

# **Review of the Supreme Court of Canada Decision Concerning Physician Assisted Dying (PAD) Carter v. Canada 2015**

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# Conflicts

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- Nothing to Disclose

# Carter v. Canada 2015 SCC 5

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## Constitution Act 1982

### Canadian Charter of Rights and Freedoms

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

Section 15 no discrimination allowed on basis of race, national origin, color, religion, sex, age or mental or physical disability”

1. Carter v. Canada
2. Charter

<http://scc-csc.lexum.com>

<http://laws.justice.gc.ca/eng/Const>



# Criminal Code

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Section 241      anyone assisting a person in committing suicide commits an indictable offense and that no person can consent to death being inflicted on them

# Rodriquez v. British Columbia - 1993

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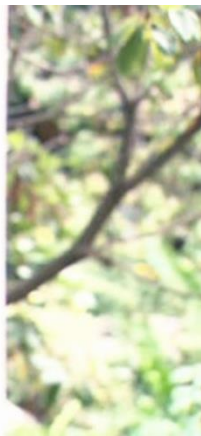


- Sue Rodriquez was suffering from ALS and sought PAD.
- Supreme Court of Canada denied her the right to PAD by a 5-4 decision.
- C.J. Sopinka – no other western democracy permitted assistance in dying.
- Eventually she was assisted to die – an illegal act.
- By 2010 eight jurisdictions, starting with the State of Oregon in 1994 had legalized medical aid in dying.

# The Carter Case

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- Kay Carter had travelled to Switzerland for Physician-Assisted Dying (PAD) in 2010.
- She was suffering from spinal stenosis.
- She was represented by her daughter.



# The Carter Case

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- Gloria Taylor was suffering from ALS, also known as Lou Gehrig's Disease.



# Courts in British Columbia

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- Case was heard by Madame Justice Lynn Smith
- 395 page decision – June 15, 2012
- Findings:
  1. PAD would not impede development of palliative care
  2. A system could be designed that would protect the vulnerable
  3. Physicians were capable of assessing patient competence



Carter v. Canada, Supreme Court of BC, 2012 BCSC  
886, June 15, 2012 Docket S112688



# Courts in British Columbia

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4. “*Rodriguez*” did not prevent her from reviewing the constitutional issues.
5. Concluded that PAD was permissible for “grievously ill and irremediably suffering” people who are competent.
6. The prohibition against PAD offered Section 7 and Section 15 of the Charter.
7. Ms. Taylor was granted the right to PAD.
8. The Government of Canada was given one year to amend legislation.

# Courts in British Columbia

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- The BC Court of Appeal (2013) by a 2 – 1 decision held that Justice Smith had erred by not recognizing “*Rodriguez*”.
- The Chief Justice dissented.

<http://www.courts.gov.bc.ca/jdb-txt/CA/13/04/2013BCCA0435.htm>

# The Supreme Court of Canada (February 6, 2015)

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- The trial judge was entitled to revisit “*Rodriguez*”.
- The law relating to the principles of overbreadth and gross disproportionality had materially advanced since “*Rodriguez*”.

1. Carter v. Canada
2. Charter

<http://scc-csc.lexum.com>

<http://laws.justice.gc.ca/eng/Const>



# The Supreme Court of Canada (February 6, 2015)

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- The Supreme Court of Canada allowed the appeal.
- Found that denying PAD offended Section 7 of the Charter.
- “properly designed and administered safeguards were capable of protecting vulnerable people from abuse and error”

# The Supreme Court of Canada (February 6, 2015)

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- PAD should be available for:
  1. A “competent adult person”
  2. who has a “grievous and irremediable medical condition (including an illness, disease or disability)”
  3. that causes “enduring suffering that is intolerable to the individual”.

# The Supreme Court of Canada (February 6, 2015)

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- The decision was unanimous
- All nine Justices signed the decision
- The government was given 12 months to amend the law
- The sitting government (Conservative) did nothing for 8 months
- An election changed the government (Liberal)
- The new government asked for a 6-month extension and in a 5 – 4 decision the Supreme Court of Canada gave them a 4 month extension
- By June 6, 2016 PAD will be legal

# Parliamentary Discussions

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- Between 1991 and 2010 the House of Commons debated 6 private members bills seeking to decriminalize assisted suicide. None were passed.

## Quebec

- French speaking province in Canada
- All party Select Committee on Dying with Dignity in 2012 recommended recognizing legal recognition of PAD.
- They passed Bill 52 allowing PAD as of December 2015

# Current State of PAD in Canada

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- The Supreme Court of Canada upheld the legislation in Quebec.
- Approximately 25 persons have received PAD via lethal injection in Quebec as of May 1, 2016.
- The courts in each province have established an exemption program such that persons can apply to the court for PAD until there is federal legislation.
- The first person, outside of Quebec to receive PAD, died on March 1, 2016 in Vancouver, British Columbia, Canada.



# Proposed Canadian Legislation

## April 12, 2016

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### Two methods for PAD

1. Self administration of prescription from doctor
2. Administration of lethal medication by a doctor

### Change in language from “Carter”

- “grievous and irremediable” *becomes* “natural death has become reasonably foreseeable”

### Further studies needed before consideration of PAD

1. Competent minors - age is set at 18
2. Advanced directives - dementia
3. PAD where mental illness is the sole underlying medical condition