

Carter v Canada (Attorney General) (2012): B.C. Court Rules that Ban on Assisted Suicide is Unconstitutional

INTRODUCTION

On June 15, 2012, the Supreme Court of British Columbia rendered its long-awaited decision in [Carter v Canada \(Attorney General\)](#),^[1] a case that considers whether a full prohibition on assisted suicide is contrary to the *Canadian Charter of Rights and Freedoms*.

Under [section 241\(b\) of the Criminal Code](#), assisting someone to commit suicide is prohibited - a criminal offence. Justice Lynn Smith ruled that this “absolute” prohibition is contrary to two rights guaranteed by the *Charter*: (1) the equality guarantee in section 15; and (2) the right to “life, liberty and security of the person” in section 7. The prohibition is “absolute” because it does not allow for any exceptions, even in limited circumstances.

The 395-page decision re-opens a debate about assisted suicide that has been considered closed by the Supreme Court of Canada since 1993. In *Rodriguez v British Columbia (Attorney General)*,^[2] the Supreme Court considered the constitutionality of the same assisted suicide provision of the *Criminal Code* and a majority of the Court decided that it did not breach the *Charter*.

Justice Smith’s decision is sure to be appealed, potentially all the way up to the Supreme Court.

FACTS

The plaintiffs challenged several provisions of the *Criminal Code* relating to assisted suicide, but the challenge is centred on section 241(b), which states:

Everyone who ... (b) aids or abets a person to commit suicide, whether suicide ensues or not, is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.^[3]

Three different sets of plaintiffs challenged this prohibition of assisted suicide in *Carter*:

1. Gloria Taylor, who suffers from a fatal, neurodegenerative disease called amyotrophic lateral sclerosis (also known as “ALS”);^[4]

2. Lee Carter and her husband Hollis Johnson, who helped Ms Carter's mother to arrange an assisted death in Switzerland, knowing that providing this assistance could expose them to criminal charges in Canada;

3. Dr William Shoichet, a B.C.-based family doctor who would be willing to participate in physician-assisted dying if it were no longer illegal and he was convinced that it was appropriate medical care in the circumstances; and

The British Columbia Civil Liberties Association was also granted public interest standing in the case as it has a "long-standing interest in matters of patients' rights and health policy", and has some involvement in advocacy regarding end-of-life policy.[\[5\]](#)

The case mainly centered on the first plaintiff, Gloria Taylor. As an ALS patient, Ms. Taylor will lose her physical capacity over time, while retaining all cognitive and mental faculties.[\[6\]](#) While she is currently able to live fairly independently, Ms. Taylor wants to know that she can have a physician-assisted death when she is no longer able to move physically and her life becomes unbearable to her.[\[7\]](#) As she stated in her affidavit before the Court:

My present quality of life is impaired by the fact that I am unable to say for certain that I will have the right to ask for physician-assisted dying when that 'enough is enough' moment arrives... As Sue Rodriguez asked before me - whose life it is anyway?[\[8\]](#)

Ms. Taylor argued that, in limited circumstances, there should be exceptions to the absolute prohibition on assisted suicide for patients. Her position was that the absolute prohibition contained in the *Criminal Code* is contrary to both her right to equality, and her right to life, liberty, and security of the person. The law prevents terminally ill, competent adults, who are well-informed and voluntarily seeking out physician-assisted dying, from receiving such assistance.[\[9\]](#)

ISSUES

The issues for the Court's consideration were:

1. Is the ban on assisted suicide in section 241(b) of the Criminal Code contrary to section 15 of the *Charter*, which guarantees the [right to equality](#)?

a. If so, is the infringement a [reasonable limit that is demonstrably justified in a free and democratic society under section 1](#) of the *Charter*?

2. Is the ban on assisted suicide contrary to [section 7](#) of the *Charter*, which guarantees the [right to life, liberty, and security of the person](#) except in accordance with the principles of fundamental justice?

a. If so, is the infringement a [reasonable limit that is demonstrably justified in a free and democratic society](#) under section 1 of the *Charter*?

3. If there is an infringement of either section 15 or section 7 of the Charter that cannot be

justified, what is the appropriate remedy?

DECISION

The Court concluded that the law, which is an absolute prohibition on assisted suicide (i.e. a prohibition without exceptions), is an infringement of Ms. Taylor's right to equality and her right to life, liberty, and security of the person. The infringement is not justified under section 1 of the *Charter*. Further, the law is an infringement of Ms. Carter and Mr. Hollis' right to life, liberty, and security of the person, and this infringement is also not justified.[\[10\]](#)

As a result, the Court struck down the law and declared it invalid.[\[11\]](#) However, the Court declared that the applicable sections of the *Criminal Code* would not be struck down immediately. It gave Parliament one year – a period of time to allow it to respond and enact new laws.[\[12\]](#) In the meantime, Ms. Taylor was granted a “constitutional exemption” – a court order that allows her the option of physician-assisted death under several stipulated conditions without risk of exposing someone to criminal charges.[\[13\]](#)

ANALYSIS

Preliminary Issues for Consideration

Before embarking on a detailed analysis of the issues before it, the Court had to resolve a number of preliminary matters, including:

1. What is meant by the term “assisted suicide”?
2. What is the effect of the Supreme Court of Canada decision on assisted suicide in the *Rodriguez* case?

What is meant by the term “assisted suicide”?

In this decision, the Court defined “assisted suicide”, or “physician-assisted suicide” as “the act of intentionally killing oneself with the assistance of a medical practitioner who provides the knowledge, means, or both.”[\[14\]](#) “It is closely related to voluntary euthanasia, which is “the intentional termination of the life of a patient by a physician, at the patient’s request, for compassionate reasons.”[\[15\]](#) The term “physician-assisted dying” encompasses both physician-assisted suicide and voluntary euthanasia.

What is the effect of the Rodriguez decision?

The Supreme Court ruled that the *Criminal Code* ban on assisted suicide is constitutional in the 1993 *Rodriguez* decision. *Rodriguez* also involved a woman with ALS who wished to obtain a physician-assisted death, and so challenged the constitutionality of the law.

According to the legal rule of “*stare decisis*” (which literally translates to “let the decision stand”), cases which involve similar facts and similar legal questions must be decided in the same way. In other words, the Court of British Columbia must follow the earlier decision of

the Supreme Court of Canada in a similar case with similar facts and issues. The rule ensures predictability and consistency in the legal system.[\[16\]](#)

However, the Court in *Carter* decided to revisit the *Rodriguez* decision and the assisted suicide issue. Why? The Court concluded that it was appropriate for several reasons:

- *New evidence is available* – today, there is significant evidence available from other jurisdictions where assisted suicide is permitted - including evidence regarding the effectiveness of safeguards to protect vulnerable individuals - that was not available to the Supreme Court in 1993 when *Rodriguez* was decided.[\[17\]](#)
- *The legal principles have evolved* – new legal principles have been developed since 1993 dealing especially with the proper approach to interpreting section 7 and the right to life, liberty, and security of the person.[\[18\]](#) In addition, new principles have emerged regarding the proper approach to interpreting reasonable limits under section 1 of the *Charter*.[\[19\]](#)
- *Several questions still linger after the Rodriguez decision* – a number of the legal issues that arise in this case were not conclusively decided in *Rodriguez*.

The *Rodriguez* case divided the Supreme Court. A summary of the decision can be found [here](#).

Of the nine judges who heard the case, a majority of five upheld the law prohibiting assisted suicide, ruling that it was constitutional. They reached this conclusion because, although Ms. Rodriguez's right to security of the person was violated, the infringement was in accordance with the principles of fundamental justice (a concept that will be discussed in more detail in the sections below) because of the sanctity of human life and the need to protect vulnerable individuals.

Four judges of the Supreme Court disagreed. Justice McLachlin (who later became Chief Justice) and Justice L'Heureux-Dubé concluded that the law was an infringement of the section 7 right to life, liberty, and security of the person, and was not justified under section 1. Chief Justice Lamer concluded that it was an infringement of the section 15 equality guarantee (the only member of the Court to address section 15 in detail). Justice Cory agreed largely with Justices McLachlin, L'Heureux-Dubé, and Chief Justice Lamer, concluding that law was an infringement of both sections 7 and 15.

Issue #1: Is the Law Prohibiting Assisted Suicide Contrary to the Section 15 Charter Right to Equality?

Section 15 of the *Charter* guarantees the right to equality. It reads as follows:

Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

The Arguments of the Parties

The plaintiffs in *Carter* argued that the law prohibiting assisted suicide infringes the right to equality because it places an extra burden on individuals who are seriously physically disabled.^[20] Committing suicide, or attempting to commit suicide, is not (in itself) a crime.^[21] However, individuals who suffer from a serious physical disability are not physically capable of ending their lives. Accordingly, Ms. Taylor argued that the *Criminal Code* prohibition on assisted suicide discriminates against her, and other individuals in a similar situation, on the basis of physical disability.^[22]

The Government of Canada argued that because assisted suicide is prohibited for everyone – both able-bodied and physically disabled persons – there is no distinction or discrimination, and thus no infringement of section 15.^[23] Canada argued that there are end-of-life choices available to disabled persons that are legal, such as refusing or withdrawing treatment, or declining nutrition and hydration under palliative sedation.^[24] Palliative sedation is a currently legal and accepted end-of-life practice. It involves doctor-imposed sedation in order to maintain an individual in a deep state of unconsciousness until the time of death, with or without providing nutrition and hydration.^[25] Ms. Taylor argued that there is no ethical or logical reason to distinguish palliative sedation from assisted suicide, while the Government argued that the key distinguishing factor is that with palliative sedation, the doctor does not commit an action that is designed to end the patient's life.

Has section 15 been infringed in the Carter case?

The Supreme Court decision in *Withler v Canada (Attorney General)*^[26] provides a two-step test to determine whether section 15 has been infringed:

1. Does the law create a distinction based on an enumerated or analogous ground?
2. Does the distinction create a disadvantage by perpetuating prejudice or stereotyping?

The Court considered each of these steps in turn:

Step 1: Does the law create a distinction based on an enumerated or analogous ground?

The section 15 equality guarantee protects individuals from discrimination, that is, distinctions made on the basis of “enumerated” or listed grounds (race, national or ethnic origin, colour, religion, sex, age or mental or physical disability) or on the basis of “analogous grounds.”^[27]

The Court concluded that the assisted suicide prohibition does create such a distinction because it places a burden on people with physical disabilities that is not placed on able-

bodied individuals.[28] Physically disabled people may not be capable of taking their own lives and are faced with the dilemma of continuing to suffer or exposing another person to criminal charges for assisting them to commit suicide.[29] The Court expressed a concern that “some resolve this dilemma by taking their lives before their illnesses progress to a point where they are no longer able to do so.”[30] Although there are some methods of suicide available to physically disabled individuals, such as palliative sedation combined with refusal of nutrition, the Court concluded that these means of suicide are far more onerous than those available to able-bodied individuals.[31]

Step 2: Does the distinction create a disadvantage by perpetuating prejudice or stereotyping?

This step of the test asks whether the distinction is discriminatory. The Court concluded that the distinction is discriminatory because it “perpetuates and worsens” a disadvantage that is suffered by physically disabled persons.[32] The law does not respect the dignity and autonomy of physically disabled persons, as they do not have the same ability to make the deeply personal choice of whether to end their own lives.

Accordingly, the Court concluded that Ms. Taylor had proven an infringement of her right to equality under section 15 of the *Charter*. [33]

Is the infringement demonstrably justified in a free and democratic society?

The rights and freedoms contained in the *Charter* are not absolute – they are subject to reasonable limits that can be justified by the Government. Therefore, once a court determines that there has been an infringement of a *Charter* right, it must then consider arguments by the Government about the reasonable and justifiable nature of the law in question.

According to section 1 of the *Charter*:

The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

In order to help the Court determine whether the assisted suicide prohibition is a [reasonable limit](#) on the right or freedom in question, it uses a test known as the “section 1” test. The test contains the following steps:

Step 1 - Pressing and substantial objective: Does the legislation have a pressing and substantial objective?

Step 2 - Proportionality: Are the means used to achieve the legislative objectives proportionate in that they do not breach Charter rights more than necessary? The Court uses the following steps to answer this proportionality question:

a) Rational Connection: Is there a rational connection between the legislation that is in violation of the Charter and the objectives of the legislation itself? In other words, are the

means rationally connected to the objectives?

b) Minimal Impairment: Does the infringement minimally impair Charter rights?

c) Proportionate Effect: Do the benefits of the legislation outweigh the harms associated with violating the Charter right?

This section 1 test was used by the Supreme Court in the *Rodriguez* case. There, the Court concluded that, assuming the law prohibiting assisted suicide was a violation of section 15 equality rights, it was justified using this section 1 test.^[34] The discussion of section 1 was brief. Strong emphasis was placed on the fact that Parliament should be given significant leeway to address this “contentious and morally laden issue”, and that there was no evidence available to support the effectiveness of appropriate safeguards needed to ensure that vulnerable individuals were protected and decisions were made by the individuals themselves.^[35]

As noted above, a trial court would normally be required to follow a decision of the Supreme Court on the basis of the legal rule of *stare decisis*. However, the Court in *Carter* decided to give the section 1 issue a fresh look for several reasons:

- The Supreme Court in *Rodriguez* did not conclusively decide whether the laws prohibiting assisted suicide infringed section 15. Instead, the Supreme Court stated that even if there was a section 15 infringement, it was justified under section 1 of the *Charter*. However, the discussion overall was brief because the issue did not need to be resolved to reach the decision in *Rodriguez* – the case was decided on other grounds.
- New evidence is available regarding the effectiveness of safeguards that was not available to the Supreme Court in *Rodriguez*.
- The law regarding the section 1 test has evolved, and is no longer the same as it was when *Rodriguez* was decided (as will be discussed in more detail in the section below).

As a result, the Court proceeded through the section 1 test.

Step 1: Does the legislation have a pressing and substantial objective?

The first step in the section 1 analysis is to identify the objectives of the legislation and determine whether they are “pressing and substantial” - that is, they must be important enough to justify overriding *Charter* rights.

Here, the Court concluded that the objective of these provisions in the *Criminal Code* is to “protect vulnerable persons from being induced to commit suicide at a time of weakness” by ensuring there are criminal consequences for anyone who assists another person with suicide.^[36] This objective protects the value of all human life in our society.

In *Rodriguez*, this objective was ruled to be pressing and substantial. The judge

in *Carter* came to the same conclusion.[\[37\]](#)

Step 2: Are the means used to achieve the legislative objective proportionate?

The second step of the section 1 test involves considering whether the means used to achieve the legislative objectives are proportionate, in that they do not breach *Charter* rights more than necessary. This step contains sub-parts, which assist a court in coming to its determination.

(a) Are the means *rationally connected* to the objective?

In *Rodriguez*, the Court ruled that the law against assisted suicide was rationally connected to the purpose of section 241(b) of the *Criminal Code*.[\[38\]](#) The judge in *Carter* came to the same conclusion.[\[39\]](#)

(b) Are the means *minimally impairing*?

The impairment to rights must be minimal and the law must be carefully tailored so that rights are impaired no more than necessary.

In the *Rodriguez* case, the Supreme Court ruled that the sections in the *Criminal Code* prohibiting assisted suicide are indeed minimally impairing, because there is no other measure that could be relied upon to fully achieve the purpose of protecting vulnerable people from being coerced or forced into an assisted suicide[\[40\]](#)

However, the Court in *Carter* focused its analysis on whether there were alternatives to the absolute infringement which would achieve the legislation's objective, without seriously infringing the *Charter* rights of people in Ms. Taylor's situation. The Court concluded that there is an effective alternative – Parliament could prohibit assisted suicide, but allow for exceptions under “stringent conditions.”[\[41\]](#) These conditions would be designed to ensure that assisted suicide would only be available in a situation where the individual is:

- An adult;
- Grievously ill with no chance for recovery;
- Competent;
- Non-ambivalent (not susceptible to changing his/her mind);
- Seeking assisted suicide voluntarily;
- Fully informed as to their diagnosis and prognosis;
- Suffering symptoms that cannot be treated through means reasonably acceptable to them; and
- Not subject to coercion.[\[42\]](#)

The Court had the benefit of new evidence from other international jurisdictions that permit assisted suicide (including Oregon, Washington, the Netherlands, and Belgium) – evidence that was not available to the Supreme Court in *Rodriguez*. As a result, the Court concluded

that the risk that legalizing assisted suicide will harm vulnerable people can be greatly minimized.^[43] Because this evidence was new and not available to the Supreme Court when *Rodriguez* was decided, the Court concluded that it was appropriate to diverge from the decision in *Rodriguez* on this point.

Accordingly, Justice Smith concluded that since a less drastic means of preventing vulnerable persons from being induced to commit suicide was available to the Government, the legislation was not minimally impairing. In other words, the legislation failed on this point.

(c) Are the benefits of the legislation proportionate to the harms that result from the violation of the *Charter* right?

The last stage of the proportionality test involves weighing the benefits of the legislation against the harms imposed by the violation of a *Charter* protected right. Justice Smith emphasized that this step in the section 1 analysis had evolved since the *Rodriguez* decision. Following the Supreme Court's decision in *Alberta v Hutterian Brethren of Wilson Colony*,^[44] the key question at this step is a broad one (broader than it was when *Rodriguez* was decided): whether the "benefits of the impugned law are worth the costs of the rights limitation."^[45]

While the law has several benefits – it sends an anti-suicide message to society and upholds the sanctity of every life – it imposes an unequal burden on physically disabled individuals who are "suffering unbearably."^[46] In this way, the law denies autonomy to people such as Ms. Taylor.^[47]

Accordingly, the Court concluded that any benefits that flow from the absolute prohibition are not worth the costs of the rights they infringe.^[48] The Court took issue with the *absolute* nature of the prohibition – the fact that it did not allow for any exceptions, even in limited circumstances. As a result, the Court ruled that the prohibition infringes section 15 in a manner that is not justifiable.

Issue #2: Does the Absolute Prohibition Infringe the Right to Life, Liberty and Security of the Person Under Section 7?

Section 7 of the *Charter* states as follows:

Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Has section 7 been infringed?

Determining whether there has been a breach of section 7 involves a two-part analysis. A court considering a potential section 7 violation must ask:

1. Whether there is a deprivation of the right to life, liberty, or security of the person; and
2. If so, whether the deprivation is in accordance with the principles of fundamental justice.

Step 1: Has there been a deprivation of the right to life, liberty, or security of the person?

Life, liberty, and security of the person are distinct, yet interrelated, concepts. Generally speaking, “life” refers to freedom from fear of death; “liberty” refers to physical freedom and personal autonomy over important life decisions; and “security of the person” refers to freedom from serious state-imposed psychological stress and interference with human dignity. However, the interpretation of each of these terms will vary depending on the specific case.

In *Rodriguez*, the Court concluded that Ms. Rodriguez’s security of the person interest was affected by the assisted suicide prohibition, because it denied her ability to make a personal choice. The Court emphasized that the ability to make such a fundamental life choice is a component of “security of the person”: “there is no question, then, that personal autonomy, at least with respect to the right to make choices concerning one’s own body, control over one’s physical and psychological integrity, and basic human dignity are encompassed within security of the person.”^[49]

Accordingly, it is clear from the Court’s decision in *Rodriguez* that Ms. Taylor’s right to security of the person was deprived by the law prohibiting assisted suicide.

The Court in *Carter* also concluded that Ms. Taylor’s liberty interest was engaged through the interference with her personal autonomy and loss of control over her own bodily integrity.^[50]

In addition, the Court considered whether the right to life was engaged by the legislation. The decision in *Rodriguez* did not decide this issue.^[51] While acknowledging that the essence of the plaintiffs’ claim was centred on the liberty and security of the person interests, the Court concluded that the right to life was also at issue. This is because the effect of the law is potentially to force a disabled individual to make an earlier decision regarding suicide – a person whose physical condition is deteriorating may take their life earlier than they otherwise would because they are still physically capable of doing so and may soon lose that physical ability.^[52]

Accordingly, Justice Smith concluded that the law prohibiting assisted suicide deprived Ms. Carter of the right to life, liberty, and security of the person.

Step 2: Is that deprivation in accordance with the principles of fundamental justice?

Section 7 of the *Charter* is unique in that it contains an [internal balancing mechanism](#): individuals may be deprived of their right to life, liberty, or security of the person, so long as the deprivation is in accordance with the “principles of fundamental justice.”

But, what are the “principles of fundamental justice”? These are legal principles that are considered essential to our society’s notion of justice. For example, it is a principle of fundamental justice that our laws not be arbitrary or overly vague.^[53] Over time, the courts in Canada have recognized different concepts as principles of fundamental justice.

At the time *Rodriguez* was decided, there was one principle of fundamental justice relevant to this case: the principle that a law must not be arbitrary.^[54] In other words, a law must be logically related to the law's goals, and not based on whim or fancy. In *Rodriguez*, a majority of the Supreme Court concluded that the law prohibiting assisted suicide was not arbitrary. As a result, the majority in *Rodriguez* ruled that the deprivation of Ms Rodriguez's security of the person was in accordance with the principles of fundamental justice, and so there was no infringement of her section 7 rights.

However, since *Rodriguez*, the Supreme Court has identified two more principles of fundamental justice. The first is the notion of "overbreadth" - a law should not be more broadly framed than necessary to achieve the legislative purpose.^[55] The second is "gross disproportionality" - the idea that a legislative response to a problem (here, the problem of vulnerable people being induced to commit suicide) is so extreme as to be disproportionate to the purpose of the legislation.^[56]

In *Carter*, the Court concluded that the law which absolutely prohibits assisted suicide under any circumstances is too broad because the alternative, a prohibition with limited exceptions, would achieve the same legislative goal - protecting vulnerable people from being induced to commit suicide at a time of weakness.^[57] The Court came to this conclusion because the evidence from other jurisdictions which permit assisted suicide under limited conditions, demonstrates that "a system with properly designed and administered safeguards could, with a very high degree of certainty, prevent vulnerable persons from being induced to commit suicide while permitting exceptions for competent, fully-informed persons acting voluntarily to receive physician-assisted death."^[58]

In addition, the Court concluded that the effect of the absolute prohibition on people in Ms. Taylor's situation was grossly disproportionate to its effect on protecting vulnerable people.^[59]

As a result, the Court concluded that because the law is overbroad and grossly disproportionate, the deprivation of life, liberty and security of the person was *not* in accordance with the principles of fundamental justice, and so Ms. Taylor's section 7 rights were infringed.

Is the infringement demonstrably justified in a free and democratic society?

In previous cases, the Supreme Court has expressed some doubt about whether an infringement of section 7 can *ever* be justified using section 1 of the Charter.^[60] However, this issue did not need to be resolved in this case. The Court concluded that any infringement of section 7 was not justified, for the same reasons that the section 15 infringement was not justified (as discussed in the section above).^[61]

Issue #3: What is the Appropriate Remedy?

As the Court concluded that the law prohibiting assisted suicide was an infringement of both section 15 and section 7 of the *Charter* and that the infringement was not reasonable or

justifiable, it then had to determine how to remedy the infringement.

Under [section 52\(1\)](#) of the *Constitution Act, 1982*, the Constitution of Canada is declared to be the “supreme law of Canada”, and “any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.” This means that a court has the power to strike down a law that is contrary to the provisions of the *Charter*.

However, the Court recognized that Parliament – not the court – is responsible for determining how to rectify the *Criminal Code* in order to ensure that the provisions regarding assisted suicide are consistent with the *Charter*.[\[62\]](#) This could be done, for example, by allowing for exceptions to the prohibition in limited circumstances. However, any changes must be made by Parliament.

Accordingly, the Court declared the assisted suicide provisions of the *Criminal Code* to be invalid, but suspended the declaration for one year in order to give Parliament time to rectify and amend the offending law.[\[63\]](#) In other words, the law will remain in effect for one year to allow Parliament to respond.

However, this delay would not help Ms. Taylor, because the absolute prohibition would remain in effect for one full year and this might deny her the opportunity to seek assisted suicide if she decided she needed to do this. So, in a rare move, the Court granted Ms Taylor a “constitutional exemption” in the interim.[\[64\]](#) This means that during the upcoming year Ms Taylor can obtain physician-assisted death, under several conditions. These conditions are detailed, and include a requirement that Ms Taylor makes a written request, that her doctor attests to the fact that she has been fully informed of her diagnosis and prognosis, any available alternative treatment options, informed of the risks of physician-assisted dying, and referred to a palliative care expert for a consultation, in addition to other conditions.[\[65\]](#)

WHAT’S NEXT?

It is unlikely that the decision of the trial Court in British Columbia will be the final word on this issue. The Attorney General of Canada [announced](#) on July 13, 2012 that the Government will appeal the *Carter* ruling to the British Columbia Court of Appeal. The case could be appealed all the way up to the Supreme Court in the coming years.

It will be interesting to see whether the British Columbia Court of Appeal (and potentially the Supreme Court) agree that the situation with respect to assisted suicide in 1993 was so markedly different than the situation today that the issue merits reconsideration.

[\[1\]](#) 2012 BCSC 886 .

[\[2\]](#) [1993] 3 SCR 519 .

[\[3\]](#) *Criminal Code*, RSC 1985, c C-46, s 241(b).

[4] *Carter*, *supra* note 1 at 47.

[5] *Ibid* at paras 45, 99. The parties were also supported by a number of interveners: the plaintiffs were supported by the Farewell Foundation for the Right to Die, the Canadian Unitarian Counsel, and the Ad Hoc Coalition of People with Disabilities who are Supportive of Physician-Assisted Dying. The defendants (the government of Canada) were supported by the Euthanasia Prevention Coalition and the Christian Legal Fellowship (see *ibid* at para 35).

[6] *Ibid*.

[7] *Ibid* at paras 44, 50.

[8] *Ibid* at paras 54, 56.

[9] *Ibid* at para 25.

[10] *Carter*, *supra* note 1 at para 1.

[11] Pursuant to [section 52\(1\)](#) of the *Constitution Act, 1982*.

[12] *Carter*, *supra* note 1 at para 2.

[13] *Ibid*.

[14] *Ibid* at para 38.

[15] *Ibid*.

[16] *Ibid* at para 900.

[17] *Ibid* at para 1001.

[18] *Ibid* at para 1002.

[19] *Ibid* at para 1003.

[20] *Ibid* at para 1009.

[21] *Ibid* at para 1011.

[22] *Ibid*.

[23] *Ibid* at para 1075.

[24] *Ibid* at para 1065.

[25] *Ibid* at para 200.

[26] 2011 SCC 12, [2011] 1 SCR 396.

[27] *Carter*, *supra* note 1 at para 1027.

[28] *Ibid* at para 1075.

[29] *Ibid* at para 1042.

[30] *Ibid*.

[31] *Ibid* at para 1076.

[32] *Ibid* at para 1161.

[33] *Ibid* at para 1162.

[34] *Rodriguez*, *supra* note 2 at 613-15, cited in *Carter*, *supra* note 1 at para 1165. The majority in *Rodriguez* did not conclusively decide whether the laws prohibiting assisted suicide infringed section 15. Instead, the majority of the Court decided that even if they did infringe section 15, the infringement was justified under section 1.

[35] *Carter*, *ibid* at paras 1166-67.

[36] *Ibid* at para 1190.

[37] *Ibid* at para 1205.

[38] *Ibid* at para 1208, citing *Rodriguez*, *supra* note 2 at 613.

[39] *Ibid* at para 1209.

[40] *Ibid* at para 1212.

[41] *Ibid* at para 1233.

[42] *Ibid*.

[43] *Ibid* at paras 1238-41.

[44] 2009 SCC 37, [2009] 2 SCR 567.

[45] *Ibid* at para 77, cited in *Carter*, *supra* note 1 at para 1246.

[46] *Carter*, *ibid* at para 1264-65.

[47] *Ibid* at para 1281.

[48] *Ibid* at para 1285.

[49] *Rodriguez*, *supra* note 2 at 587-589, cited in *Carter*, *supra* note 1 at para 1293.

[50] *Carter*, *supra* note 1 at para 1303.

[51] *Ibid* at para 1319.

[52] *Ibid* at para 1322.

[53] Peter W Hogg, *Constitutional Law of Canada: 2011 Student Edition* (Toronto: Carswell, 2011) at 47.17-47.18.

[54] *Carter*, *supra* note 1 at para 1331.

[55] This principle of fundamental justice was first articulated in 1994 in [R v Heywood](#), [1994] 3 SCR 761.

[56] Gross disproportionality was first identified as a principle of fundamental justice in *R v Malmo-Levine*, 2003 SCC 74, [2003] 3 SCR 571.

[57] *Carter*, *supra* note 1 at para 1363-64.

[58] *Ibid* at para 1367.

[59] *Ibid* at para 1378.

[60] *Ibid* at para 1380. The court cited the Supreme Court decisions in *Charkaoui v Canada (Citizenship and Immigration)*, 2007 SCC 9, [2007] 1 SCR 350; and [Re: BC Motor Vehicle Act](#), [1985] 2 SCR 486.

[61] *Ibid* at para 1383.

[62] *Ibid* at para 1385.

[63] *Ibid* at para 1393.

[64] *Ibid* at para 1411.

[65] *Ibid* at para 1413.