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Lori **Duffv** 416-947-5009 » full bio

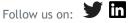


Pamela Liang 416-619-6284 » full bio

WeirFoulds LLP

66 Wellington Street West Suite 4100, PO Box 35 Toronto-Dominion Centre Toronto, Ontario, Canada M5K 1B7 Office 416.365.1110

Facsimile 416.365.1876 www.weirfoulds.com



The Supreme Court of Canada Overturns Prohibition on Physician-Assisted Suicide

Today the law criminalizing physician-assisted suicide was overturned in the landmark unanimous decision of Carter v. Canada (Attorney General) ["Carter"]1. The Supreme Court of Canada ["SCC"] sent a strong message in support of the protection of Canadians' right to life, liberty and security of the person (s. 7) pursuant to the Charter of Rights and Freedom ("Charter")².

In Canada, the Criminal Code ("Code")3 states that the aiding and abetting of suicide is a criminal offence under s. 241(b), which carries a maximum penalty of fourteen years in jail, and that no person may consent to death being inflicted upon them under s. 14 of the Code. The object of this prohibition on assisted dying is "to protect vulnerable persons from being induced to commit suicide at a moment of weakness."4 However, it was agreed that this prohibition, as presently worded, catches people outside of this class of protected persons and thus "imposes unnecessary suffering on affected individuals."5

The Carter case began in 2012 when the constitutional validity of the Code's prohibition of physician-assisted suicide was brought before the British Columbia Supreme Court.⁶ The trial judge found that the Code violated the protected rights of the terminally ill and that the infringement was not justified under s. 1 of the Charter. The decision was later overturned by the B.C. Court of Appeal. The plaintiffs were granted leave to appeal and the case was brought before the SCC in October of 2014.

^{1 2015} SCC 5.

² The Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11, Part I Canadian Charter of Rights and Freedoms.

³ RSC, 1985, c C-46.

⁴ Carter, supra, note 1 at para 86.

⁵ Ibid at para 90.

⁶ Carter v Canada (Attorney General), 2012 BCSC 886, [2012] BCJ No 1196 (QL).

In an extensive judgment, the SCC upheld the trial judge's decision. The SCC concluded that "the prohibition on physician-assisted dying is void insofar as it deprives a competent adult of such assistance where (1) the person affected clearly consents to the termination of life; and (2) the person 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."⁷

Consequently, the law infringes upon the *Charter* rights of this unintended group in a manner that is not in accordance with the principles of fundamental justice.⁸

The SCC suspended its declaration of invalidity of the law for 12 months, giving Parliament an opportunity to draft new laws in response. One source of guidance for the federal government will be the stance on assisted suicide taken by Quebec. In 2014, Quebec became the first province to adopt Bill 52, known as "An Act respecting end-of-life care," which would legally permit physicians to provide and administer medical aid in dying to terminally ill patients.9

We will be providing a further analysis on the impact of this important decision shortly.

ESTATES, TRUSTS AND CHARITIES

Since the creation of the firm, our lawyers have been advising clients on all aspects of will preparation, family and business trusts, estate planning, business succession planning, capacity and guardianship issues, estate litigation, and estate arbitration and mediation. Our Estates, Trusts and Charities Practice is led by senior partners with a wide range of experience. Our practice members are active in the litigation, mediation and corporate and commercial areas of practice. Several of our members have been recognized as leading practitioners in their area of expertise in various legal directories. Our clients include trust companies, charities, not-for-profit corporations, independent business owners, executors, estate trustees and individuals.

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⁷ Carter, supra note 1 at para 4 8 Ibid at para 126.

⁹ CQLR, c S-32.0001.