

# Is Physician-Assisted Death Constitutional?

*This article was written by a law student for the general public.*

## Introduction

The *Criminal Code* forbids helping a person commit suicide. The recent case of *Carter v Canada (Attorney General)* is important because it considers whether the *Charter of Rights and Freedoms* allows a right to physician-assisted death. The court was required to balance the autonomy and dignity of terminally-ill adults with the need to protect the vulnerable from being induced to commit suicide in a moment of weakness.<sup>[1]</sup>

## Facts

Gloria Taylor had amyotrophic lateral sclerosis (ALS), a fatal disease that causes muscles to gradually weaken. As the disease develops, patients lose the ability to use their hands and feet, before also eventually losing the capacity to speak or breathe. Taylor brought the case because she didn't want to "live in a bedridden state, stripped of dignity and independence" and to "die wracked with pain."<sup>[2]</sup> She argued that the current law left her with the cruel choice of either killing herself while she still had the capacity or giving up control over when and how she would die.<sup>[3]</sup>

## Case History

The British Columbia Supreme Court decided that prohibiting physician-assisted death for adults who are competent, informed and seriously ill violates their section 7 *Charter* right to "life, liberty, and security of the person" if they have no possibility of recovery.<sup>[4]</sup> The British Columbia Court of Appeal said that the Supreme Court of Canada should decide if the *Criminal Code* provisions that prohibit assisted suicide are constitutional.

## Issues

The Supreme Court of Canada looked at the *Criminal Code* provisions banning assisted suicide to decide the following:

- Does the prohibition against physician-assisted suicide violate the [section 7 Charter](#) right to life, liberty, and security of the person?
- If so, is the prohibition in accordance with the principles of fundamental justice?
- If there is a section 7 *Charter* breach, can it be justified under [section 1](#) of the *Charter*?

## Decision

The Supreme Court held that prohibiting assisted suicide violates the right to life, liberty, and security of the person. Further, this prohibition is not in accordance with the principles of fundamental justice because it is overbroad and disproportionate. Finally, the court did not find compromising these rights to be justified, because there are less harmful ways of protecting vulnerable people from being pressured into committing suicide than by issuing a complete ban.<sup>[5]</sup> Therefore, the prohibition is unconstitutional because it prohibits a competent adult with a serious, terminal illness that causes intolerable suffering from consenting to assisted death. <sup>[6]</sup> The government was given 12 months to pass new laws on assisted suicide that are consistent with the *Charter*.

## Analysis

The Supreme Court decided that all three section 7 rights are affected. First, the prohibition against assisted suicide concerns the right to life because it could force some patients to take their own lives prematurely, while they are still physically capable of doing so.<sup>[7]</sup> The prohibition also affects liberty and security of the person because it interferes with “fundamentally important and personal medical decision-making.” <sup>[8]</sup> A complete ban on assisted dying prevents people from making a choice important to their sense of dignity and personal integrity. <sup>[9]</sup>

The Supreme Court held that these violations to section 7 of the *Charter* are not in accordance with the principles of fundamental justice. First, the laws are too broad. While their purpose was to protect the vulnerable from potentially ending their lives in times of weakness, a complete ban on assisted suicide includes at least some possibilities not connected to this purpose.<sup>[10]</sup> This could include a person with a terminal disability, who has made a competent and fully informed decision to end his or her life without pressure from others. <sup>[11]</sup> Second, the laws are disproportionate because they cause unnecessary suffering for affected individuals.<sup>[12]</sup> This prohibition could cause some to take their own lives sooner than if they knew they could access assisted death later.<sup>[13]</sup>

After a court has found a breach of *Charter* rights, the government can try to justify the infringement. In this case, the Supreme Court found that preventing the vulnerable from committing suicide in a moment of weakness is an important objective. Prohibiting assisted suicide is logically connected to this objective. However, the court found that there are less harmful ways to achieve this objective, as Parliament could make physician-assisted dying laws with strict limitations to protect vulnerable people from abuse and error.<sup>[14]</sup> Therefore, the court decided that a complete prohibition on assisted suicide is not justifiable.<sup>[15]</sup>

## Conclusion

*Carter* is particularly important for how we assess the right to life, as this decision makes clear that we have moved away from the view that life is to be saved at all costs. Now, human dignity and autonomy are also important considerations. While the Supreme Court

has given the government 12 months to enact legislation that is constitutionally valid, Justice Minister Peter MacKay said in a June 2015 interview that the government will ask the Supreme Court to extend its deadline for legalizing physician-assisted death due to constraints posed by the upcoming federal election.<sup>[16]</sup> While it remains uncertain if the government will enact legislation and what that legislation could look like, the *Carter* decision has provided clear outlines that indicate when assisted suicide laws could violate the section 7 *Charter* right to life, liberty, and security of the person.

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[1] *Carter v Canada (Attorney General)*, 2015 SCC 5 at para 29 .

[2] *Ibid* at para 34.

[3] *Ibid* at para 13.

[4] *Carter v Canada (Attorney General)*, 2012 BCSC 886 at para 358.

[5] *Carter*, *supra* note 1 at para 121.

[6] *Ibid* at para 147.

[7] *Ibid* at para 57.

[8] *Ibid* at para 65.

[9] *Ibid*.

[10] *Ibid* at para 86.

[11] *Ibid*.

[12] *Ibid* at para 90.

[13] *Ibid*.

[14] *Ibid* at para 105.

[15] *Ibid* at para 123.

[16] Sean Fine, "Tories will likely seek assisted-death deadline extension, says MacKay", *The Globe and Mail* (16 June 2015) online: The Globe and Mail <<http://www.theglobeandmail.com/>>.