

Medical Assistance in Dying: *A.Y. v. N.B.*, 2024 BCSC 2004

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Road Map

- ▶ Introductory comments about the case.
- ▶ A brief comment on injunctions
- ▶ A brief comment on the law before the court
- ▶ The facts
- ▶ The decision

Introductory Comments

- ▶ The case was not about whether MAiD legislation and policies are constitutional. The case did not seek to challenge the law.
- ▶ This presentation will only cover information that is publicly available. The underlying litigation was discontinued in January 2025. You will not hear what eventually happened after the injunction expired.
- ▶ The injunction was granted on an interim, without notice basis. You will not hear the opposing party's position.

The Test for an Injunction

- ▶ There is a serious issue to be tried.
- ▶ There will be irreparable harm if the injunction is not granted.
- ▶ The balance of convenience favours granting the injunction.

Without Notice

- ▶ The applicant must make a full and fair disclosure of all the material facts.
- ▶ The material facts are those which it is material for the judge to know in dealing with the application as made; materiality is to be decided by the court and not by the assessment of the applicant or his legal advisers.
- ▶ The applicant must make proper inquiries before making the application. The duty of disclosure therefore applies not only to material facts known to the applicant but also to any additional facts which he would have known if he had made such inquiries.
- ▶ The extent of the inquiries which will be held to be proper, and therefore necessary, must depend on all the circumstances of the case including (a) the nature of the case which the applicant is making when he makes the application, (b) the order for which application is made and the probable effect of the order on the defendant..., and (c) the degree of legitimate urgency and the time available for the making of inquiries....

The *Criminal Code*

- ▶ A framework for medical practitioners to be exempted from criminal liability for the offence of aiding suicide.
- ▶ S. 241(1)(b) provides that aiding suicide is a crime that is punishable with a sentence of imprisonment of up to 14 years.
- ▶ S. 241(2) provides an exemption for medical practitioners who provide medical assistance in dying in accordance with s. 241.2.

Eligibility

- ▶ S. 241.2(1) sets out five criteria that must be met before a person may be eligible for MAiD:
 - ▶ they are eligible for health services funded by a government in Canada;
 - ▶ they are at least 18 years of age and capable of making decisions with respect to their health;
 - ▶ they have a grievous and irremediable medical condition;

Eligibility (contd)

- ▶ they have made a voluntary request for medical assistance in dying that, in particular, was not made as a result of external pressure; and
- ▶ they give informed consent to receive medical assistance in dying after having been informed of the means that are available to relieve their suffering, including palliative care.

Grievous and Irremediable Condition

- ▶ Under s. 241.2(2), three criteria:
 - ▶ they have a serious and incurable illness, disease or disability;
 - ▶ they are in an advanced state of irreversible decline in capability; and
 - ▶ that illness, disease or disability or that state of decline causes them enduring physical or psychological suffering that is intolerable to them and that cannot be relieved under conditions that they consider acceptable.

Two Tracks

- ▶ Track 1 is where natural death is reasonably foreseeable (*i.e.* relatively imminent).
- ▶ Track 2 is where natural death is not reasonably foreseeable (*i.e.* not soon).

Track Two

- ▶ S. 241.2(3.1): The medical practitioner or nurse practitioner must:
 - ▶ be of the opinion that the person seeking MAiD meets all of the criteria;
 - ▶ ensure that the person is informed that they may withdraw their request at anytime;
 - ▶ ensure that another medical practitioner has provided a written opinion confirming that all the criteria have been met;
 - ▶ be satisfied that they and the other medical practitioner are independent;
 - ▶ and ensure that the person has been informed of the means available to relieve their suffering.

Independence

- ▶ Ss. 241.2(6)(c) explains that a medical practitioner or nurse practitioner is independent if they:
 - ▶ are not a mentor to the other practitioner or responsible for supervising their work;
 - ▶ will receive no financial or other material benefit resulting from that person's death, other than standard compensation for their services relating to the request; and
 - ▶ do not know or believe that they are connected to the other practitioner or to the person making the request in any other way that would affect their objectivity.

Mental Health Conditions

- ▶ Temporary exclusion for individuals whose sole condition was mental illness or disability
- ▶ Scheduled to expire on March 17, 2023.
- ▶ Extended by Parliament for one year to March 17, 2024,
- ▶ Extended again to March 17, 2027.

Oversight - BC

- ▶ Medical Assistance in Dying Oversight Unit within the Ministry of Health.
- ▶ Doctors and nurse practitioners who provide medical assistance in dying in B.C. must submit all required documentation, using standardized provincial forms, to the Oversight Unit within 72 hours (of death).
- ▶ All cases are reviewed by the Oversight Unit for compliance with the eligibility criteria, federal safeguards, federal regulations, provincial safeguards and professional regulatory college practice standards for medical assistance in dying.

***Sorenson v. Swinemar*, 2020 NSCA 62**

- ▶ An 83 year old man, with dementia and stage III COPD, with no more than 49% lung capacity, was approved for MAiD.
- ▶ His wife sought to prevent MAiD.
- ▶ Court declined to grant injunction; wife appealed.
- ▶ **NSCA:**
 - ▶ Medical assessments relating to eligibility for MAiD, by themselves, are not justiciable.
 - ▶ Since there was no justiciable issue, the applicant had no standing.

***W.V. v. M.V.*, 2024 ABKB 174**

- ▶ M.V. was a young woman who was approved for MAiD. Her medical condition was not disclosed.
- ▶ Her father applied for judicial review of the decision-making process for MAiD in Alberta and in particular the process of MAiD approval for M.V.
- ▶ He applied for an injunction. An interim injunction was granted.
- ▶ M.V. applied successfully to set aside the injunction.
- ▶ **NSCA:**
 - ▶ The application of administrative policies surrounding MAiD are justiciable.
 - ▶ The father was granted public interest standing to bring the application for judicial review of the application of the administrative policies.
 - ▶ Injunction was declined: M.V.'s right to choose MAiD prevailed.

***A.Y. v. N.B.*, 2024 BCSC 2004**

- ▶ N.B. was a woman living in Alberta in her 50s with a diagnosis of bipolar 2 disorder.
- ▶ Her partner was active in N.B.'s healthcare and had access to her physicians and treatment. He attended appointments with N.B.
- ▶ During a period of hospitalization, N.B. was prescribed a high dosage of quetiapine.
- ▶ N.B. felt sedated and like her limbs were planted. She decided to wean off the quetiapine.
- ▶ N.B. began suffering distressing symptoms: having "the horrors" or an inner sense of terror all day long, the inability to sleep at night, nightmares, the inability to lie down during the day due to a feeling of falling, the inability to sit or remain still, and suicidal thoughts
- ▶ N.B. self-diagnosed as having akathisia (the diagnosis may have been confirmed by a neurologist).

***A.Y. v. N.B.*, 2024 BCSC 2004**

- ▶ Akathisia: The evidence before the court:
 - ▶ A cluster of symptoms connected to changes in dosages of anti-psychotic medications
 - ▶ The effects are characterized by restlessness, terror, agitation, inability to sit still and burning skin sensation.
 - ▶ Sufferers can become suicidal.
 - ▶ The condition is treatable and could possibly be remedied within a short period of time.
 - ▶ The condition was described on N.B.'s MAiD application form as neurocognitive.
 - ▶ N.B.'s psychiatrist questioned that descriptor.

***A.Y. v. N.B.*, 2024 BCSC 2004**

- ▶ N.B. frequently asked the applicant to kill her.
- ▶ As she weaned off the Quetiapine, N.B.'s mental health deteriorated, and her suicidal ideation increased.
- ▶ N.B. received treatment for akathisia but did not follow the treatment plan.
- ▶ N.B. sought to receive MAiD. Her physicians would not approve.
- ▶ Her psychiatrist opined that MAiD was premature and N.B. had not exhausted her treatment options.

***A.Y. v. N.B.*, 2024 BCSC 2004: MAiD Approval**

- ▶ N.B. started looking online for doctors to approve MAiD. She found the doctor.
- ▶ The doctor did not speak with N.B.'s physicians. The doctor asked N.B. to forward N.B.'s medical records. N.B.'s psychiatrist said his records were not selected.
- ▶ N.B. was approved for MAiD at the end of the first meeting with the doctor.
- ▶ At the second meeting, N.B. completed her application form for MAiD.
- ▶ N.B. did not have someone to witness her form. A person at the clinic where the doctor worked acted as the witness.
- ▶ N.B. did not have a doctor to provide a second assessment. The doctor arranged the second assessor.
- ▶ At a meeting, the doctor told the applicant that *"the diagnosis does not matter, and that only quality of life matters"*.

***A.Y. v. N.B.*, 2024 BCSC 2004: The Issues**

- ▶ Are decisions made in assessing an applicant for MAiD Track 2 justiciable?
- ▶ Did the applicant have standing, either public or private interest standing, to challenge the MAiD decision relating to his spouse?
- ▶ What is the evidentiary burden on MAiD Track 2 applicants to obtain an exemption and was the evidentiary burden met in this case?
- ▶ Was the MAiD decision made negligently?

A.Y. v. N.B., 2024 BCSC 2004: The Decision

- ▶ There is a serious question to be tried in B.C. about whether there should be judicial oversight when someone chooses to die pursuant to the MAiD exemption provisions in the [Criminal Code](#). This applies to both the assessment of whether the exemption conditions were met and whether the process was properly followed.
- ▶ *In particular, I would say there is a serious issue to be tried about justiciability in the apparent circumstances of this case, where N.B.'s situation may be limited to mental health issues or conditions, may well be remediable, and there are challenges to the process involved in her MAiD approval.*
- ▶ There is a serious question to be tried on the issue of standing, particularly where the *only accountability mechanisms to ensure that MAiD administrative processes are being adhered to are criminal prosecutions, wrongful death suits, and complaints to professional governing bodies. While these accountability mechanisms are important, they can take many years to be litigated to completion. Judicial review is a much more expedient process.*

A.Y. v. N.B., 2024 BCSC 2004: The Decision

- ▶ *[40] I agree there is a serious issue to be tried regarding whether the MAID criteria were satisfied in these circumstances, and whether the process was properly followed. As I have said, the evidence suggests N.B.'s situation appears to be a mental health condition or illness, without a link to any physical condition, and it may not only be remediable but remediable relatively quickly. There is also evidence of her being motivated by guilt about the effect her situation was having on A.Y.'s financial circumstances.*
- ▶ *[41] I also agree there is a serious issue to be tried regarding the process followed where there may have been some degree of locating a favourable practitioner who did not have the benefit of the full medical picture.*

A.Y. v. N.B., 2024 BCSC 2004: The Decision

- ▶ Both N.B. and A.Y. would suffer irreparable harm if the injunction were not granted.
- ▶ *[45] In my view, the irreparable harm which would occur without the injunction is the overwhelming consideration in the balance of convenience.*
- ▶ *[46] Having said that, I recognize the injunction is a severe intrusion into N.B.'s personal and medical autonomy. I can only imagine the pain she has been experiencing, and I recognize that this injunction will likely only make that worse.*
- ▶ *[47] But given my conclusions that there is an arguable case about whether or not the MAID criteria and process were properly applied in the circumstances, in my view the interests of justice require that this interim injunction be granted.*

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***A.Y. v. N.B.*, 2024 BCSC 2004: The Order and the Outcome.**

- ▶ An injunction against the doctor and the clinic restraining them from providing MAiD to N.B. for thirty days
- ▶ N.B. had leave to apply to set aside the order on five clear days' notice.
- ▶ The injunction expired on November 26, 2025.
- ▶ The applicant discontinued the litigation in January 2025.
- ▶ The clinic confirmed that its employee had acted as the witness.
- ▶ The clinic provided an undertaking to the court:
 - ▶ The clinic will not offer its facility to provide MAiD to N.B.; and
 - ▶ The clinic will not permit its employees to act as a witness in respect of requests for MAiD being considered by the doctor.

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