

MEDICAL AID IN DYING AND THE RIGHT TO LIFE, LIBERTY AND SECURITY

Carter v. Canada - Supreme Court of Canada (2015)

FACTS

In 2009, Gloria Taylor learns that she was suffering from a neurodegenerative disease that will gradually weaken her until death. In 2010, her condition worsens; her muscles cause her constant pain and she is only able to move using a wheelchair. Ms. Taylor tells her family and friends that she wants **medical aid in dying**. She does not want to suffer until she dies of natural causes and does not want to be forced to kill herself.

The problem for Ms. Taylor is that medical aid in dying is **prohibited in Canada**. At that time, the Criminal Code prohibited doctors and any other person from helping someone to commit suicide. The main objective of this ban is to **protect vulnerable people**: they should not be incited to commit suicide in a moment of weakness.

Ms. Taylor decides to go to court to strike down the sections of the Criminal Code that prevent her from receiving medical aid in dying. Several other people decide to join her fight. This is the case of Lee Carter, the daughter of a woman who was also in an end-of-life situation and who decided to go to Switzerland to die with dignity. In Switzerland, aid in dying is legal and is offered to foreigners.

According to Ms. Taylor and the other appellants, prohibiting medical aid in dying infringes the rights protected by section 7 of the Canadian Charter, namely the **right to life, liberty and security**.

QUESTIONS

1. Do sections of the Criminal Code that prohibit assisting someone to commit suicide infringe the rights protected by section 7 of the Charter?
2. If so, is this infringement justified under section 1 of the Charter?

PREPARATION FOR PLEADINGS

Here are some ways to help you develop your legal arguments.

In your pleadings, you do not have to answer all these questions. You can choose not to answer questions if your answers are not convincing or if they seem to benefit the opposing party.

Question 1

Do the Criminal Code sections that prohibit assisting someone to commit suicide infringe rights protected by section 7 of the Charter?

Sample questions you might ask yourself:

a) Right to life:

- ◆ What are the risks associated with knowing that a person will not be able to receive medical aid in dying on the day it is desired and that on that day, they will no longer be in a position to end their own life?
- ◆ Is the right to die part of the right to life?

b) Right to liberty:

- ◆ Should a person in an end of life situation have the freedom to choose between life and death?
- ◆ Should a person be able to choose how they will die?
- ◆ Should a person be able to choose the medical care they receive?

c) Right to security:

- ◆ Is the right not to suffer part of the right to security?



- ◆ Should a person in an end-of-life situation be forced to suffer until they die from natural causes?

Question 2

If so, is this infringement justified under section 1 of the Charter?

Apply the section 1 test (found on page X of your Student Guide). Do not consider the 4th step of the test ("proportionality").

- a) What is the **objective** of the prohibition on medical aid in dying? Is this objective important enough to justify an infringement of the right to life, liberty and security of sick people?
- ◆ What might a person do knowing that they will not be able to receive medical aid in dying on the day they desire and that on that day, they will no longer be in a position to end their own life?
 - ◆ Are all people at the end of life in an identical psychological state?
 - ◆ How important is the right to life in our society?
- b) Is the prohibition of medical aid in dying a **logical way to achieve the above objective**?
- ◆ Is prohibiting an act a good way to dissuade people from asking for it?
 - ◆ Is it logical to forbid medical aid in dying for everyone when the objective is to protect a particular group of people?
- c) Is it **reasonable and necessary** to prohibit medical aid in dying for **everyone**?
- ◆ What **other means** could be put in place to avoid undermining fundamental rights?
 - ◆ Do medical personnel have the **necessary competence** to determine the psychological state of an end-of-life person?
 - ◆ Are there **risks of abuse** or **medical errors**?

Do not forget to anticipate the arguments of the adverse party!

