



UNIVERSITÉ D'OTTAWA
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UNIVERSITY OF OTTAWA
CENTRE FOR
**Health Law,
Policy and Ethics**

Medical assistance in dying: From *Carter* to Bill C-14 and beyond

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Disclosures

None

Carter v Canada (A.G.),
(2015) 1 SCC 5

- The Applicants:
- Lee Carter, Hollis Johnson (family of Kay Carter)
- Gloria Taylor
- British Columbia Civil Liberties Association



Criminal Code provisions

- Section 241(b) : “everyone who aids or abets a person in committing suicide commits an indictable offence”
- Section 14: “no person may consent to death being inflicted on them.”

Carter v Canada (A.G.),
(2015) 1 SCC 5

Section 7: 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.



Carter v Canada (A.G.), (2015) 1 SCC 5

Section 7 of the *Charter*:

- “The prohibition on assisted dying deprived Ms. Taylor and others suffering from grievous and irremediable medical conditions of the right to life, liberty and security of the person” (para. 70)

Carter v Canada (A.G.), (2015) 1 SCC 5

- not in accordance with the principles of fundamental justice
- “prohibition on assisted dying is overbroad” (para 86)

Carter v Canada (A.G.), (2015) 1 SCC 5

Section 1 of the *Charter*

- rights and freedoms...subject...to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.
- prohibition on assisted dying is not “minimally impairing”
- sections 241 (b) and 14 of the *Criminal Code* are not saved by section 1 of the *Charter*

Carter v Canada (A.G.), (2015) 1 SCC 5

- Declaration of invalidity (para. 127)
 - Sections 241(b) and 14 of the *Criminal Code* are of no force and effect to the extent that they prohibit physician-assisted death for:
 - a competent adult who
 - clearly consents to the termination of life, **and**
 - 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 her condition
- “The scope of this declaration is intended to respond to the factual circumstances in this case.”

Carter v Canada (A.G.), (2015) 1 SCC 5

A few words about conscientious objection...

- reconciling rights of patients and physicians
- role of professional colleges, provincial and federal lawmakers

Carter v Canada (2016) SCC 4

- suspension of declaration of invalidity for 12 months
- subsequently extended suspension of declaration of invalidity to June 6, 2016, with exemptions for those who wish to seek assistance from a physician with the criteria set out in para. 127

Bill C-14

Establishes:

- Eligibility Criteria
 - s. 241.2(2) “grievous and irremediable medical condition”
- Safeguards



Bill C-14, next steps

- information collection & disclosure
- Parliamentary review (after 5 years)
- independent review relating to:
 - requests by mature minors for medical assistance in dying
 - to advance requests and
 - to requests where mental illness is the sole underlying medical condition.

Conscientious objection



Conscientious objection



Statistics

Three reporting periods by Health Canada:

- June 17 to Dec 31, 2016: 803
- January 1 to June 30 2017: 1179
- July 1 to December 31, 2017: 1525

In total (between December 10, 2015 and December 31, 2017): 3714

Profile of medically assisted death persons receiving assisted deaths

Most common underlying medical circumstances of those who received a medically assisted death

Cancer-related	63%	65%
Neuro-degenerative	13%	10%
Circulatory/Respiratory system	17%	16%
Other causes/Unknown [†]	7%	9%

Statistics

**Table 3. Profile of Requests for Medically Assisted Deaths in Select Provinces
 (AB, SK, MB, QC, NL, PEI, NS)**

	January 1 to June 30, 2017	July 1 to December 31, 2017
Total number of requests for medical assistance in dying reported in these provinces	832	1,066
Most frequently cited reasons for why requests for medical assistance in dying have been declined (in order of frequency)*	Loss of competency Death not reasonably foreseeable Other	Loss of competency Death not reasonably foreseeable Other
Number of cases where the individual died prior to the completion of the assessment process	202 (24%)	149 (14%)

Eligibility

- “grievous and irremediable medical condition”
 - serious and incurable illness, disease or disability
 - advanced state of irreversible decline in capability
 - causes them enduring physical or psychological suffering that is intolerable to them
 - natural death has become reasonably foreseeable

Reasonably foreseeable natural death

- *AB v Canada (Attorney General)*:
 - *“Natural death need not be imminent....person-specific medical question to be made without necessarily making, but not necessarily precluding, a prognosis of the remaining lifespan”*
 - *“the language does not require that people be dying from a terminal illness, disease or disability”*

Reasonably foreseeable natural death

- *Lamb v Canada* :

“eligibility for medical assistance in dying is not limited to those who are dying from a fatal or “terminal” disease. No specific prognosis is necessary and death need not be imminent nor expected within a prescribed number of months”

Serious and incurable condition

- “serious and incurable illness, diseases or disability”
- incurable by any means? Or any means acceptable to the patient?

Intolerable suffering

- “illness, disease or disability or....state of decline [that] causes them enduring physical or psychological suffering that is intolerable to them and that cannot be relieved under conditions they consider acceptable”

Irreversible decline in capability

- an advanced state of irreversible decline in capability
- physical & cognitive?
- objectively or subjectively assessed?

Expanding eligibility?

- Psychiatric illness
- Advance directives
- Mature minors



Advance Directives

N.S. woman choosing to die earlier than she wants due to 'extreme' assisted-dying law



Audrey Parker fears she will lose the mental capacity required to consent to medically assisted death



Kayla Hounsell · CBC News · Posted: Sep 19, 2018 4:00 AM ET | Last Updated: September 19



Audrey Parker, 57, has stage 4 breast cancer that has spread through her bones to her brain. She says she will end her life earlier than she really wants due to Canada's 'extreme' rules around medically assisted dying.

Lamb v Canada

Argues that the following provisions are unconstitutional:

(2) A person has a grievous and irremediable medical condition only if they

meet all of the following criteria:

...

(b) they are in an advanced state of irreversible decline in capability;

...

(d) their natural death has become reasonably foreseeable, taking into account all of their medical circumstances. without a prognosis necessarily having been made as to the specific length of time that they have remaining.



Information collection & disclosure

- reporting requirements from Health Canada
- apply to physicians, nurse practitioners & pharmacists
- written requests