Advance Requests for MAID:
Independent Legal Assessment Before Death

Proposed Amendment

October 21, 2026

Introduction

Advance requests for medical assistance in dying (MAID) raise an access to justice challenge before end of life: a person may be unable to speak for themselves or seek legal assistance when the provision of MAID is contemplated. If undue influence, coercive control, or other forms of abuse are discovered only after MAID has been provided, no remedy can restore the person's life.[1] The person needs an independent voice before death.

If Parliament decriminalizes advance requests, the *Criminal Code* should require the appointment of a lawyer to conduct an independent legal assessment before MAID is administered under such a request. This would establish a minimum access to justice safeguard across the country and help ensure that the person's rights and interests are protected, leaving implementation to the provinces and territories.

About Dementia Justice Canada

Established in 2017, Dementia Justice Canada is a small nonprofit dedicated to advancing the rights and dignity of people with dementia. Criminal justice reform is a particular focus of our work. Our main activities include legal research, law reform advocacy, and education.

Proposed Amendment

In anticipation of the forthcoming House Government Bill on advance requests, Dementia Justice Canada proposes the following amendment to the *Criminal Code*:

---

[1] This document draws on and builds upon an article by Heather Campbell Pope: "MAID advance requests need independent legal scrutiny before death," *Law360 Canada* (13 October 2026), and it has benefited from the generous feedback and insights of many individuals, whose time and thoughts are gratefully acknowledged. The views expressed herein do not necessarily reflect their positions.

241.1 Definitions

finally determined means that the period allowed for any appeal or any application for leave to appeal to a higher court or tribunal has elapsed.

independent legal assessment means an assessment by counsel[2] conducted in accordance with any applicable provincial laws, rules or standards.

241.2(3.1.1) Safeguards – advance requests

(a) Before a medical practitioner or nurse practitioner provides medical assistance in dying to a person pursuant to an advance request, the medical practitioner or nurse practitioner must ensure that an independent legal assessment

(i) has been conducted when the provision of medical assistance in dying pursuant to the advance request is being contemplated;

(ii) has determined that the provision of medical assistance in dying would not be contrary to the law; and

(iii) has been finally determined.

Independence – counsel

(b) Counsel conducting the independent legal assessment are independent if they

(i) do not know or believe that they are a beneficiary under the will of the person making the request, or a recipient, in any other way, of a financial or other material benefit resulting from that person's death; and

(ii) do not know or believe that they are connected to the practitioners or to the person making the request in any other way that would affect their objectivity.

Legal and Social Context

An advance request is made by a person while they still have decision-making capacity, with the intention that MAiD be provided later, after they have lost capacity to consent and once specified conditions are met. The *Criminal Code* does not currently permit MAID pursuant to an advance request, although Quebec has permitted the practice since October 2024.[3]

[2] Section 2 of the *Criminal Code* defines counsel as "a barrister or solicitor, in respect of the matters or things that barristers and solicitors, respectively, are authorized by the law of a province to do or perform in relation to legal proceedings."

[3] Quebec's prosecutorial guidance directs prosecutors to consider the public interest, including the balance between personal autonomy and the protection of vulnerable persons, when deciding whether to prosecute

The proposed decriminalization of advance requests raises contested legal and ethical considerations. In 2025, the United Nations Committee on the Rights of Persons with Disabilities recommended that Canada not expand MAID to advance requests.[4] That same year, Health Canada's *What We Heard* report found that 69 percent of its online questionnaire respondents supported or strongly supported advance requests following a diagnosis of a serious, incurable condition expected to cause loss of decision-making capacity, such as Alzheimer's disease.[5] Meanwhile, 51 percent identified the protection of vulnerable people as a value guiding their views on advance requests.[6]

Elder Abuse and Coercive Control

Elder abuse is a significant issue in Canada. A 2022 study estimated that one in 10 older Canadians experience mistreatment each year.[7] This estimate is likely conservative, as fear of reprisal, stigma, dependence on the abuser, and other barriers prevent many victims from reporting abuse, allowing cases to go unnoticed. In reported cases of elder abuse, the perpetrator is most often someone known to the victim: in 81 percent of cases, the alleged perpetrator was a family member, spouse, friend, neighbour, or acquaintance.[8]

People living with dementia may face heightened risks of abuse due to factors such as social isolation, cognitive changes, and increased dependency on family members and caregivers.[9] Abuse may involve an adult child seeking financial advantage, or an intimate partner, other family member, or acquaintance with competing interests.

Isolation, loneliness, ageism, and feelings of being a burden can further compromise a person's ability to protect their own interests. Health Canada's data help illustrate the prevalence of these considerations. Its 2024 annual report on MAID reports that

---

in cases involving MAID administered pursuant to an advance request. The Canadian Medical Protective Association, *Updated Québec MAID legislation* (30 October 2024) states:

> The directives state that it is not in the public interest to authorize the filing of criminal charges or allow private prosecution related to a death following MAID, if MAID was provided in compliance with the person's free and informed wishes, taking into account Québec's *Act respecting end of life care*. Additionally, any consideration of charges will need to be brought to the attention of the Director personally so that the Director can decide whether to pursue the charges.

[4] United Nations Committee on the Rights of Persons with Disabilities, *Concluding observations on the combined second and third periodic reports of Canada* (15 April 2025) CRPD/C/CAN/CO/2-3 at para 20(b).

[5] Health Canada, What we heard: National conversation on advance requests for medical assistance in dying (October 2025) at 31 (15 percent selected "support" and 54 percent selected "strongly support").

[6] *Ibid* at 32.

[7] David Burns et al., "Elder abuse prevalence and risk factors: findings from the Canadian Longitudinal Study on Aging," (23 September 2022) 2 Nature Aging 284.

[8] National Initiative for the Care of the Elderly, *Into the Light: National Survey on the Mistreatment of Older Canadians* (2015).

[9] See e.g., Michaela Rogers, Jennifer E. Story & Sonia Galloway, "Elder Mistreatment and Dementia: A Comparison of People with and without Dementia across the Prevalence of Abuse" (23 December 2022) 42(5) J Appl Gerontol 909.

approximately half of MAID recipients were reported to experience a perceived burden on family, friends, or caregivers (48.4 percent of Track 1 recipients and 50.3 percent of Track 2 recipients).[10] Isolation or loneliness was reported as a source of suffering for 21.9 percent of Track 1 recipients and 44.7 percent of Track 2 recipients.[11]

An advance request may reflect coercion or the exploitation of dependency, whether at the time the request is made or when administration is later considered. Less visibly, it may reflect the effects of coercive control, a cumulative pattern of domination that gradually erodes a person's autonomy, sense of safety, and self-worth.[12] A person may appear to choose freely when their autonomy in daily life has been systematically diminished.

During its consideration of Bill C-16, the *Protecting Victims Act*,[13] the Senate Standing Committee on Legal and Constitutional Affairs reported in June 2026 that it "clearly heard that coercive control is a form of entrapment that may leave a person feeling controlled, manipulated, intimidated, isolated, vulnerable, and dangerously dependent."[14] The Committee further observed that "[t]his kind of coercive relationship can happen to any member in a family unit, whether it be intimate partner relationships, or relationships between parents and their adult children or grandchildren."[15]

In a survey of Greater Vancouver-area dementia care clinicians, 97 percent of respondents expressed concerns about enacting advance requests, including how clinicians would protect the person's interests in the future, navigate conflicts, administer MAID to someone lacking capacity, and identify red flags around coercion.[16] These concerns help illustrate the challenges of protecting the rights and interests of a person who may no longer be able to speak for themselves when MAID pursuant to an advance request is contemplated.

Access to Justice Before Death

Quebec, which has permitted advance requests since October 2024, has a regime that includes a prescribed form, witnesses, trusted persons, an official register, and clinical assessment requirements that include consideration of external pressure.[17] However, these safeguards do not ensure that the person will have an independent legal voice to protect

---

[10] Health Canada, *Sixth Annual Report on Medical Assistance in Dying in Canada* (November 2025).
[11] *Ibid*.
[12] For a discussion of coercive control in the context of elder abuse, see e.g., Canadian Network for the Prevention of Elder Abuse, *Submission to the Standing Committee on Justice and Human Rights (Bill C-16)* (13 February 2026).
[13] 1st Sess, 45th Parl, 2025–2026 (assented to 18 June 2026), SC 2026, c 19.
[14] Standing Senate Committee on Legal and Constitutional Affairs, 11th Report of the Committee (Bill C-16) (17 June 2026).
[15] *Ibid*. On the tort of intimate partner violence, see *Ahluwalia v Ahluwalia*, 2026 SCC 16.
[16] Allison Nakanishi, Lauren Cuthbertson & Jocelyn Chase, "Advance Requests for Medical Assistance in Dying in Dementia: a Survey Study of Dementia Care Specialists" (2021) 24:2 Cdn Geriatrics J.
[17] *Act respecting end-of-life care*, CQLR c S-32.0001. For an overview of the advance request regime, see Quebec, *Medical aid in dying*, "Advance request for medical aid in dying" (last updated 5 May 2025).

their rights and interests when the provision of MAID is contemplated. Clinical assessments and the person's existing social and professional networks are not substitutes for independent legal scrutiny before a decision that will end a person's life.

Independent Legal Advice

The impulse to sign an advance request may arise at moments of deep vulnerability, often after a new diagnosis or when facing long-term care. Fear, grief, and uncertainty can shape how a person views their future and the options available to them. These concerns arise in a broader social context in which ageism and stigma can devalue older people, especially those with dementia.[18] An Alzheimer's Society (UK) report captures this concern: "Too often people feel like dementia is a label that leads society to believe a person has less purpose and value."[19] One person with dementia described the impact of diagnosis: "I got diagnosed and I went into absolute depression and guilt, lost all my confidence and all my self-worth. The guilt I felt because I'd put my family in this position. The guilt I felt, because I wasn't able to work anymore. The guilt because I was going to die before my children were older."[20]

Requiring independent legal advice before an advance request is signed could help ensure that the person understands the request and makes it freely. New Brunswick's *Supported Decision-Making and Representation Act* provides a legislative example of mandatory lawyer involvement at the time of signing a document.[21] It requires a decision-making assistance authorization form to contain a statement by a lawyer confirming, among other things, that the lawyer reviewed the authorization with the person, was present when it was signed, and is of the opinion that the person has the capacity to make the authorization.

However, an advance request for MAID may remain untouched for years, perhaps decades. Advice provided at the time of signing would not cure the risks of abuse that emerge or reveal themselves over time, or account for the possibility that a person's wishes or experience of suffering may change. As one physician interviewed in a Dutch study observed, "An advance directive may be a point of reference as to what someone defined as unbearable in the past. The tricky thing is that this can change, also with dementia. What someone has previously indicated as unbearable may turn out to be bearable later."[22]

Legal representation at the time MAID is contemplated presents a different difficulty: by then, the person may lack capacity to instruct counsel. A statutory mechanism could

[18] For a discussion on ageism, described as "an insidious scourge on society," see World Health Organization, *Global Report on Ageism* (2021). On the social stigma of people with dementia, described as a worldwide problem, see Magdalena Rewerska-Juśko & Konrad Rejdak, "Social Stigma of People with Dementia" (2020) 78:4 J Alzheimers Dis 1339.
[19] Alzheimer's Society, *Turning Up the Volume: unheard voices of people with dementia* (May 2017) at 14.
[20] *Ibid*.
[21] SNB 2022, c 60, s 6(5)(e).
[22] Djura O. Coers et. al., "Navigating Dilemmas on Advance Euthanasia Directives of Patients with Advanced Dementia" (2024) 25:12 JAMDA 105300 at 5.

address this barrier. For example, under Ontario's *Substitute Decisions Act, 1992*, section 3 counsel illustrates how legislation can deem a person capable of giving instructions, in that case for the purpose of relevant proceedings.[23] However, deeming capacity does not resolve the problem if the person cannot meaningfully communicate instructions to counsel.

Independent Legal Assessment

Given these capacity considerations, independent legal assessment when the provision of MAID pursuant to an advance request is contemplated would address the access to justice barrier that arises when a person is no longer able to instruct counsel. There are several possible approaches, ranging from examination by a lawyer to mandatory judicial approval.

In light of the constitutional division of powers, Dementia Justice Canada proposes that the *Criminal Code* establish a minimum requirement for the appointment of a lawyer to conduct an independent legal assessment, allowing provinces and territories to determine specifics, including the lawyer's duties and powers, funding, access to information, the effect of the lawyer's findings, and the circumstances that may trigger a referral to a court or tribunal. Consideration should also be given to the role of public guardians and trustees.

Legal assessment would not eliminate every risk, and to further reduce the margin of error, provinces and territories could determine whether additional measures, such as a multidisciplinary review panel involving expertise in law, medicine, social work, and ethics,[24] or judicial approval[25] in some or all cases, would also be required in their jurisdiction.

Under the proposal presented here, the lawyer's assessment would serve a distinct access to justice function. Rather than repeat the clinical assessment, the lawyer would bring an independent legal perspective to the circumstances. The value of this assessment would lie not only in identifying concerns that may warrant further scrutiny, but also in recognizing the separate importance of having an independent legal voice at the end of life.

A tension is whether the lawyer's role should be an independent assessment in the public interest, similar to *amicus* counsel, or representation of the person with a duty of loyalty to them. This distinction becomes particularly significant where the person can no longer provide instructions, and the lawyer considers whether the proposed provision of MAID accords with the person's previously expressed wishes and how those wishes should be

[23] SO 1992, s 3. See also *Health Care Consent Act, 1996*, SO 1996, c 2, Sch A, s 81 (counsel for an incapable person before Ontario's Consent and Capacity Board).

[24] A multidisciplinary Assisted Dying Review Panel was proposed in the United Kingdom's 2026 *Terminally Ill Adults (End of Life) Bill* (defeated at second reading in the House of Commons on 11 September 2026; on assisted dying in terminally ill adults rather than advance requests). Some advocates did not believe the panel safeguard went far enough and called for judicial approval in every case.

[25] For discussion of judicial oversight as a possible approach in the general context of MAID, see e.g., Dr. Harvey Max Chochinov, *Recommended Amendments to Bill C-14*, brief submitted to the House of Commons Standing Committee on Justice and Human Rights (2016) at 2.

weighed against any present expressions of wishes or apparent contentment.[26] The *Criminal Code* could establish the requirement for an independent legal assessment, while leaving provinces and territories to clarify the lawyer's mandate and duties in these circumstances.

This challenge is not unique to the proposed amendment. In a 2013 Ontario case, for example, the court recognized the importance of providing a person who could not instruct counsel with an independent legal voice, allowing counsel to make submissions without a clear determination in the decision of whether counsel should act as a representative under s 81 of Ontario's *Health Care Consent Act, 1996* or as *amicus curiae*.[27]

Where assessments are conducted by lawyers in private practice, law societies across Canada could establish policies addressing conscientious and religious objection.[28] Where a jurisdiction establishes a statutory role or roster of approved legal assessors, the framework could address these issues through hiring and appointment procedures.

The Netherlands offers a contrasting approach. It permits euthanasia on the basis of a written advance directive in certain circumstances, and relies on medical safeguards and mandatory review after death.[29] If a review committee finds that a physician has failed to meet one or more due care criteria, it must report its findings to the appropriate authorities, which consider whether disciplinary action or criminal prosecution is warranted. Although retrospective review can hold physicians and others accountable for failures to comply with the law, it cannot undo a wrongful death. Given the broader public interest in protecting people whose decision-making capacity has diminished near end-of-life, and the limitations of post-death review in addressing abuse, the *Criminal Code* should require independent legal assessment before MAID is administered pursuant to an advance request.

Mandatory legal assessment would add a procedural step; however, this requirement should be weighed against society's responsibility to protect vulnerable people from irreversible harm and Canada's international human rights commitments, including its obligations under Articles 13 and 16 of the United Nations *Convention on the Rights of Persons with Disabilities*, which require measures to ensure effective access to justice for persons with disabilities and to protect them from exploitation, violence, and abuse.[30]

---

[26] For a discussion of this ethical tension among Dutch physicians, see Djura O. Coers et. al, "Euthanasia in advanced dementia: an empirical study of the decision-making process based on advance directives" (2026) 55:6 Age Ageing doi: 10.1093/ageing/afag170.

[27] *Friedberg et al. v Korn*, 2013 ONSC 960 at para 47.

[28] For a policy example in the medical profession, see College of Physicians and Surgeons of Ontario, *Human Rights in the Provision of Health Services*, cl 12 (approved September 2008; updated September 2023). See also *Carter v Canada (Attorney General)*, 2015 SCC 5 at para 132: "[N]othing in the declaration of invalidity which we propose to issue would compel physicians to provide assistance in dying."

[29] Government of the Netherlands, *Is euthanasia legal in the Netherlands*, "Advance directive" (n.d.).

[30] UN GAOR, 61st Sess, 76th Mtg, UN Doc GA/10554 (2006), arts 13 & 16.

Contact:

Heather Campbell Pope, LLB, LLM
Chair & Lawyer
Dementia Justice Canada
heather@dementiajustice.ca
www.dementiajustice.ca