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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.

⁷ *Carter*, *supra* note 1 at para 4

⁸ *Ibid* at para 126.

⁹ CQLR, c S-32.0001.

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