Background

Carter vs Canada - Supreme Court Ruling
In February 2015, the Supreme Court handed a historic decision to lift Canada’s ban on physician assisted suicide. The ruling stated that denying competent adults with a “grievous and irremediable medical condition” the right to terminate their lives violated both the Charter of Rights and the “principles of fundamental justice.”

Furthermore, addressing the arguments of a potential “slippery slope” or practices that could potentially lead to the abuse of the vulnerable, Justice Smith found that there was “no evidence from permissive regimes that people with disabilities are at heightened risk of accessing physician-assisted dying...no evidence of inordinate impact on socially vulnerable populations in permissive jurisdictions.” and that there is “no compelling evidence that a permissive regime in Canada would result in a ‘practical slippery slope.’”

With this decision, the Supreme Court has sent a clear and strong message to legislatures that assisted suicide must be permitted for a carefully defined subset of Canadians. The Supreme Court has given Parliament one year to draft new legislation. The Court suspended that decision for 12 months meaning that the current law remains in force.

Panel to consult with stakeholders and all Canadians

“On July, 17, 2015 Minister of Justice and Attorney General of Canada Peter MacKay and Minister of Health Rona Ambrose announced the establishment of an external panel that will consult with Canadians on options to respond to the Supreme Court of Canada’s decision in Carter v. Canada.

“The panel will conduct consultations with medical authorities and with interveners in the Carter case to assist the federal government in formulating a legislative response to the Supreme Court’s decision. The panel will also consult Canadians, including interested stakeholders, through a public online consultation. The panel will then provide a final report to the Ministers of Justice and Health that outlines its findings and options for a legislative response for consideration by the federal government.” Read full news release here.

Discussion on the Future Legislation for Physician Assisted Suicide

The MS Society respects the autonomy and ability of persons with MS and their families to make their own choices regarding their own lives. We have drafted this discussion document to provide information for members and volunteers to join in the consultations that were announced. Here is the link to the consultation website - http://ep-ce.ca/en/home/.

Please note that this discussion paper is not meant to be comprehensive; rather it is to promote discussion topics and consideration of this topic which may provide insights and resources for further exploration. Here is a list of topics with questions and considerations we will be looking at as the discussion – and eventual legislation – are developed.

Safeguards
Overall, what steps in future legislation will provide for safeguards? For instance what is the process and criteria for the involvement of health professionals? How will the ‘request’ for the right to die and its legitimacy and/or appropriateness be evaluated or adjudicated? What safeguards will be in place to ensure that an individual does not succumb to undue pressure from others to make an irrevocable decision? What
does it mean that the patient needs to be ‘professionally informed’ of their medical situation?  The term “cooling off” period has been used. Will this apply to this legislation?  What processes will be in place to ensure an individual bases his/her decision on sound medical assessments of the medical condition and prospects for recovery?  How shall we ensure that the needs of the dying are not by default secondary to the well-being of the living?

**Eligibility Requirements**
What are the criteria and eligibility for physician assisted dying?  If the individual needs to be competent at the time of dying – how will competency be determined? What does ‘intolerable suffering’ mean and how will that be determined?  Will competency be determined by health care professionals, the individual, or a combination of the two? What role would family play in providing evidence of competency? What is the relevance of depression in eligibility?

**Definitions/Roles**
Within the legislative framework it will be important for definitions and roles to be outlined and explained. There are questions around language as some individuals refer to this as Dr. assisted suicide and physician assisted suicide, while others refer to it as physician assisted death. For some individuals, the term suicide has a negative connotation and is fraught with moral implications. As well, the explicit roles of the physicians and the patients as well as families/guardians need to be defined and outlined. For example, can physicians refuse to participate in assisted dying and how would that be combined with ensuring access to physician assisted suicide?  How will the legislation be reconciled with the rights of patients and those of doctors who have taken a Hippocratic Oath to preserve life?  What process should exist once an individual requests aid?  What is the role of their family?

**Oversight and Reporting**
What oversight and data reporting mechanisms should exist?  What will be made public?  What will the timeframes be for reporting?

**Palliative Care**
How will palliative care be impacted by physician assisted suicide?  What assurances will there be that the availability and quality of palliative care in the individual’s area has been reviewed and/or offered to the individual?  Will access to palliative care become a universally available health care service to provide needed support and choice at the end of life?  Defining what palliative care is, and how it differs from physician assisted death will be important such that the public understands the difference. It is critically important that the federal government show national leadership on the issues of palliative and long-term care to reduce the number of people who in future choose physician assisted suicide out of desperation because they do not have access to support systems and palliative care to ease their end of life. All Canadians—regardless of age, disease, stage of disease, and geographical location—should have access to palliative care that meets national standards. Palliative care should be available in all health care settings. In addition, a variety of settings must be available for end-of-life care.

**Living with Dignity**
To what extent do conditions of poverty, exclusion and lack of support actually restrict autonomy, and ‘erode’ the human will to live among dependent Canadians? Will our national commitment to suicide prevention extend to persons with disabilities and degenerative conditions? There is a need to ensure that people who are suffering with intolerable pain be supported to live with dignity and be offered support to manage their situation.  *(See MS Society position statement on Living with Dignity).*  Our governments need to stand firm in maintaining and expanding home care services and supports for community/independent living.
About MS and the MS Society of Canada

Canada has the highest rate of multiple sclerosis in the world. MS is a chronic, often disabling disease of the central nervous system comprising the brain, spinal cord and optic nerve. Affecting women three times as frequently as men, it is one of the most common neurological diseases affecting young adults in Canada. Most people with MS are diagnosed between the ages of 15 and 40, and the unpredictable effects of MS last for the rest of their lives. The MS Society provides services to people with MS and their families and funds research to find the cause and cure for this disease. Until we end MS, people affected by the disease face many challenges. The MS Society of Canada works to ensure the 100,000 Canadians with MS, and their families, have the opportunity to participate fully in all aspects of life. Across the country, the MS Society endeavours to change government policies, private industry practices and public attitudes in ways that will benefit people affected by MS.

Reference/Resources

Carter vs Canada – Supreme Court Ruling

Consultation Website
http://ep-ce.ca/en/home/

Council on Canadians with Disabilities
http://www.ccdonline.ca/en/
http://www.ccdonline.ca/en/humanrights/endoflife/euthanasia/lpad

Dying with Dignity
https://www.dyingwithdignity.ca/

Government of Canada News Release
Government of Canada Establishes External Panel on options for a legislative response to Carter v. Canada

Health Law Institute, Dalhousie University
http://eol.law.dal.ca/?page_id=236

The Canadian Medical Association
https://www.cma.ca/En/Pages/end-of-life.aspx

The College of Family Physicians in Canada