



**SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
TRIAL DIVISION**

NOTICE TO THE PROFESSION

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 Trial Division of the Supreme Court of Newfoundland and Labrador 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 Originating Application (*Inter Partes*) in the General Division

1. A person wishing to bring an application for an exemption from the prohibition against physician assisted death (“an exemption application”) must file an Originating Application (*inter partes* – with notice), supporting affidavits, and a draft of the order sought at the General Division registry in the desired judicial centre.

Ancillary Confidentiality Orders

2. An applicant for an exemption order may wish to seek a sealing order, publication ban, anonymity order, or an order for the exclusion of the public from the hearing (such orders are referred to collectively hereafter as “confidentiality orders”). Such orders may be applied for prior to filing the exemption application by filing an Originating Application (*ex parte* – without notice).

Directions

3. The Chief Justice of the Trial Division or another judge designated by him will hear exemption applications and ancillary applications for confidentiality orders.

4. The Chief Justice or designated judge may, in writing or at a pre-hearing conference convened for this purpose, provide the parties with directions on any one or more of the following:
 - a. the date for hearing the exemption application;
 - b. persons entitled to notice;
 - c. service of documents;
 - d. filing of responses;
 - e. issues of standing;
 - f. timelines for filing materials; or
 - g. other matters.

Service of Materials in Support of Exemption Application

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

Evidence about the Applicant

6. On the exemption application, the applicant must file an affidavit providing the following information:
 - a. the applicant's date of birth;
 - b. the applicant's place of residence and the duration of that residency;
 - c. the applicant's medical condition (illness, disease, or disability);
 - d. whether as a result of his or her medical condition, the applicant is suffering enduring intolerable pain or distress that cannot be alleviated by any treatment acceptable to the applicant;

- e. the reasons for the applicant's request for an exemption from the prohibition against physician assisted death;
- f. whether prior to commencing the application, the applicant 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 applicant seeks an exemption;
- h. whether the applicant 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 applicant is aware that if the order sought in the application is granted, the decision to use or not use the exemption is entirely the applicant's to make.

Evidence of Attending Physician

- 7. On the exemption application, the applicant must also file an affidavit from the applicant's attending physician addressing whether, in the opinion of the attending physician:
 - a. the applicant has a grievous irremediable medical condition (illness, disease, or disability) that causes suffering;
 - b. as a result of his or her medical condition, the applicant is suffering enduring intolerable pain or distress that cannot be alleviated by any treatment acceptable to the applicant;
 - c. the applicant 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 applicant has the mental capacity to make a clear, free, and informed decision about a physician assisted death;
 - e. the applicant has consented without coercion, undue influence, or ambivalence to a physician assisted death;
 - f. the applicant is aware that his or her request for an authorization for a physician assisted death may be withdrawn at any time;

g. the applicant makes the request for authorization for a physician assisted death freely and voluntarily; and

h. the applicant is aware that if the authorization is granted, the decision to use or not use the authorization is entirely the applicant's decision to make.

Evidence of Second Physician

8. On the exemption application, the applicant 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 applicant 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 applicant has a grievous irremediable medical condition (illness, disease, or disability) that causes the applicant to suffer;

b. the applicant has the mental capacity to make a clear, free, and informed decision about a physician assisted death; and

c. the applicant has consented without coercion, undue influence, or ambivalence to a physician assisted death;

d. the applicant is aware that his or her request for an authorization for a physician assisted death may be withdrawn at any time;

e. the applicant makes the request for authorization for a physician assisted death freely and voluntarily; and

f. the applicant is aware that if the authorization is granted, the decision to use or not use the authorization is entirely the applicant's to make.

Evidence of Physician Proposed to Assist the Applicant

9. On the exemption application, the applicant must also file an affidavit from the physician who is proposed to be the physician who will assist the applicant to use the exemption sought, who may be the applicant'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 applicant in dying, if that act were authorized by court order;

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c. whether the physician believes that his or her providing assistance would be clearly consistent with the applicant'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 applicant's to make.

General

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

Raymond P. Whalen
CHIEF JUSTICE
TRIAL DIVISION