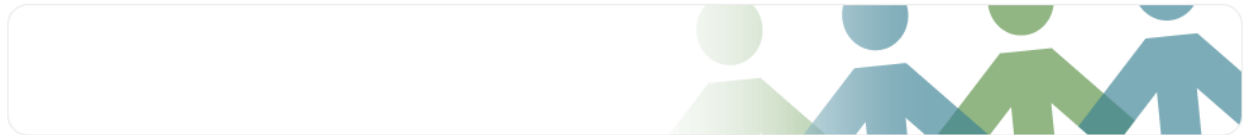


**Physician-Assisted Death: Discussion Paper**  
*April 2016*





## INTRODUCTION

This document has been prepared by the Canadian Association of Social Workers in response to the 2015 Supreme Court decision in *Carter v. Canada (Attorney General)* regarding physician-assisted death (PAD), and the recent first reading of Bill C-14, *An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying)*, on April 14, 2016.

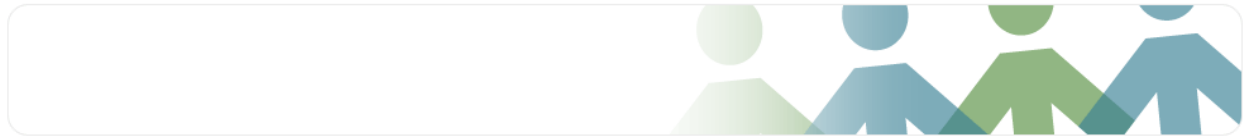
In 1994, CASW produced a [Statement of Principles on Physician Assisted Dying](#) which was re-released in 2015 following the Carter Decision. These principles inform the basis of the current discussion paper and provide the context for the following key areas of discussion regarding PAD:

- 1) The time is now for the federal government to develop pan-Canadian standards for both palliative care and PAD;
- 2) A palliative first approach to care, including the development of a more robust and accessible model of palliative care, is crucial in ensuring that Canadians do not pursue PAD due to a lack of adequate or accessible palliative services;
- 3) Vigorous safeguards must be put in place to protect persons vulnerable due to age, health, disability, or any other factor, and to ensure that no Canadian pursues PAD due to coercive influence;
- 4) Social workers, with their unique perspective and expertise, should be integral members of teams caring for Canadians considering PAD;
- 5) The Criminal Code of Canada must be amended to provide explicit legal protection to social workers involved in PAD;
- 6) Social workers require training and support specific to PAD.

This discussion paper has been developed in consultation with CASW's provincial and territorial Partner Organizations and CASW's Health Interest Group – composed of experts in the field from across Canada.

## BACKGROUND

*Carter v Canada (AG)* is a Supreme Court of Canada decision in which the prohibition of physician-assisted death was challenged on the basis of conflict with Canadian Charter of Rights and Freedoms. The case came as a result of a lawsuit filed in 2011 of the British Columbia Civil



Liberties Association (BCCLA) which challenged both s. 14 and section 241(b) of Criminal Code (those laws that prohibits aiding a person to commit suicide), claiming they violated the Canadian Charter of Rights and Freedoms . Through a unanimous decision made February 6, 2015, the Court struck down the provision prohibiting PAD, giving the federal government 12 months to implement the change. In February 2016, the Supreme Court gave federal government another 4-month extension to pass the physician-assisted dying law, until June 2016.

The Supreme Court of Canada noted that, to qualify for PAD, a client must be “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 client.

Although referred to as *physician-assisted death*, other professions including social work, nursing and pharmacy have been identified as part of PAD care teams. Social workers are employed in diverse fields of practice (i.e., health care teams, mental health, private practice, long term care, etc.) and will likely work with clients who are considering PAD.

CASW recognizes that the unique social work perspective, which considers both traditional bio-medical as well as systems and person-in-environment theories, with a special focus on the social determinants of health, is integral to the support of Canadians considering PAD.

## **THE SOCIAL WORK PERSPECTIVE**

The CASW Code of Ethics highlights the importance of self-determination, capacity to consent, and informed consent:

- Social workers uphold each person’s right to self-determination, consistent with that person’s capacity and with the rights of others.
- Social workers respect the diversity among individuals in Canadian society and the right of individuals to their unique beliefs consistent with the rights of others.
- Social workers respect the client’s right to make choices based on voluntary, informed consent.

The CASW Code of Ethics goes on to define self-determination as:

A core social work value that refers to the right to self-direction and freedom of choice without interference from others. Self-determination is codified in practice through mechanisms of informed consent. Social workers may be obligated to limit self-determination when a client lacks capacity or in order to prevent harm.

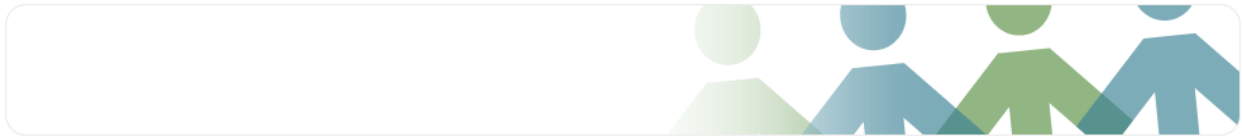
In light of the Carter Decision and the ethical values of the social work profession, CASW highlights the following areas for consideration.



- Protections must be in place to prevent a person from selecting PAD as a result of a lack of appropriate, sufficient, accessible, or timely palliative care. CASW supports a palliative first approach to the entire PAD dialogue. A palliative first approach supports a robust model of palliative care that is accessible to all Canadians.
- The assessment process to determine eligibility for PAD must be rigorous and comprehensive at the policy level, and highly individualized at the level of the individual person. Capacity of the person considering PAD is an integral component. As the CASW Code of Ethics notes, capacity is defined as the ability to understand information relevant to a decision and to appreciate the reasonably foreseeable consequences of choosing to act or not to act. Capacity is specific to each decision and thus a person may be capable of deciding about a place of residence, for example, but not capable with respect to deciding about a treatment. Capacity can change over time.
- The decision to choose PAD should be considered through the particular historical and personal context of the client requesting it. There must be a well conducted process of decision making between the individual and the care team. Professionals already have clinical practices and standards to draw from to help inform best practice considerations.
- CASW recognizes that social workers are integral to the PAD dialogue due to the profession’s unique perspective that considers a client holistically: as an individual and as a part of a family, community, a system. Social workers also have experience in assessing all the factors that might impact a client’s state of mind: physical, emotional, social, economic, and spiritual.
- Established competency requirements should be verified at both the time of request for PAD, throughout the process, and also immediately preceding the treatment. This will help reduce the risk of coercion and ensure that a client knows they can change their mind at any time.
- While it is not CASW’s role to define the scope of “a grievous and irremediable medical condition,” CASW agrees with the Canadian Nurses Association that “it is vital to have a clear and common understanding of what these broad terms mean in relation to an illness, disease or disability in order to provide proper guidance for all involved in PAD and for public knowledge<sup>1</sup>.”
- CASW also recognizes that well researched, organized, and ethical care is inherently less stressful for both the client and the professional. As such CASW would again recommend that great care be taken to add failsafe measures around the assessment of capacity to

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<sup>1</sup> [https://www.cna-aiic.ca/~media/cna/page-content/pdf-en/physician-assisted-death\\_brief-for-the-government-of-canadas-external-panel-on-options-for-a-legislative-response-to-carter-v-canada.pdf?la=en](https://www.cna-aiic.ca/~media/cna/page-content/pdf-en/physician-assisted-death_brief-for-the-government-of-canadas-external-panel-on-options-for-a-legislative-response-to-carter-v-canada.pdf?la=en) , page 6.



consent and any other factors that would prevent a client from pursuing PAD voluntarily and with full self-determination.

- CASW notes that the role for social workers extends beyond the client, to include psychosocial support to the families, caregivers and *other professionals* involved in the assessment and treatment of the client. In various regions, social workers on clinical teams have already been identified as a valuable resource in providing consultative support to other social workers involved in PAD, and other members of the interdisciplinary clinical team throughout the process.

## RISKS AND CONSIDERATIONS

The Carter case provides legal protection to physicians involved in PAD, affording them protection from criminal prosecution. Social workers require this same protection. Although social workers will not be administering PAD, social workers could be in the room with the client and family at the time of death.

As integral members of interdisciplinary care teams, social workers must be able to provide therapeutic counselling services, information, supports to clients and clients' families and networks, and referrals to service without fear of criminal consequences in light of this decision. Importantly, protection for social workers under the Criminal Code must be clearly identified, and intersections with other provincial legislations need to be further considered.

CASW notes that Bill C-14 provides exemptions for medical practitioners, nurse practitioners, and pharmacists under to protect them from culpability under the criminal code.

The earlier *Report of the Special Joint Committee on Physician-Assisted Dying* (February 2016), stated:

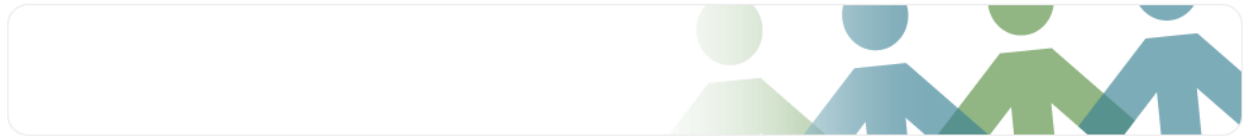
Taking into account the limited access that people living in rural and remote regions of Canada may have to a physician, to ensure access to MAID across Canada, the Committee recommends:

### RECOMMENDATION 13

That physicians, nurse practitioners and registered nurses working under the direction of a physician to provide medical assistance in dying be exempted from sections 14 and section 241(b) of the Criminal Code.

Pharmacists and **other health care practitioners** who provide services relating to medical assistance in dying, should also be exempted from sections 14 and section 241(b) of the Criminal Code.

In reaction, the Canadian Nurses Protective Society also recommended amending section 241(a) of the Criminal Code to protect nurses and **other health care professionals who “engage in**



## **discussions with patients about end-of-life options and wishes<sup>2</sup>.”**

CASW recommends taking these protections further by recognizing any profession that may reasonably take part in PAD be named explicitly – as opposed to naming only ‘health care professionals’ – for protection under the Criminal Code of Canada.

Professional self-care is also an important consideration. It is reasonable to assume that assistance with/involvement in PAD may have unintended negative impacts on the social worker and could result in trauma, burnout, or other forms of distress.

To help mitigate risk, CASW recommends that education, information and support for social workers and other professionals involved in PAD at any level be available in all workplaces, and that all workplaces uphold the right of the professional to refuse participation in the process, or as a member of a care team of seeking PAD. In this regard, the importance of locating a middle ground between conscientious objections and models that will work in each jurisdiction is of the utmost importance. Indeed, the geographical context of where physician-assisted death occurs is also important to consider.

Additionally, CASW recommends that every workplace stress the importance of supportive professional practice environments for high quality of care – these environments include providing the opportunity for consultation and debriefing.

The importance of liability insurance must be stressed. Liability insurance is not only protection for the professional, it also affords protection to those receiving services as it assures them that the professional would have the ability to fully respond to a concern regarding conduct should one arise. In this regard, insurance providers should immediately amend policies to include this type of protection.

## **SUMMARY**

- The CASW Code of Ethics clearly states that social workers must uphold a person’s right to self-determination insofar as they do not pose a threat of harm to themselves or others. In terms of PAD specifically, social workers will continue to support clients’ self-determination.
- Safeguards must be in place to ensure that decisions to pursue PAD are made free from any coercive factors relating to social or financial circumstance, or due to a lack of access to the best possible pain and symptom management.

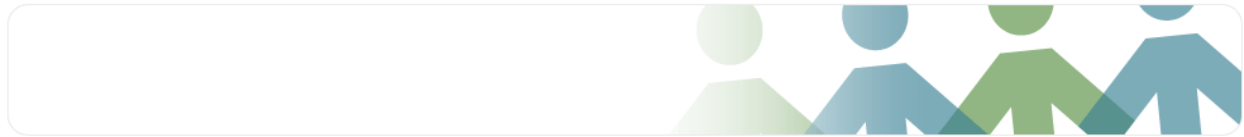
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<sup>2</sup> The full Report is available at:

[http://www.parl.gc.ca/Content/HOC/Committee/421/PDAM/Reports/RP8120006/421\\_PDAM\\_Rpt01\\_PDF/421\\_PDAM\\_Rpt01-e.pdf](http://www.parl.gc.ca/Content/HOC/Committee/421/PDAM/Reports/RP8120006/421_PDAM_Rpt01_PDF/421_PDAM_Rpt01-e.pdf)



- Social workers have always been involved with clients making difficult decisions of their lives, and should contribute to the care of client's exploring and requesting PAD.
- The social work perspective and training, grounded in the traditional bio-medical or bio-psycho social models, the person-in-environment perspective, as well as core values and ethics outlined in the CASW Code of Ethics, is invaluable in assessing the reasons for which a person may seek PAD.
- It is crucial that the Criminal Code of Canada be amended to offer explicit protection for social workers in relation to PAD.
- Appropriate steps must be taken to support well-being for both clients and professionals, which involve the creation of Pan-Canadian standards for **both** palliative care and PAD, the creation of safeguards built in to the PAD process (such as routine capacity to consent and mental health screenings), as well as continued advocacy for more research into excellence in pain management and palliative interventions more generally.



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