



Canadian Physicians
for Life

Canadian Physicians for Life's summary of

Carter v. Canada (AG)

Carter v. Canada: The Supreme Court of Canada decision which decriminalized assisted suicide.

Background

Until February 2015, physician assisted-suicide was illegal under section 241(b) of the *Criminal Code*, which prohibited individuals from “aiding or abetting a person to commit suicide”.¹ The provision was established “to protect the vulnerable from ending their life in times of weakness”,² and the constitutionality of the law was upheld by the Supreme Court of Canada (SCC) 21 years ago, in *Rodriguez v British Columbia (AG)*.³ However, the SCC revisited the issue of physician assisted-suicide this past year, in *Carter v Canada (AG)*. The claim was that the provision infringed upon a person's right to life because they had to end their lives earlier than they wished in order to avoid any suffering.⁴ It was also argued that the right to liberty and security of the person were infringed because individuals were prevented from making decisions about their medical treatment and were forced to endure physical and psychological suffering.⁵

The Decision

On February 6, 2015, the SCC released its decision,⁶ ruling that sections 241(b) and 14 of the *Criminal Code* infringe an individual's right to life, liberty and security of the person, to the extent that the provisions prohibit physician assisted-suicide.⁷ Sections 241(b) and 14 are void in cases where a competent, consenting adult, who “has a grievous and irremediable medical condition...that causes enduring

suffering that is intolerable to the individual in the circumstances of his or her condition” seeks physician assisted-suicide.⁸ The Court decided that it is possible for physicians to assess whether or not patients are competent and freely consenting, thereby protecting the vulnerable without infringing the claimants' rights.⁹ The invalidity of the laws will not take effect for one year, so that the government may devise a plan to respond to the decision.¹⁰

The Decision in Relation to Physicians' Rights

The claimants argued that there is a right to choose the timing of one's death.¹¹ This makes the Court's statement that its decision does not compel physicians to participate in assisted-suicide particularly important.¹² However, the Court left the decisions of how to proceed to the physicians' colleges and the government.¹³ Consequently, the extent of protection for physicians from participation in physician assisted-suicide was not settled and no statements were made pertaining to the issue of compelling physicians to refer.¹⁴

Some stakeholders have advocated for requiring physicians to refer the service.¹⁵ Two of these stakeholders are the College of Physicians and Surgeons of Saskatchewan and the College of Physicians and Surgeons of Ontario (CPSO). Both colleges revised their policy to force a physician to refer even in cases where the referral itself is against a physician's beliefs or conscience.¹⁶ From the CPSO's perspective, for example, the inability to refer will lead to an unreasonable delay in obtaining assisted-suicide, subsequently causing the



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patient physical or psychological harm.¹⁷ However, forcing a physician to refer for assisted-suicide would infringe the physician's freedom of conscience and religion. From the physician's perspective, referring is a form of participation because, by acting as a step in the process, the physician is directly helping the patient obtain the service.¹⁸

A regulatory regime that can facilitate the patient to access the service, without imposing a policy to refer on physicians, could lead the courts to find in favour of the physician's constitutional right.¹⁹ One avenue to consider is the Canadian Medical Association's advocated proposal. The proposal is to have physicians inform patients about assisted-suicide and then, should the patient choose to pursue assisted-suicide, direct them to an independent third party.²⁰ The third party will decide whether or not the legal requirements are met, and will counsel and refer the patient.²¹

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¹ *Carter v Canada (AG)*, 2015 SCC 5 at para 5, [2015] 1 SCR 331.

² *Carter v Canada (AG)*, 2015 SCC 5 at para 84, [2015] 1 SCR 331.

³ *Carter v Canada (AG)*, 2015 SCC 5 at para 5, [2015] 1 SCR 331.

⁴ *Carter v Canada (AG)*, 2015 SCC 5 at para 57, [2015] 1 SCR 331.

⁵ *Carter v Canada (AG)*, 2015 SCC 5 at para 66, [2015] 1 SCR 331.

⁶ *Carter v Canada (AG)*, 2015 SCC 5, [2015] 1 SCR 331.

⁷ *Carter v Canada (AG)*, 2015 SCC 5 at para 126, [2015] 1 SCR 331.

⁸ *Carter v Canada (AG)*, 2015 SCC 5 at para 127, [2015] 1 SCR 331.

⁹ *Carter v Canada (AG)*, 2015 SCC 5 at para 116, [2015] 1 SCR 331.

¹⁰ *Carter v Canada (AG)*, 2015 SCC 5 at para 147, [2015] 1 SCR 331.

¹¹ *Carter v Canada (AG)*, 2015 SCC 5, [2015] 1 SCR 331 (Factum of the Intervener at para 40).

¹² *Carter v Canada (AG)*, 2015 SCC 5 at para 132, [2015] 1 SCR 331. See Geoffrey Trotter, *The Court Has Allowed Physician-assisted Death – What Next? Reflections on the Supreme Court of Canada judgment in Carter v. Canada* (24 February 2015), online: The Evangelical Fellowship of Canada <www.evangelicalfellowship.ca/cartertrotter>.

¹³ *Carter v Canada (AG)*, 2015 SCC 5 at para 132, [2015] 1 SCR 331.

¹⁴ Geoffrey Trotter, *The Court Has Allowed Physician-assisted Death – What Next? Reflections on the Supreme Court of Canada judgment in Carter v. Canada* (24 February 2015), online: The Evangelical Fellowship of Canada <www.evangelicalfellowship.ca/cartertrotter>.

¹⁵ Sean Murphy, *Supreme Court of Canada orders legalization of physician assisted suicide – AND euthanasia* (6 February 2015), online: The Protection of Conscience Project <consciencelaws.org/law/commentary/legal073-010.aspx#>.

¹⁶ Elyse Sunshine & Lonny Rosen, "Access to care versus a doctor's moral beliefs" (2015) 34:46 *Lawyers Weekly* (QL); "Conscientious Objection", online: College of Physicians and Surgeons of Saskatchewan <www.cps.sk.ca/Documents/Council/2015-6-19%20Conscientious%20Objection%20Policy%20AS%20APPROVED%20IN%20PRINCIPLE%20BY%20COUNCIL.pdf>.

¹⁷ Filippo Titi, *Find Another Doctor: The Right to Refuse Making a Medical Referral* (26 June 2015), online: University of Alberta <ualawccsprod.srv.ualberta.ca/ccs/index.php/constitutional-issues/the-charter/fundamental-freedoms-section-2/858-find-another-doctor-the-right-to-refuse-making-a-medical-referral>.

¹⁸ "National Post View: Doctors should be able to exercise freedom of conscience", *National Post* (18 March 2015), online: <news.nationalpost.com/full-comment/national-post-view-doctors-should-be-able-to-exercise-freedom-of-conscience>.

¹⁹ Gerald D. Chipeur, *Physician-assisted Suicide: Drafting Memo for Parliament*, online: Miller Thomson <www.millerthomson.com/assets/files/article_attachment>



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s3/Physician-assisted-Suicide-Drafting-Memo-for-Parliament.pdf>.

²⁰ Steve Weatherbe, "Canadian Medical Association recommends policy allowing doctors to avoid assisted suicide referrals" (27 August 2015), online: LifeSiteNews <www.lifesitenews.com/news/canadian-medical-association-adopts-policy-allowing-doctors-to-avoid-assist>.

²¹ Steve Weatherbe, "Canadian Medical Association recommends policy allowing doctors to avoid assisted suicide referrals" (27 August 2015), online: LifeSiteNews <www.lifesitenews.com/news/canadian-medical-association-adopts-policy-allowing-doctors-to-avoid-assist>.