



**Federal Consultation on
Legislative Options for Assisted
Dying**

Submission to the Expert Panel for a
Legislative Response to *Carter v. Canada*

October 19, 2015



Federal Consultation on Legislative Options for Assisted Dying

Summary of Recommendations:

Recommendation #1: The Government of Canada create a national palliative and end-of-life care strategy that provides universally accessible, equitable, publicly funded and not-for-profit services across the country.

Recommendation #2: The Government of Canada co-lead, with the provincial/territorial governments, the development of a principled regulatory framework to implement the Carter decision, inclusive of broad public and health professional consultations.

Recommendation #3: The principled regulatory framework clearly articulates and respects the particular parameters that fall within each jurisdiction.

Recommendation #4: The principled regulatory framework includes a registry with clearly defined criteria, and a national tracking system that receives consistent data from the provinces/territories on assisted death.

Recommendation #5: A report on assisted death be issued publicly, by the Government of Canada, on an annual basis.

Recommendation #6: The Government of Canada and provincial/territorial governments enact policy that is reflective of health professional-assisted death, involving registered nurses (RN) and nurse practitioners (NP).

Recommendation #7: No health professional or institution should be forced into providing assisted death, however, in cases of conscientious objection, there is an obligation to refer people to an appropriate alternate setting to receive service.

Recommendation #8: Health system planners must ensure access to assisted death services locally across the country.

Recommendation #9: The Government of Canada enact legislation that protects physicians, RNs, NPs and other health professionals from criminal prosecution when acting within their scope of practice and providing assisted death services.

Recommendation #10: The Government of Canada and provincial/territorial governments support efforts to develop health professionals' competency related to assisted death through the creation of interprofessional education and clinical practice guidelines.

Recommendation #11: Provincial/territorial health professional regulators develop practice standards related to assisted death to promote quality, safety and accountability.

Introduction:

The Registered Nurses' Association of Ontario (RNAO) is the voluntary professional association representing registered nurses (RN), nurse practitioners (NP) and nursing students in Ontario. Our mandate involves speaking out for healthy public policy and we extend our gratitude to the *Federal Expert Panel for a Legislative Response to Carter v. Canada* for the opportunity to participate in the consultation underway.

Today, there are approximately 108,000 RNs and 2,700 NPs eligible to practise in Ontario. Nurses work in a diverse array of settings from public health units to hospitals and palliative care. We are among the public's most accessible health professionals and are regarded as the most trusted health profession.ⁱ We have a strong interest in participating, as expert leaders, in a dialogue regarding assisted death.

RNAO has been a leading voice in advancing a national dialogue on end-of-life issues, including assisted death. In 2014, our membership voted, with a large majority in favour, for a resolution that called for a national public dialogue on end of life care inclusive of assisted death and procedural safeguards to mitigate risk (Appendix A). This has been followed by four webinars attended by more than 1,000 RNs, NPs, other health providers and the public.ⁱⁱ In addition, we organized a live panel facilitated by renowned reporter Carol Goar from the Toronto Star and attended by 580 people at our 2015 Annual General Meeting to discuss perspectives related to this issue.ⁱⁱⁱ

RNAO also has expertise in end-of-life care, which is evident through our clinical practice guideline *End-of-Life Care During the Last Days and Hours*.^{iv} This guideline, which is used extensively by service and academic settings in Canada and abroad, was steered by an expert panel and produced through a systematic review of the literature and extensive stakeholder consultation. The clinical questions addressed by the guideline include:

1. What knowledge and skills do nurses require to identify and assess individuals and families during the last days and hours of life?
2. What knowledge, skills and tools do nurses require to support individuals and their families in making informed choices during the last hours and days of life?
3. What palliative interventions are needed to address the experiences faced by individuals and their families during the last days and hours of life?
4. What supports are needed to assist nurses in providing high-quality care in the last hours and days of life?

Nurses want to ensure that all Canadians have access to quality publicly funded and not-for-profit palliative and end-of-life care in all reaches of the nation. In response to the 2015 Canadian federal election, RNAO released a policy platform: *Why Health Matters*.^v There are two key recommendations from the platform that are relevant to this submission:

- 1) create a national palliative care strategy that provides universally accessible services across the country
- 2) develop a principled regulatory framework to implement the Supreme Court of Canada's decision on assisted death

While beyond the scope of the panel's review, the present context provides an opportune time to consider how the delivery of palliative and end-of-life care can be enhanced in Canada. RNs and NPs are leaders in the delivery of palliative and end of life care and their full utilization can transform access to quality services for Canadians. In addition, overcoming structural barriers, enhancing provider competency and evidence-based practice will advance person-centred care across the lifespan.

Recommendation #1: The Government of Canada create a national palliative and end-of-life care strategy that provides universally accessible, equitable, publicly funded and not-for-profit services across the country.

Assisted Death:

Canada is a privileged country in that all citizens are granted the ability to exercise their human rights in a free and democratic society. Genuine autonomy means that Canadians have the opportunity to fully exercise self-determination. As we move forward, it is imperative that everyone is presented with an opportunity to choose an informed end-of-life plan based on their values, interests and needs. Since the Carter decision was delivered by the Supreme Court of Canada, RNAO was one of the first groups to respond by advocating for implementation through a principled regulatory framework.^{vi} The Supreme Court of Canada has recognized that current prohibitions against physician-assisted death interfere with autonomy and dignity. Moreover, the court has further recognized the risks inherent with-assisted death, especially for vulnerable persons. Therefore, a principled regulatory framework must be developed to balance the principles of autonomy and justice.

Throughout this submission, RNAO has applied the term assisted death to encompass both assisted suicide and voluntary euthanasia. While the moral distinctions and similarities between these terms can be debated at length, RNAO's understanding is that the Carter decision found prohibitions on physician-assisted death (encompassing voluntary euthanasia and assisted suicide) broadly violate the *Charter of Rights and Freedoms*. Therefore, it is important that the panel equally consider both voluntary euthanasia and assisted suicide.

Developing the Framework:

Establishing this expert panel to inform the federal government on the implementation of the Carter decision is a great first step. There are three key principles that the federal government ought to consider when supporting the development of a principled regulatory framework:

1) Public Engagement:

The parameters that compose the regulatory framework around assisted death must be derived from public consultation that includes diverse perspectives. This expert panel is examining a number of models being used internationally. Each of these models has their strengths and limitations. We can learn from these experiences, however, the government must ensure that the values, interests and needs of Canadians are truly reflected in a regulatory scheme. The consultation process being used by the expert panel is to be applauded, however, further public consultation is needed to ensure that elected officials and bureaucrats are able to advance an effective regulatory framework. RNAO is concerned that many Canadians are unaware of the consultation underway. Moreover, it is important that the consultation reaches Canadians of all generations, cultural/ethnic backgrounders, religious affiliations, socioeconomic statuses, sexual orientations, gender identities and geographic locations. A number of methods can be used, including town hall meetings, social media, engagement through associations and technology. Furthermore, consultations should be expedited so the development and implementation of the framework is not delayed beyond February 6, 2016 (date after which the criminal prohibitions will be invalid).

2) Health Professional Engagement:

It is also important to ensure that the voice of RNs, NPs, physicians and other health professionals are captured within the dialogue underway and that these groups have the opportunity to inform the development of the framework. It will be important for the panel, governments and others to consult directly with a range of health professionals and to leverage the collective voice of professional associations, unions and other groups.

3) Provincial/Territorial Engagement:

Neither the federal nor provincial/territorial governments can take sole leadership for the development of an effective regulatory framework. It is critical that governments come together to discuss respective interests/needs and ensure that decision-making is made collectively and not unilaterally. RNAO was pleased to see the leadership of the provinces coming together, with Ontario playing a convening role, to discuss this important issue.^{vii} Now it is important for the federal expert panel to identify opportunities to work with the provincial/territorial efforts currently underway and to make linkages. It is imperative that the work is complementary and not duplicated or conflicting. While role clarity will be needed, this issue demands a co-leadership role. RNAO sees the role of the federal government as laying the foundation for the development of a principled regulatory framework that will offer national unity, however, also respecting the needs and context of each provincial/territorial jurisdiction. For example, a number of the needed parameters within such a regulatory framework rest at the provincial level (i.e. determining consent/capacity).

Recommendation #2: The Government of Canada co-lead, with the provincial/territorial governments, the development of a principled regulatory framework to implement the Carter decision, inclusive of broad public and health professional consultations.

Recommendation #3: The principled regulatory framework clearly articulates and respects the particular parameters that fall within each jurisdiction.

Eligibility and Safeguards:

As the court noted in the Carter decision:

“... vulnerability can be assessed on an individual basis, using the procedures that physicians apply in their assessment of informed consent and decisional capacity in the context of medical decision-making more generally. Concerns about decisional capacity and vulnerability arise in all end-of-life medical decision-making. Logically speaking, there is no reason to think that the injured, ill, and disabled who have the option to refuse or to request withdrawal of lifesaving or life-sustaining treatment, or who seek palliative sedation, are less vulnerable or less susceptible to biased decision-making than those who might seek more active assistance in dying. The risks that Canada describes are already part and parcel of our medical system.”^{viii}

Furthermore:

“... it is argued that without an absolute prohibition on assisted dying, Canada will descend the slippery slope into euthanasia and condoned murder. Anecdotal examples of controversial cases abroad were cited in support of this argument, only to be countered by anecdotal examples of systems that work well. The resolution of the issue before us falls to be resolved not by competing anecdotes, but by the evidence. The trial judge, after an exhaustive review of the evidence, rejected the argument that adoption of a regulatory regime would initiate a descent down a slippery slope into homicide. We should not lightly assume that the regulatory regime will function defectively, nor should we assume that other criminal sanctions against the taking of lives will prove impotent against abuse.”^{ix}

RNAO agrees with the court’s observations. Assisted death is practised in many other jurisdictions, which gives Canada the unique opportunity to analyze the strengths and weaknesses of a number of models. Consistent with our 2014 resolution, RNAO believes that the following eligibility criteria must be adopted:

- Any requests for assisted death should originate from the patient/client. When the request is made, the health professional should ensure that the individual is aware of all options and services available to them.
- A determination of consent and capacity can be made at the point-of-care, as is currently the case for any medical intervention in Ontario. RNAO encourages the

involvement of a mental health professional (i.e. nurse, psychologist, physician) to rule out emotional and/or mental disorders that could impact ones' decision. Moreover, appeal procedures (i.e. Ontario's Consent and Capacity Board) should continue to apply and be conducted promptly.

- Once an individual has met all eligibility criteria for assisted death, a waiting period should be established to enable the patient/client to review his/her decision. Within several American states, a waiting period of approximately two weeks has been established. RNAO suggests that the panel consider a waiting period that offers sufficient time to reflect and review, while balancing an individual's autonomy and ability to exercise self-determination.

Lastly, RNAO feels that each province/territory should be collecting consistent data regarding requests for assisted death, outcomes of the eligibility/review process, complications that could occur and the number of completed assisted deaths. This information serves as an accountability mechanism and helps researchers, evaluators and decision-makers understand how assisted death is being utilized. This data should feed into a federal system that offers public reporting on an annual basis.

Recommendation #4: The principled regulatory framework includes a registry with clearly defined criteria, and a national tracking system that receives consistent data from the provinces/territories on assisted death.

Recommendation #5: A report on assisted death be issued publicly, by the Government of Canada, on an annual basis.

Interprofessional Care:

RNAO recognizes that the language within the Carter decision is specific to physician-assisted death. However, in today's health environment, interprofessional care is the norm. Assisted death is a process that will inevitably involve a number of health professionals, including RNs and NPs. There can be an indirect role for RNs/NPs, such as providing counseling, co-ordination and support. There can also be a direct role for RNs/NPs, such as RNs administering medications and NPs prescribing. The Supreme Court of Canada's role is to interpret the law and not to make policy. The Government of Canada has the ability to enact policy that recognizes the role that many health professionals will play when it comes to assisted death, both directly and indirectly. The process cannot be limited to physicians.

Recommendation #6: The Government of Canada and provincial/territorial governments enact policy that is reflective of health professional-assisted death, involving RNs and NPs.

RNAO argues that no health professional or organization should be forced into providing assisted death services. However, RNAO insists that in cases of conscientious objection, health professionals and institutions must respect the law of the nation and have an obligation to make appropriate referral arrangements. Given the vast geographic distribution of Canada, including a large rural, remote and northern area, health policy

planners need to ensure that all Canadians have the ability to pursue the assisted death process, not unlike any other health service.

Recommendation #7: No health professional or institution should be forced into providing assisted death, however, in cases of conscientious objection, there is an obligation to refer people to an appropriate alternate setting to receive service.

Recommendation #8: Health system planners must ensure access to assisted death services locally across the country.

Earlier this year, a bill was introduced in the Senate of Canada, Bill S-225 – *An Act to amend the Criminal Code (physician-assisted death)*. This bill aimed to protect physicians from criminal prosecution for involvement with assisted death. RNAO is seeking the same protection for RNs and NPs.

Recommendation #9: The Government of Canada enact legislation that protects physicians, RNs, NPs and other health professionals from criminal prosecution when acting within their scope of practice and providing assisted death services.

Assisted death is a new concept for Canada's health system. There is little Canadian provider competency developed in this area, aside from those who have sought understanding from international jurisdictions. This is not an isolated phenomenon, as providers are routinely exposed to new practices and procedures as technology advances. It is important that interprofessional education modules are developed to enable knowledge transfer and application. Evidence-based clinical practice guidelines and regulatory practice standards will also be required to enhance provider accountability and competency.

Recommendation #10: The Government of Canada and provincial/territorial governments support efforts to develop health professionals' competency related to assisted death through the creation of interprofessional education and clinical practice guidelines.

Recommendation #11: Provincial/territorial health professional regulators develop practice standards related to assisted death to promote quality, safety and accountability.

Conclusion:

Once again, RNAO thanks the *Federal Expert Panel for a Legislative Response to Carter v. Canada*. We look forward to the implementation of a principled regulatory framework in response to the Supreme Court of Canada's ruling on assisted death. We offer our feedback to inform the panel's discussions and look forward to seeing it incorporated into the final report to government. As a next step, RNAO would appreciate the opportunity to meet with the panel when stakeholder consultations resume after the 2015 federal election.

Appendix A

Resolution Passed at RNAO's 2014 Annual General Meeting

WHEREAS a national discussion is underway regarding end on 'dying with dignity' which involves a review of assisted suicide and/or euthanasia; and

WHEREAS the final decision on permitting assisted suicide and/or euthanasia public; and

WHEREAS there is support from all three provincial political parties to engage in a discussion regarding end-of-life care; and

WHEREAS RNAO is being asked by stakeholders and media to comment on this issue;

THEREFORE BE IT RESOLVED THAT RNAO urge the provincial and federal governments to engage in formal public dialogue on end of life issues and dying with dignity, including discussions, related to assisted suicide and/or euthanasia; and

THEREFORE BE IT FURTHER RESOLVED THAT the following principles be considered when discussing assisted suicide and/or euthanasia

- Personal autonomy and justice are fundamental principles
- Ensuring timely access to evidence-based palliative care must remain a top priority
- The government must reject calls for involuntary euthanasia
- Assisted suicide and/or euthanasia must never be considered within the context of cost-savings
- Procedural safeguards must be enacted, including:
 - Restricting assisted suicide and/or euthanasia to competent adults with terminal illness;
 - Requiring that requests for assisted suicide and/or euthanasia be initiated by the person seeking the service and would be subject to a thorough review process that includes: independent confirmation on terminal illness; determination of capacity by a mental health-care professional (with appeal to the Consent and Capacity Board); providing access to all reasonable alternatives and establishing a waiting period.
- The practice of assisted suicide and/or voluntary active euthanasia must be restricted to professionals who have sought designated education and training.
- No health professional or organization should be required to participate in assisted suicide and/or voluntary active euthanasia.
- A provincial monitoring and reporting system must be developed, including a process for responding to complaints.

References:

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