

Section 7 and Physician Assisted Suicide

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I. INTRODUCTION

In a society that values individual liberty, equality and the sanctity of human life, it is inevitable that the issue of physician-assisted dying will spark intense debate. In a parliamentary democracy that offers robust legal protection for individual rights, it is also inevitable that some aspects of this debate will end up before the courts for rights adjudication. This Fall, for the second time in roughly twenty years, the Supreme Court will hear a constitutional challenge to the *Criminal Code* provisions that prohibit physician-assisted suicide and euthanasia. The hearing in *Carter v Canada (Attorney General)*¹ has been scheduled for mid-October of this year. Will the Court take a different view of the issues this time? Has the reasoning around section 7 changed enough that the Court will be prepared to overturn its decision in *Rodriguez*?² And if so, on what basis? What effect, if any, will the changed composition of the Court have on the decision?³ The answers to these questions await the Court's decision, which we will likely not know for some time. But in the meanwhile, it is worth reflecting on the issues that the Court will contemplate and the medical and ethical issues that arise in this context.

In this brief paper, I discuss the current legal and ethical landscape around end-of-life medical practice through the lens of section 7 of the *Charter*. In so doing, I highlight the issues that will confront the Supreme Court of Canada when it hears the *Carter* appeal. After outlining the *Charter* jurisprudence on physician-assisted suicide in Canada, I turn to the practical legal and ethical considerations at play in end-of-life medical care. In this section, I define various treatment options and discuss the legal and ethical status of current end-of-life medical practice. I explain the practical implications of current legally acceptable end-of-life practices, and contrast those with physician-assisted death. Finally, I briefly consider the claim the Supreme Court will hear this Fall.

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¹ *Lee Carter et al v Canada (Attorney General) et al*, SCC Docket No 35591, on appeal from the British Columbia Court of Appeal (*Carter v Canada (Attorney General)*, 2013 BCCA 435 [*Carter v Canada (BCCA)*]).

² *Rodriguez v British Columbia (Attorney General)*, [1993] 3 SCR 519 [*Rodriguez*].

³ Only one of the justices who heard the *Rodriguez* case is still on the Court, Chief Justice Beverley McLachlin. And she dissented in *Rodriguez*, finding that the impugned provision violated Ms. Rodriguez's s. 7 rights.