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CHAPTER IV – CHAPITRE IV : Pre-trial, Trial, and Appeal Matters Questions avant le procès, pendant le procès et en appel	Readers are referred to the list of Related Documents at the end of this Policy for additional information. Les lecteurs peuvent se référer à la liste des documents connexes notés à la fin de cette politique pour information supplémentaire.	

PHYSICIAN-ASSISTED DEATH (PAD)

Statement of Policy

This Directive is issued in relation to the investigation and prosecution of offences pursuant to s.241 and s.14 of the *Criminal Code*. This Directive will remain in effect until such time as Parliament enacts legislation to respond to the Supreme Court of Canada judgment in Carter v. Canada (Attorney General) 2015 SCC 5 and Carter v. Canada (Attorney General) 2016 SCC 4.

It is necessary to provide this guideline, to ensure the public and those that deliver a physician-assisted death (PAD), or assist in delivering a PAD, that these actions will not be prosecuted, provided the PAD is within the limitations set by the Supreme Court of Canada’s decision in Carter 2015.

Background

On February 6, 2015, the Supreme Court of Canada issued judgment in Carter v Canada (Attorney General) 2015 SCC 5. The Court declared sections 241(b) and 14 of the *Criminal Code* to be unconstitutional and of no force and effect to the extent that they prohibited physician assisted death for competent adult persons suffering from grievous and irremediable medical conditions that cause enduring suffering, and who consent to the termination of their life. The declaration of invalidity was suspended for 12 months, until February 6, 2016, to allow Parliament to enact new, constitutionally permissible, legislation.

In Carter v Canada (Attorney General) 2016 SCC 4, the suspension of the declaration of invalidity was extended to June 6, 2016, but the Supreme Court permitted patients who desired physician assisted death the ability to seek an exemption from a superior court for relief during this extension period. At the time of drafting this Directive, replacement legislation has not been enacted. This means that as of June 6, 2016, physician assisted death that falls within the parameters described in Carter 2015, is no longer a crime under section 241 of the *Criminal Code*.

Physician assisted death (PAD) requires the skills and collaboration of an interdisciplinary team of health care providers that may include: physicians, nurse practitioners, registered nurses, registered psychiatric nurses, licensed practical nurses, respiratory therapists, paramedics, occupational therapists, speech language pathologists, psychologists, pharmacists, health care administrators, social workers, and any other person acting in aid of PAD. (the “health care team”). The work of the health care team (that provides information to patients, assists the physician, or dispenses the drug that will bring about death) is necessary to give effect to the constitutionally protected right as described in Carter 2015. Further, the assistance of the health care team in a non-criminal action is not an offence under the *Criminal Code*.

Directive

There is no reasonable likelihood of a conviction for charges under 241 (counselling or aiding suicide) for physicians assessing whether a patient meets the eligibility criteria under Carter 2015 or in providing specific details to a patient on the options and means of providing PAD.

There is no reasonable likelihood of a conviction for charges pursuant to 241 (counselling or aiding suicide) for any member of a patient's health care team, including physicians, pharmacists, nurses, social workers or other health professionals or their respective employers, in discussing PAD with a patient as long as those discussions do not constitute the deliberate encouragement or active inducement of a patient to pursue PAD.

There is no reasonable likelihood of a conviction for charges pursuant to 241 (counselling or aiding suicide) for physicians providing PAD or any member of the health care team including pharmacists, nurses, other health professionals or their respective employers, in aiding a physician to provide a person with PAD when the provision of PAD is in compliance with the Supreme Court of Canada's decision in Carter 2015.

There is no reasonable likelihood of a conviction for charges pursuant to 241 (counselling or aiding suicide) for pharmacists in aiding a physician by dispensing a drug pursuant to prescription from a physician when the physician confirms that the prescription is for the purpose of the provision of PAD is in compliance with the Supreme Court of Canada's decision in Carter 2015.

Accordingly, no prosecution pursuant to section 241 will be commenced or continued against physicians or any member of the health care team including pharmacists, nurses, other health professionals or their respective employers, who dispense a drug, provide physician-assisted death, or otherwise participate, under the direction of a physician, in a physician-assisted death that falls within the guidelines set out by the Supreme Court of Canada in Carter 2015.

Related Policies

Policy