



SUPREME COURT OF BRITISH COLUMBIA

Notice Regarding Applications for Exemption

from the *Criminal Code* Prohibition Against Physician Assisted Death

In *Carter v. Canada (Attorney General)*, 2016 SCC 4, the Supreme Court of Canada directed that applications may be brought to provincial superior courts for exemption from the Criminal Code prohibition against physician assisted death, in accordance with the criteria set out in *Carter v. Canada (Attorney General)*, 2015 SCC 5 (“Carter (2015)”).

This notice is intended to provide guidance to counsel and parties who intend to bring an application to the Supreme Court of British Columbia for an exemption from the Criminal Code prohibition. The notice is advisory only and the direction given is subject to any orders made by the judge presiding on the application. Further, for the assistance of counsel and the parties, this notice refers to the types of evidence discussed in Carter (2015), however, the onus rests on the applicant to confirm and meet the evidentiary requirements set out in Carter (2015).

Application to be made by Petition

1. A person wishing to bring an application for an exemption from the prohibition against physician assisted death (“an exemption application”) must file a petition, supporting affidavits and a draft of the order sought.

Ancillary Confidentiality Orders

2. An applicant for an exemption order may wish to seek a sealing order, publication ban, anonymity order, or an order that the exemption application be heard in camera (such orders are referred to collectively hereafter as “confidentiality orders”). In that event, a copy of the unfiled petition, supporting affidavits and a draft of the order sought on the exemption application, as well as a draft of the confidentiality orders sought, must be submitted to the Supreme Court Scheduling Manager at the relevant registry before the proceedings are commenced.

Request to Appear

3. The Chief Justice of the Supreme Court or another judge designated by him will hear exemption applications and ancillary applications for confidentiality orders.
4. Counsel or a party wishing to bring an exemption application and/or any of the above mentioned confidentiality orders, must file a Request to Appear before the Chief Justice to set a time for the hearing of the applications, and to seek additional directions. The Request to Appear may be found on the court's website at the following link:

[Request to Appear](#)

Pre-hearing Conference and Directions

5. The Chief Justice or another judge designated by him will review the Request to Appear and the petition, supporting affidavits and the draft order sought on the exemption application, as well as any materials in support of a confidentiality order.
6. The Chief Justice or designated judge will convene a pre-hearing conference to give directions or will provide written directions as to the date for hearing the exemption application.
7. The Chief Justice or designated judge may also give directions in relation to notice, service of documents, filing of responses, issues of standing, timelines for filing materials, or other matters.

Service of Materials in Support of Exemption Application

8. Subject to any directions made by the Chief Justice or designated judge on an exemption application, the petitioner must serve the petition, supporting affidavits and draft order sought on:
 - a. the Attorney General of British Columbia;
 - b. the petitioner's spouse, if the petitioner is cohabiting with his or her spouse at the time the petition is made; and
 - c. any person named as the petitioner's attorney, if that power of attorney is effective at the time the petition is made.

Evidence about the Petitioner

9. On the exemption application, the petitioner must file an affidavit providing the following information:
 - a. the petitioner's date of birth;

- b. the petitioner's place of residence and the duration of that residency;
- c. the petitioner's medical condition (illness, disease, or disability);
- d. whether as a result of his or her medical condition, the petitioner is suffering enduring intolerable pain or distress that cannot be alleviated by any treatment acceptable to the petitioner;
- e. the reasons for the petitioner's request for an exemption from the prohibition against physician assisted death;
- f. whether prior to commencing the petition, the petitioner has been fully informed about his or her medical condition (illness, disease, or disability), diagnosis, prognosis, treatment options, palliative care options, the risks associated with the treatment and palliative care options, and the risks associated with a physician assisted death;
- g. the manner, means and proposed timing for the physician assisted death for which the petitioner seeks an exemption;
- h. whether the petitioner is aware that his or her request for an exemption for a physician assisted death may be withdrawn at any time; and
- i. whether the petitioner is aware that if the order sought in the petition is granted, the decision to use or not use the exemption is entirely the petitioner's to make.

Evidence of Attending Physician

10. On the exemption application, the petitioner must also file an affidavit from the petitioner's attending physician addressing whether, in the opinion of the attending physician:
 - a. the petitioner has a grievous irremediable medical condition (illness, disease, or disability) that causes suffering;
 - b. as a result of his or her medical condition, the petitioner is suffering enduring intolerable pain or distress that cannot be alleviated by any treatment acceptable to the petitioner;
 - c. the petitioner was fully informed about his or her medical condition (illness, disease, or disability), diagnosis, prognosis, treatment options, palliative care options, the risks associated with the treatment and palliative care options, and the risks associated with a physician assisted death;
 - d. the petitioner has the mental capacity to make a clear, free, and informed decision about a physician assisted death; and

- e. the petitioner has consented without coercion, undue influence, or ambivalence to a physician assisted death.
- f. the petitioner is aware that his or her request for an authorization for a physician assisted death may be withdrawn at any time;
- g. the petitioner makes the request for authorization for a physician assisted death freely and voluntarily; and
- h. the petitioner is aware that if the authorization is granted, the decision to use or not use the authorization is entirely the petitioner's decision to make.

Evidence of Second Physician

11. On the exemption application, the petitioner must also file an affidavit from a second physician, who does not practice in the same clinic or office as the attending physician. The second physician need not be a psychiatrist, unless the petitioner is currently being treated by a psychiatrist, in which case the affidavit should be from that psychiatrist. The affidavit should address whether, in the opinion of the second physician:
- a. the petitioner has a grievous irremediable medical condition (illness, disease, or disability) that causes the petitioner to suffer;
 - b. the petitioner has the mental capacity to make a clear, free, and informed decision about a physician assisted death; and
 - c. the petitioner has consented without coercion, undue influence, or ambivalence to a physician assisted death;
 - d. the petitioner is aware that his or her request for an authorization for a physician assisted death may be withdrawn at any time;
 - e. the petitioner makes the request for authorization for a physician assisted death freely and voluntarily; and
 - f. the petitioner is aware that if the authorization is granted, the decision to use or not use the authorization is entirely the petitioner's to make.

Evidence of Physician Proposed to Assist the Petitioner

12. On the exemption application, the petitioner must also file an affidavit from the physician who is proposed to be the physician who will assist the petitioner to use the exemption sought, who may be the petitioner's attending physician, the second physician or another physician, indicating:
- a. the manner, means, and proposed timeframe for the physician assisted death;

- b. whether the physician is willing to assist the petitioner in dying, if that act were authorized by court order;
- c. whether the physician believes that his or her providing assistance would be clearly consistent with the petitioner's wishes;
- d. whether the physician is aware that if the authorization is granted, the decision to use or not use the authorization is entirely the petitioner's to make.

General

- 13. Unless extended, the procedure described in this notice will be in place only until June 6, 2016.

Christopher E. Hinkson
Chief Justice

February 25, 2016