

DOCTOR-ASSISTED DEATH IN CANADA

A STORY OF PAIN, SUFFERING, AND LEGAL EQUALITY



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RESEARCH QUESTIONS. *What is assisted-death, and what does the literature say about its legality and morality? What are the current laws in Canada which ban assisted-death? What, if any, are their implications? Are these laws legitimate? Is this a human rights issue?*

METHOD. Literature review and legal case study

ABSTRACT. In the bulk of contemporary literature and debate discussing physician-assisted death and dying, there seems to be an over-saturation of references to the practice's moral permissibility, and to individual's rights to bodily autonomy and self-determination. What seems to be lacking, however, is an investigation into how the equality rights of individuals with disabilities are being ignored, and how these same individuals are being adversely affected — more than any other group — by laws banning assisted death. This paper argues that the section 15 equality rights (among others) of individuals with disabilities under the Canadian Charter of Rights & Freedoms [1982] are being violated by sections 14 and 241(b) of the Criminal Code of Canada, as was argued by the plaintiffs in *Carter v. Canada (Attorney General)* [2015], and should be struck down; an elucidation of changes in legal interpretation since *Rodriguez v. Canada (Attorney General)* [1993] to support this argument and a reference to Dutch assisted-death law as paradigmatic of effective safeguards are also provided. The paper concludes with a brief overview of North American literature discussing assisted death and euthanasia.

The Literature: For & Against

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| <ul style="list-style-type: none">• The 'Sanctity of human life' does allow for DAS• Forces individuals to end lives prematurely• The law has a historical basis in Christian doctrine, and requires investigation | FOR | <ul style="list-style-type: none">• Adequate safeguards are possible• Better end of life care• Liberty and autonomy• It is already being practiced• 'Criminal' penalties show public support | AGAINST | <ul style="list-style-type: none">• Adequate safeguards are not possible• Liberty should not be THE supreme value• Will lead to abuses or forced suicide• The 'Slippery Slope' argument• Unfair to doctors• The Sanctity of human life does not allow for DAS• Excuse to spend less on better palliative care |
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The Law.

Criminal Code of Canada (CCC):

...**14.** *No person is entitled to consent to have death inflicted on him, and such consent does not affect the criminal responsibility of any person by whom death may be inflicted on the person by whom consent is given...*

...**241.** *Every one who (a) counsels a person to commit suicide, or (b) aids or abets a person to commit suicide, whether suicide ensues or not, is guilty of an indictable offence...*

A Historic Decision.



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CARTER V. CANADA (ATTORNEY GENERAL) [2015]. Decided first in the British Columbia Court of Appeal in 2012, and subsequently in the Supreme Court of Canada merely weeks ago in 2015, the plaintiffs of this case (for which there were five) argued that sections 14 and 241 of the *Criminal Code of Canada* infringed upon their rights to life, liberty, security of person, and equal treatment, as outlined in sections 7 and 15 respectively of the *Canadian Charter of Rights and Freedoms*. The testimony of one particular plaintiff, **Gloria Taylor**, was crucial in the decisions, both in favour of the plaintiffs, that sections 14 and 241 should be struck down.

GLORIA TAYLOR: HER DISEASE, HER CONTRIBUTION. Gloria Taylor lived in West Kelowna, British Columbia, and in December of 2009 was diagnosed with **Amyotrophic Lateral Sclerosis (ALS)**. ALS is a disease which "attacks the nerve cells responsible for controlling voluntary muscles" (NIHDS, 2014), leading to atrophy, or the breaking down of muscle cells. This inevitably results in death due to the inability to breathe and pump blood from the heart - all while retaining total cognitive function. Taylor was suffering a great deal in her disease, and she felt that palliative care was not an option for her, since it was just "doping me out of my mind" (CBC, 2012) rather than real care. In seeking the option to choose the time and manner of her death through assisted death, she joined the case as a plaintiff in 2011, and her testimony was particularly important in Madame Justice Lynn Smith's contention that the above sections of the CCC were overbroad and adversely affecting individuals with disabilities in an unfair way. Taylor died at home on October 4th, 2012, and although she never accessed the option to have a physician assist her in dying, she is the only person at present in Canadian history to have been given such an option.

Wasn't this already decided?

RODRIGUEZ V. CANADA (ATTORNEY GENERAL) [1993].

In 1993, Sue Rodriguez - also an ALS sufferer from British Columbia - was told by the Supreme Court of Canada in a decision of 5-4 that she would not be allowed the right to physician-assisted suicide. Rodriguez, like in *Carter*, challenged the constitutionality of s. 241 on the basis that it infringed upon her rights to liberty and security of person. The majority argued that, if there was an infringement of rights, it "constituted a reasonable limit and was demonstrably justified under s. 1 of *The Charter*" (Sopinka, 1993).

WHAT CHANGED? Although *Rodriguez* is a binding authority in *Carter*, it was never decided whether s. 241 infringes upon the plaintiffs' right to life. Furthermore, the analytical approaches to interpreting (i) the principles of fundamental justice and (ii) s.1 of *The Charter* have changed, and therefore require revisitation.



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Conclusions.

I AM IN AGREEMENT WITH THE HONOURABLE MADAME JUSTICE SMITH. Current laws in Canada banning assisted death are not only overbroad, but they are discriminatory, and they constitute an unjustifiable violation of the human rights of folks like Gloria Taylor. The Supreme Court of Canada is clearly also in agreement as of February 6th, 2015, and these laws will be deemed of no force or effect in one year's time.

FOR ADEQUATE SAFEGUARDS, PARLIAMENT NEED ONLY LOOK EASTWARD. The Netherlands became one of the first in the West to legalize euthanasia and assisted suicide with the passing of Bill 22572 in 1993 and the *Termination of Life on Request and Assisted Suicide Act* on April 1st, 2002. Although I do not suggest that Canada should adopt an identical law, I merely affirm that the Dutch example provides a model for adequate safeguards against abuses, and shows that respecting life while respecting autonomy and equality of individuals is a possibility. In sum, it will be a great place to look towards in the upcoming 12 months of parliamentary review and revisitation.