

# Autonomy, Temporality and Identity: Ethical Issues of Advance Requests for MAID

David Campbell, PhD  
Ethicist KHSC  
Palliative Care Rounds  
April 20, 2018

# Objectives

- ▶ Explore the ethical arguments for and against respecting Advance Directive requests for MAID
  - ▶ Identify the philosophical complexities of personal identity and how it changes through time
  - ▶ Appreciate the ethical, philosophical, and practical challenges of respecting Advance Directive requests for MAID
- 

# Conflicts of Interest

- ▶ Of course not. I'm an Ethicist....trust me!

# The *Carter* Ruling

- ▶ Feb. 6, 2015 Supreme Court struck down Criminal Code prohibitions on assisted suicide and will no longer apply to a “competent adult person who clearly consents to the termination of life and has a grievous and irremediable medical condition (including an illness, disease or disability) that causes enduring suffering that is intolerable to the individual in the circumstances of his or her condition.”

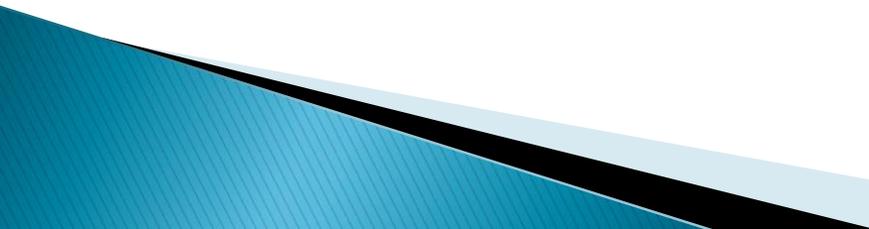
# Fundamental Questions

- ▶ *Carter* ruling open to broad interpretation
  - ▶ Advance directives? Minors? Psychiatric issues? Elderly tired of living?
  - ▶ Will facilities with religious affiliations be forced to provide MAID?
  - ▶ What if not enough practitioners are prepared to participate in MAID? How can we guarantee equity of access?
- 

# Special Joint Committee on PAD (MAID) Recommendations

- ▶ Due to access issues, NPs and nurses acting under doctors orders allowed to administer MAID
  - ▶ All publically funded health care institutions should provide MAID (no religious exceptions)
  - ▶ Advanced requests requesting MAID be respected (after irremediable condition diagnosed)
  - ▶ In future MAID should be available for competent mature minors
- 

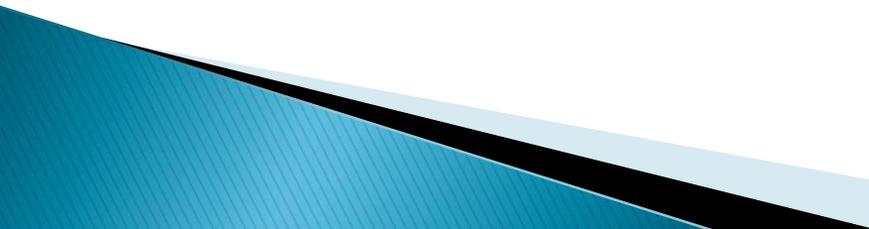
# Bill C-14: June 17 MAID Legislation

- ▶ Limits access of MAID to those “suffering intolerably” and whose death is “reasonably foreseeable”
  - ▶ Limited to competent adults entitled to receive public health care
  - ▶ Includes mandatory 10 day “reflection period” after pt makes initial request
  - ▶ Allows for NPs to administer MAID as well as MDs
  - ▶ Protects HC professionals and family members who assist in MAID
- 

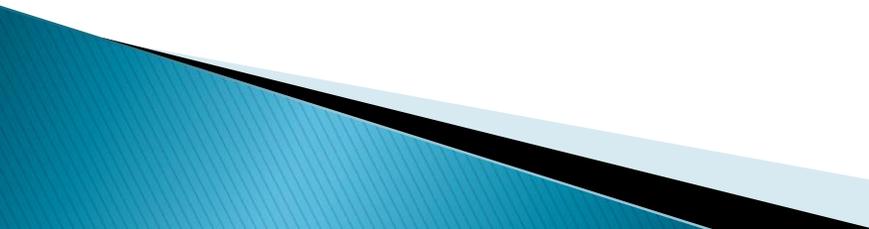
# Advance Directives for MAID...a matter of time?

- ▶ Will be reviewed by Parliament in future
  - ▶ Previous court rulings involving respecting advance requests have set legal precedent
  - ▶ Jurisdictions with liberal MAID legislation later allowed advance directive requests
  - ▶ Significant public support
  - ▶ MAID advocates will push for it in future
- 

# Ethical Arguments for Respecting Advance Directive MAID Requests

- ▶ **Autonomy:** the prior wishes of individuals should be respected, advance directives clear example of individual wishes
  - ▶ **Beneficence/non-maleficence:** incapable pts can suffer just as much as capable pts, possibly even more as they do not understand the nature of their suffering
  - ▶ **Justice:** discriminatory to deny MAID to those who lack capacity; we respect other previous wishes, why not MAID?
- 

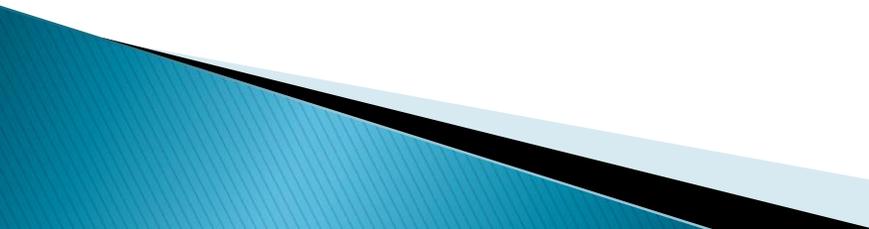
# The Logic of Expanding MAID

- ▶ Once assistance in dying becomes legal, it is interpreted as a *right*
  - ▶ Rights by their nature are expansive
  - ▶ Providing MAID becomes a duty
  - ▶ If right is based on choice and intolerable suffering, there can be no grounds of limiting this right to some but not others
  - ▶ Discriminatory not to allow MAID for those currently excluded
- 

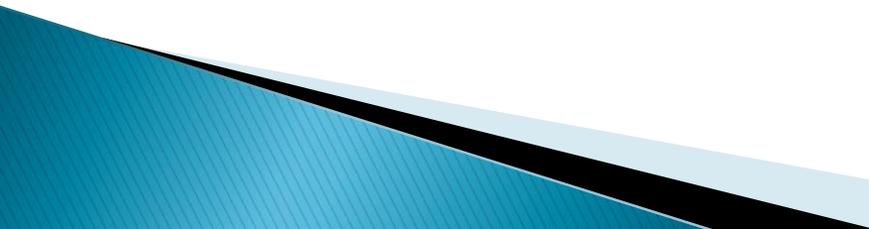
# The Main Argument for Respecting MAID in Advance Directives

- ▶ Purpose of advance directives to guide clinical decisions for incapable pts
  - ▶ As MAID is a clinical intervention, it should be respected in an Advance Directive
  - ▶ If MAID requests are not respected in advance directives, what is the point of an advance directive? Why respect other requests mentioned in an advance directive?
- 

# The Catch-22 of Deteriorating Capacity: When to say When?

- ▶ Most patients fear losing capacity and many would not want to live if they lose capacity
  - ▶ Dementia and other degenerative neurological conditions can advance at unpredictable speeds
  - ▶ Many will feel anxiety and feel pressured to either die while they still have QoL or will lose opportunity because they waited too long
- 

# Importance of Fidelity to the Past

- ▶ Individual promises (e.g. Wills, POA for Health Care and Finances, estates, trusts, etc.)
  - ▶ Institutional commitments (covenants, operational agreements, value statements, etc.)
  - ▶ Social commitments (e.g. graves, parks, public statues, historic buildings, etc.)
  - ▶ National commitments (constitutions, charters of rights, international agreements, common law, parliamentary conventions, etc.)
- 

# The Identity Dilemma

- ▶ Are you the same person as you were when you were younger?
  - ▶ Have you ever had a realization that you have changed or that things which used to be important are no longer as important?
  - ▶ Can you accurately predict what your values, priorities and quality of life will be like in the future?
- 

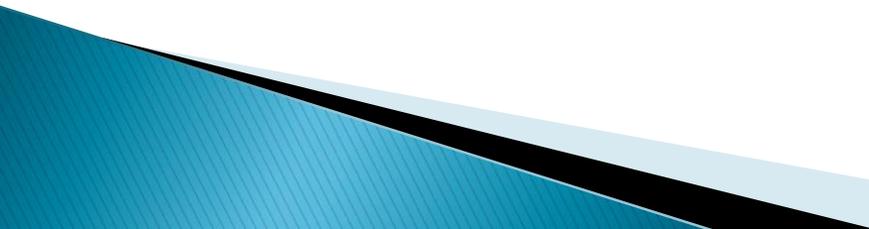
# The Ship of Theseus

- ▶ During a long journey, over the years, Theseus's ship was rebuilt, plank by plank, until all of its original materials were replaced. Is it the same ship? If so, how?
  - ▶ What if we took all the old rotten boards and made it exactly like the original? Would it be more authentic than the new ship?
  - ▶ As individuals age, which is the "real" you, the past you, the present you, or the future you?
- 

# Who is the real David Jones?



# Do Ethical Duties have Time Limits?

- ▶ Does a past version of an individual have a right to terminate the life of his/her future self?
  - ▶ Does a future version of a person have a right not to fulfill a moral promise to his/her past self?
  - ▶ Which claim has greater moral weight?
  - ▶ In life and death decisions, shouldn't present self take priority over past and future self?
- 

# The Transitory Nature of Quality of Life

- ▶ Individuals cannot predict how their QoL might change in future
  - ▶ Individuals are surprisingly adaptable; “intolerable” situations can become tolerable after time
  - ▶ Can clinicians confidently determine a demented person’s QoL? Can family members?
- 

# Challenges of Dementia

- ▶ Pt could say they want MAID when they are no longer able to recognize family, but this ability can vary day to day
  - ▶ Difficult to determine if demented pt is suffering intolerably as pt can no longer explain it
  - ▶ Are agitated pts with dementia suffering more than passive or non-responsive dementia pts?
- 

# Netherlands Example

- ▶ 2002 law allows for advance requests for euthanasia as long as 6 criterion met (voluntary/well considered request, unbearable suffering, pt informed of prospects, no reasonable alternative, 2<sup>nd</sup> opinion, performed in professional and careful manner)
- ▶ Yet allowing advance requests completely inconsistent with 6 criterion....
- ▶ Therefore *extremely* rare

# Danger of Abuse

- ▶ Individuals change their minds
  - ▶ Advance Directive could be outdated
  - ▶ Might have been written during time of stress
  - ▶ Blurs line between voluntary and involuntary euthanasia
  - ▶ Could cause trauma for family
  - ▶ How many physicians would be able to administer MAID to a confused patient who says they don't want to die?
- 

# A Tale of Two Autonomies

- ▶ Advance requests for refusals of interventions take precedence over directives for specific interventions
  - ▶ *Negative* autonomy absolute; forcing unwanted treatment is assault
  - ▶ *Positive* autonomy limited by resources, clinical indicators, onerous demands on 3<sup>rd</sup> parties etc.
- 

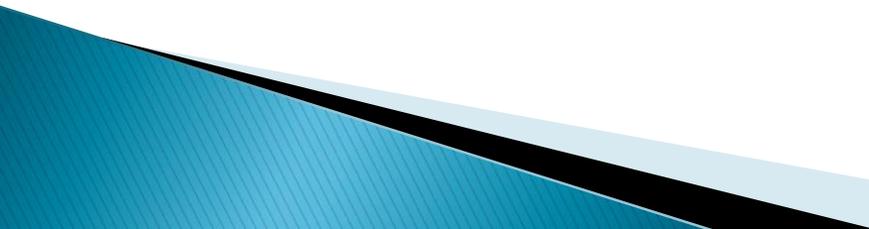
# The Myth of MAID

- ▶ Majority MAID requests *not* due to physical pain but existential angst and suffering
  - ▶ Loss of dignity and autonomy main reasons for MAID requests
  - ▶ Bad memories of family members suffering with dementia can haunt those who request MAID
  - ▶ Fear of dementia and concern of being burden on loved ones behind desire for MAID Advance Directives
- 

# A Moot Point?

- ▶ Advance Directives have *no* legal status in Ontario
  - ▶ Physicians must seek consent; SDMs would be one's who would request MAID
  - ▶ SDMs often have difficulties following pt's wishes
  - ▶ Even best Advance Directives can be open to interpretation and ethical/legal ambiguities
- 

# Conclusion: Ethically Acceptable Cases?

- ▶ *Very* recent
  - ▶ *Extremely* explicit
  - ▶ *No* red flags about SDM motivations
  - ▶ Other options should be explored (palliative sedation; NPO etc.)
  - ▶ Pt should express consistent desire (even though incapable)
  - ▶ Need a thorough review process
- 

# Thank you!

- ▶ Questions or comments?
  - ▶ If you have any ethics related questions, quandaries or comments, please feel free to contact me at [david.campbell@KingstonHSC.ca](mailto:david.campbell@KingstonHSC.ca)
  - ▶ Or 613-549-6666 ext. 8146
- 