https://cca-reports.ca/wp-content/uploads/2018/12/The-State-of-Knowledge-on-Medical-Assistance-in-Dying-Where-a-Mental-Disorder-is-the-Sole-Underlying-Medical-Condition.pdf>.

<sup>17</sup> *Re H.S.* 2016 ABQB 197.

<sup>18</sup> *A.B. v Canada (Attorney General)*, 2016 ONSC 1912

<sup>19</sup> *Patient v Attorney General Canada*, 2016 MBQB 63.

<sup>20</sup> *Patient 0518 v RHA 0518*, 2016 SKQB 175.

<sup>21</sup> *Canada (Attorney General) v E.F.*, 2016 ABCA 155

<sup>22</sup> *Re A.A.*, 2016 BCSC 570.

<sup>23</sup> *An Act Respecting End-of-Life Care* (CQLR c.S-32.000).

2016 and involved an 80 year old man with advance stage aggressive lymphoma. The court reviewed and applied *Carter* and granted the request. In the course of doing so, Perell J. set out five criteria subsequently followed in several MAiD cases:

- (i) an applicant has to be competent and an adult;
- (ii) the adult has to have a grievous and irremediable medical condition;
- (iii) the condition must be causing intolerable suffering to the adult;
- (iv) the suffering cannot be alleviated by treatment that is acceptable to the adult; and,
- (v) the adult must clearly consent to the assisted death.

Importantly, Perell J. also addressed the test of capacity (or competency), applicable in such cases. Like other Canadian jurisdictions, such as British Columbia, Ontario has provincial health care consent legislation and related policy that includes a test of incapacity and a procedure for assessing incapacity built upon a statutory presumption of competency (capacity) that mirrors the common law. However, in the judge's view, in assisted dying cases the matter of competency (capacity) must be proven, not assumed (i.e., presumed). Perell J. *did* apply the Ontario health care consent legislation to the process of obtaining consent in assisted death cases; particularly the procedural and other requirements for a valid (i.e., informed) consent at two key points: the initial request, and the confirming request after what is currently a 10 day wait period.

#### IV THE MEDICAL ASSISTANCE IN DYING ACT

In June 2016, the month set by the Supreme Court of Canada when constitutional (i.e., '*Carter*') exemptions would no longer be available, the new federal *Medical Assistance in Dying Act*<sup>25</sup> received Royal Assent.<sup>26</sup> Prior to Royal Assent it was apparent that there were going to be disagreements with respect to some of the provisions of the Act mainly because of the apparent gap between the Supreme Court's decision in *Carter*, (and especially the *Carter* criteria), and key sections of the

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<sup>24</sup> *A.B. v Canada (Attorney General)*, 2016 ONSC 1912.

<sup>25</sup> *Medical Assistance in Dying Act*, S.C. 2016, c.3.

<sup>26</sup> While the long-standing Criminal Code prohibition against counselling suicide and/or aiding an individual to commit suicide remains in force, this prohibition is tempered by the provisions of the new medical assistance in dying legislation. In a nutshell, the Act, which amends the *Criminal Code of Canada* includes a preamble, various key definitions (s 241.1); the criteria for MAiD (s 241.2); penalties for failing to comply with the Act (s 241.3); information gathering and sharing (s 241.31); and forging documents (s 241.4).

new legislation. In particular, concern was expressed about the restrictive provision which required that, in order to be eligible for MAiD, an adult's death had to be 'reasonably foreseeable.' Other issues – the exclusion of both mature minors and those with psychiatric disorders from access to MAiD - and whether advance requests (i.e., advance directives) especially for those with degenerative diseases of aging should be included within the legislation, had also surfaced. Wisely, the federal government decided to commission *independent* reports on these issues per s 9.1 of the new Act. In December 2016, the Council of Canadian Academies agreed to assemble expert advisory groups to examine the three issues and submit a report, *without* recommendations, to the federal government by December 2018.<sup>27</sup> Importantly, 10 provides for a review of MAiD starting in the 5<sup>th</sup> year following Royal Assent. The legislation is to be referred to a committee of Parliament, along with a review of the provision of palliative care in Canada more generally. Further details have not yet been forthcoming but the MAiD review will probably begin in June 2020.

The legislation includes a definition of medical assistance in dying which prescribes two main options: one where a medical practitioner or nurse practitioner administers a substance *for* a patient; the other where a substance provided by either a medical practitioner or nurse practitioner is administered *by* a patient (i.e. self-administered).<sup>28</sup> Both medical practitioners and nurse practitioners are able to provide medical assistance in dying but the provision of such assistance is not mandatory. Practitioners who object (e.g., on religious grounds) are not required to carry out the procedure. Arguably, health care facilities that are linked to faith communities are also not required to allow use of their premises for MAiD and many facilities linked to such communities have refused to do so but have referred patients to facilities that will allow MAiD. It remains to be seen how this thorny issue will be dealt with. In British Columbia, for example, a non-profit, non-denominational Society that receives more than 50 percent of its funding from the province recently refused to allow MAiD practitioners to use its Hospice. The provincial Minister of Health has indicated that the Society will lose its funding.

The current MAiD procedure involves three stages: (i) a voluntary request by a

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<sup>27</sup> Council of Canadian Academies (n 16).

<sup>28</sup> Pharmacists play a role insofar as they provide the substances requested by a medical or nurse practitioner such as

competent adult; (ii) an assessment of eligibility by two practitioners; and (iii) the actual provision of MAiD following a mandatory 10 day wait period.<sup>29</sup> While the criteria in the Act are clearly spelled out there are some important elements that need to be emphasized. The Act requires that an applicant be eligible to receive public health services in Canada; a provision which is designed to prevent what is sometimes referred to as ‘suicide tourism,’ or ‘assisted death tourism:’ individuals who are unable to receive such services in their home jurisdictions coming to Canada to obtain an assisted death. This phenomenon has been seen in Europe (e.g., British citizens who obtain assisted deaths in Switzerland) and in North America (e.g., Canadian citizens also travelling to Switzerland for an assisted death).

The minimum age is set at 18; the federal age of majority. In some jurisdictions, like British Columbia, however, the age of majority is 19 and this may create some inter-jurisdictional problems especially with respect to mature minors. In addition, the person seeking assistance must be capable of making health care decisions; a matter dealt with in provincial and territorial health care consent legislation. As we have seen, the matter arose in Ontario in *A.B. v Canada (Attorney General)*.<sup>30</sup> Ontario has health care consent legislation that includes a test of incapacity and a procedure for assessing incapacity built upon a statutory presumption of competency (capacity) that mirrors the common law. However, in the judge’s view, in assisted dying cases the matter of competency (or capacity) must be proven, rather than assumed (or presumed). The legislation requires that the adult requesting MAiD must also have a grievous and irremediable medical condition (that is, a serious and incurable illness, disease or disability); be in an advanced state of irreversible decline in capability; be experiencing enduring physical or psychological suffering that is intolerable to them and that cannot be relieved under conditions that they consider acceptable; and their natural death must be reasonably foreseeable, taking into account all of their medical circumstances, but without a prognosis necessarily having been made as to the specific length of time the person has remaining.

This last criterion- reasonable foreseeability - has become a major issue which is the basis for the first round of amendments to the legislation. This issue was not considered or identified

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secobarbital and pentobarbital.

<sup>29</sup> See, e.g., R Carter and B. Rodgerson (n 1).

<sup>30</sup> *A.B. v Canada (Attorney General)*, 2016 ONSC 1912.

by the Supreme Court of Canada in *Carter* and the requirement is seen by some advocates as blocking access to assistance for those with medical conditions that are unpredictable but where the adult does not wish to wait for the onset of the unmanageable and unpleasant symptoms and characteristics of the condition (e.g., a neuro-cognitive disorder caused by Alzheimer disease), including the loss of decision-making capacity.<sup>31</sup> Others see it as an important safeguard protecting vulnerable individuals with disabilities from premature MAiD requests. This issue has been addressed by the courts in both Ontario and Quebec and has arisen as a concern in British Columbia.<sup>32</sup>

The Quebec Superior Court decision in *Truchon v. Attorney General of Canada*<sup>33</sup> seems to have been a major driver of reform for the federal government. This case involves two plaintiffs: Jean Truchon and Nicole Gladu. Both were competent adults who lived with and suffered through deteriorating physical conditions which were both grievous and irremediable. They sought and gave consent to medically-assisted deaths per Quebec's end of life care legislation **and** the new federal MAiD legislation. While the plaintiffs satisfied most of the criteria for MAiD, both statutes contained an end of life/foreseeability of death requirement which the plaintiffs did not satisfy. The Quebec Superior Court (Baudouin JCS) held that both the end of life requirement in the Quebec legislation and the reasonable foreseeability of death requirement in the federal legislation (i.e., s 241.2 (2)) were unconstitutional. The federal legislation, in particular, contravened s 7 (the right to life, liberty and security of the person) and s 15 (the equality rights) of the *Charter*. The judge granted constitutional exemptions to the two plaintiffs and suspended the judgment for six months to enable the two governments to review and amend their legislation. The issue is being addressed through Bill C-7 which received First Reading at the end of February.

## V THE PRACTICE OF MAiD IN CANADA

The most recent statistical picture of MAiD, in Canada and especially in the provinces, is

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<sup>31</sup> See, J Downie 2019, 'Two major developments in the space of a week on Canada's medical assistance in dying laws could help more Canadians end their suffering.' *Policy Options*, September 2019.

<sup>32</sup> See, for example, *A.B. v Canada (Attorney General)*, 2017 ONSC 3759. For a more detailed description, see Gordon (2020) (n 1).

<sup>33</sup> *Truchon v Attorney General of Canada*, 2019 QCCS 3792.



to be found in the 4<sup>th</sup> Interim Report on MAiD issued by Health Canada in 2019.<sup>34</sup> Reporting began in 2016; since then, several interim analyses have been published. The data in the report are to be approached with caution for two primary reasons: (i) the three Territories (Yukon, Northwest Territories, and Nunavut) could not provide information mainly because of the small numbers of cases and the consequent privacy concerns; and (ii) the Province of Quebec has a reporting system that reflects its provincial end of life care legislation and the requirement that reporting occurs through the provincial Commission on End of Life Care. The national picture is, therefore, unreliable at this time. This will change with the introduction of a new reporting system in November 2018 and the public availability of data probably by the Spring of 2020.

With these caveats in mind, and up to November 1<sup>st</sup> 2019, at least 6,749 Canadians have received MAiD since the Quebec legislation came into force in December 2015 and the federal legislation came into force in June 2016.<sup>35</sup> In 93 percent of cases, the assistance was provided by physicians; in seven percent of cases, assistance was provided by nurse practitioners. There have been a minimal number (only six) of self-administered deaths; this number may increase significantly with the availability of oral medication for use in providing MAiD.<sup>36</sup>

An extremely useful national comparative analysis has been undertaken by the Health Law Institute at Dalhousie University. Among other things, this shows a steady rise in MAiD deaths as a percentage of all deaths across Canada since the 1<sup>st</sup> Interim Report in 2016. British Columbia stands out as the province that has had the highest percentage of such deaths each year since 2016; by 2018, the percentage stood at nearly 2.5 percent compared with the national percentage (1.5 percent). Of all the provincial health regions, the Vancouver Island Health Authority stands out as the region that is consistently ahead of the others. In the second quarter of 2019, for example, over seven percent of MAiD deaths in the province occurred in that single

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<sup>34</sup> *Fourth Interim Report on Medical Assistance in Dying*, Government of Canada, April 25, 2019. <https://www.canada.ca/en/health-canada/services/publications/health-system-services/medical-assistance-dying-interim-report-april-2019.html>

<sup>35</sup> This constitutes at least 1.12 percent of deaths in Canada.

<sup>36</sup> See, C Harty et al 'Oral medication assistance in dying (MAiD): informing practice to enhance utilization in Canada' (2019) 66(9) *Cn J Anaesth*. 1106-1112.

health region.<sup>37</sup>

Nationally, hospitals were the preferred place of assisted death (44 percent) with the person's home a close second (42 percent). Care facilities and other locations accounted for the rest. The majority of assisted deaths (56 percent) occurred in large urban centres. The age range of those receiving an assisted death was 56 to 90 years; the average age of a deceased person was 72. About 51 percent were men; 49 percent were women. Cancer related illnesses were the most frequent underlying condition, but there were also some participants who had neuro-degenerative disorders (e.g., Alzheimer disease) and some who had circulatory/respiratory conditions.

Some valuable qualitative research has been undertaken by physicians who participate in MAiD in British Columbia and who have formed an organization: the Canadian Association of MAiD Assessors and Practitioners (CAMAP). These practitioners have gathered information that goes beyond the basic statistics and have published the results in a 2018 volume of *Canadian Family Physician*.<sup>38</sup> Contributions include research on those who have requested and those who have received MAiD (including the reasons why people request medical assistance in dying); and on the views of those who provide assistance.<sup>39</sup>

## VI CONCLUSION

There is little doubt that MAiD is an extremely active area of Canadian law that is now starting to take shape. Changes will be made to the core federal legislation, initially in the Spring (2020) sitting of Parliament (i.e., Bill C-7), and primarily with respect to the issue of reasonable foreseeability. More amendments will follow over the next couple of years as the information in the reports on advance requests, mature minors, and requests from people with mental illnesses is discussed. Adjustments will also have to be made to related provincial and territorial legislation with respect to both health care consent and incapacity planning if advance requests are to

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<sup>37</sup> J Brooks, 'MAiD in Canada; who is assessing MAiD and how often?' End of Life Law and Policy in Canada, Health Law Institute, Dalhousie University, Nova Scotia, Canada <http://eol.law.dal.ca/wp-content/uploads/2019/11/MAiD-in-Canada-Graphic-Presentation-Q3-2019.pdf>.

<sup>38</sup> (2018) 64(9) *Canadian Family Physician*. In particular, see E Wiebe et al 'Reasons for requesting medical assistance in dying' (2018) 64(9) *Canadian Family Physician* 674 – 679; J Shaw et al 'Providing medical assistance in dying, *Canadian Family Physician*' (2018) 64(9) *Canadian Family Physician* 394.

include MAiD directives. It may even be the case that the statutory presumption of capability in both health care consent and incapacity planning legislation will need to be modified to ensure that an adult requesting MAiD is fully aware of the nature and consequences of their decision. Similar adjustments may be required to the associated incapability assessment policies and procedures, and to the mandate of health care review boards that currently deal with disputes affecting capacity and health care consent decision making.