



## Carter v. Canada (Attorney General)

2015 SCC 5

**Country:** Canada

**Region:** Americas

**Year:** 2015

**Court:** Supreme Court

**Health Topics:** Chronic and noncommunicable diseases, Controlled substances, Disabilities, Informed consent, Mental health

**Human Rights:** Right to bodily integrity, Right to liberty and security of person, Right to life

### Facts

After Plaintiff Gloria Taylor was diagnosed with a terminal illness in 2009, she challenged the constitutionality of the Canadian Criminal Code Section 241(b), which prohibited assistance in dying. The trial court held that the law was unconstitutional and granted Taylor an exemption from the law. The Court of Appeal reversed, basing their decision on the blanket prohibition on assisted suicide upheld by the Supreme Court of Canada in *Rodriguez v. British Columbia (Attorney General)*, [1993] 3 S.C.R. 519. The Supreme Court of Canada allowed an appeal.

### Decision and Reasoning

The Court held that the Criminal Code provision against assisted suicide was unconstitutional in the case of a competent adult person who clearly consents to the termination of life and has a grievous and irremediable medical condition that causes enduring suffering that is intolerable to the individual.

The Court further held that a blanket prohibition against physician-assisted suicide violated section 7 of the Canadian Charter of Rights and Freedoms, the right to life, liberty and security of the person. Furthermore, the Court stated that people have the right to die with dignity and autonomy. The purpose of the prohibition on physician-assisted suicide was to protect the vulnerable from being induced to commit suicide at a time of weakness. The Court summarized other courts' surveys of other jurisdictions where physician-assisted suicide was legal and found that regulations were in place which effectively protected vulnerable persons from unwanted physician-assisted deaths.

Rather than granting a free-standing constitutional exemption, the Court encouraged Parliament to enact the necessary legislative revisions.

### Decision Excerpts

“The rights to liberty and security of the person, which deal with concerns about autonomy and quality of life, are also engaged. An individual's response to a grievous and irremediable medical condition is a matter critical to their dignity and autonomy. The prohibition denies people in this situation the right to make decisions concerning their bodily integrity and medical care and thus trenches on their liberty. And by leaving them to endure intolerable suffering, it impinges on their security of the person.” Page 9.

“A number of the witnesses made clear that they “ or their loved ones “ had considered or in fact committed suicide earlier than they would have chosen to die if physician-assisted death had been available to them. One woman noted that the conventional methods of suicide, such as carbon monoxide asphyxiation, slitting of the wrists or overdosing on street drugs, would require that she end her life “while I am still able bodied and capable of taking my life, well ahead of when I actually need to leave this life.” Page 27.

“Although none of the systems has achieved perfection, empirical researchers and practitioners who have experience in those systems are of the view that they work well in protecting patients from abuse while allowing competent patients to choose the timing of their deaths.” Page 32.

“The appropriate remedy is therefore 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. "Irremediable," it should be added, does not require the patient to undertake treatments that are not acceptable to the individual. The scope of this declaration is intended to respond to the factual circumstances in this case. We make no pronouncement on other situations where physician-assisted dying may be sought.

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