

**SUPREME COURT OF CANADA**

**Lee Carter, Hollis Johnson, William Shoichet,  
British Columbia Civil Liberties Association and Gloria Taylor**  
*Appellants*  
*v.*  
**Attorney General of Canada**  
*Respondent*

**DATE: 2015/02/06 , DOCKET: 35591**

**Introduction - Brief Summary of *Carter v Canada***

In *Carter*, the Supreme Court of Canada (the “Court”) held that the criminal laws prohibiting assistance in dying limited the rights to life, liberty and security of the person under section 7 of the *Canadian Charter of Rights and Freedoms* (the “*Charter*”) in a manner that was not demonstrably justified under section 1 of the *Charter*. The *Criminal Code* provisions at issue were paragraph 241(b), which prohibits assisting suicide, and section 14, which provides that no person may consent to death being inflicted on them.

***Life, Liberty and Security of the Person***

Consistent with its earlier *Rodriguez* decision, the Court held that the laws prohibiting physician-assisted dying interfere with the liberty and security of the person of individuals who have a grievous and irremediable medical condition. They interfere with liberty by constraining the ability of such individuals to make decisions concerning their bodily integrity and medical care, and with security of the person by leaving such individuals to endure intolerable suffering. The Court also held that the laws deprive some people of life by forcing them to take their own lives prematurely for fear that they would be incapable of doing so when they reached a point where their suffering was intolerable.

***Principles of Fundamental Justice***

In order to comply with section 7 of the *Charter*, a deprivation of life, liberty or security of the person must accord with the principles of fundamental justice. The principles at issue in *Carter* were those against arbitrariness, overbreadth and gross disproportionality. An arbitrary law is one that “exact[s] a constitutional price in terms of rights, without furthering the public good that is said to be the object of the law.” An overbroad law is one that may be rational in general but denies the rights of some individuals in a way that

bears no relation to the legislative purpose. A grossly disproportionate law is one that, while it may further the legislative objective, has negative effects on life, liberty or security of the person that are so extreme as to be “totally out of sync” with the object of the law.

The Court held that the prohibition on assistance in dying is not arbitrary because it “clearly helps achieve” the legislative objective of protecting vulnerable persons from being induced to die by suicide at a moment of weakness. However, the prohibition was found to be overbroad because it applies to individuals who are not vulnerable, thereby denying the rights of some people in a way that bears no relation to the purpose of the law. The Court found it unnecessary to decide the issue of gross disproportionality in view of its conclusion that the prohibition is overbroad.

### ***Section 1***

Limitations of *Charter* protections are constitutional if they are reasonable and demonstrably justified pursuant to section 1 of the *Charter*. The Court concluded that the section 7 limitation was not justified. Although the Court accepted that the absolute prohibition on assistance in dying furthers a pressing and substantial objective, it concluded that a permissive regime with properly designed and administered safeguards was capable of protecting vulnerable people from abuse and error and that the absolute prohibition goes farther than reasonably necessary to achieve the legislative purpose.

### ***Remedy***

The Court explained that the appropriate remedy was:

a declaration that s. 241(b) and s. 14 of the *Criminal Code* are void insofar as they prohibit physician-assisted death for a competent adult person who (1) clearly consents to the termination of life; and (2) 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.

The Court went on to specify that the scope of the declaration was “intended to respond to the factual circumstances in this case” and to highlight that it was making “no pronouncement on other situations where physician-assisted dying may be sought.” The factual circumstances that were the focus of the Court’s analysis were those of Gloria Taylor, who suffered from amyotrophic lateral sclerosis (ALS), a fatal neurodegenerative disease. The Court noted elsewhere in the judgment that assistance in dying in other situations, such as for “minors or persons with psychiatric disorders or minor medical conditions” would not fall within the parameters suggested in its reasons.

The Court suspended the declaration of invalidity for 12 months to give Parliament and provincial legislatures time to respond. It acknowledged that the legislative response would likely involve a “complex regulatory regime” and that Parliament “faces a difficult task” in balancing the competing social interests of those who might be at risk in a permissive regime against those who seek assistance in dying. It also suggested that a high degree of deference would be owed to the regime ultimately adopted by Parliament.

On January 15, 2016, the Court granted a four-month extension of the suspension, with the result that the declaration of invalidity would take effect on June 6, 2016 unless new legislation is in place prior to that date.