

## EXPANSION OF THE AVAILABILITY OF MEDICAL ASSISTANCE IN DYING

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Medical assistance in dying ("MAID") has been legal in Canada since June 2016. Now, proposed amendments would extend the availability of MAID to those who face irreversible suffering but whose death is not foreseeable.

### Bill C-7

On October 5, 2020, the federal government re-introduced Bill C-7 to amend certain provisions of the *Criminal Code* relating to MAID. The Bill, which was initially introduced in February 2020 before Parliament was prorogued in August, responds to the decision of the Superior Court of Quebec in *Truchon c. Procureur général du Canada*, 2019 QCCS 3792 [Truchon].

In *Truchon*, the Court held that section 241.2(2)(d) of the *Criminal Code*, which states that a reasonably foreseeable natural death is a requirement for access to MAID, infringes upon fundamental rights set out in the *Charter of Rights and Freedoms*. The Court granted the federal government six months to comply with the declaration of constitutional invalidity and, following two extensions, Parliament now has until December 18, 2020, to amend the legislation.

### Proposed Changes

The changes proposed in Bill C-7 would repeal section 241.2(2)(d) altogether and introduce a two-track approach to procedural safeguards based on whether the person's natural death is reasonably foreseeable.

For those whose natural death is reasonably foreseeable, the amendments would remove the requirement that there be 10 clear days between when the request is signed and when MAID is provided. The requirement of express consent immediately before providing MAID would also be removed where the individual has lost the capacity to consent and had agreed to receiving MAID in such circumstances in their written arrangement.

For those whose natural death is not reasonably foreseeable, the proposed amendments would require two independent medical or nurse practitioners to confirm their eligibility for MAID, one of whom must be an expert in the individual's condition. The individual must also be properly informed of the means available to relieve their suffering, and the practitioners must agree that the individual has seriously considered those means. There would also be the added requirement of 90 days between the individual's initial assessment and when MAID is provided, unless there is medical consensus that loss of the person's capacity to consent is imminent.

Other proposed changes would clarify that mental illness alone does not make an individual eligible for MAID, and require that only one independent witness, rather than two, sign a request for MAID.

*Please reach out to the Fogler, Rubinoff LLP Health Law Group if you have questions.*

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