



Justice Centre  
for Constitutional Freedoms

# Protections for Conscience Rights:

Recommended Amendments to Bill C-14:  
*An Act to amend the Criminal Code and to make  
related amendments to other Acts (medical  
assistance in dying)*

Brief to the Standing Committee on Justice and Human Rights

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## **The Lack of Protections for Conscience and Religious Belief**

Substantial portions of Bill C-14 appropriately reflect the decision of the Supreme Court of Canada in *Carter v. Canada (Attorney General)*, 2015 SCC 5 [*Carter*].<sup>1</sup> However, Bill C-14 is not fully compliant with the *Carter* decision.

The Court in *Carter* held that “complex regulatory regimes are better created by Parliament than by the courts”,<sup>2</sup> and envisioned the enactment of new legislation to address the Court’s invalidation of the offending *Criminal Code* provisions against euthanasia (s. 14) and assisting in the commission of suicide (s. 241(b)). It was in the context of noting the need for legislative reform to allow for Medical Assistance In Dying (“MAID”) that the Court discussed and reiterated the conscience and religious rights of medical practitioners, stating that, “nothing in the declaration of invalidity which we propose to issue would compel physicians to provide assistance in dying.”<sup>3</sup> The Court stated that it did “not wish to pre-empt the legislative and regulatory response to [*Carter*].” Instead, the Court “underline[d] that the *Charter* rights of patients and physicians will need to be reconciled.” Thus, it is apparent that the Court intended Parliament’s legislative response to address the issue of medical practitioners’ conscience rights. Bill C-14 fails to do so.

**Recommendation: In order to comply with *Carter*, Bill C-14 should codify protections for the conscience rights of physicians, nurses, pharmacists, and other health care workers, as well as health care organizations and institutions, to refuse to participate in, and refuse to refer for MAID.**

The Supreme Court of Canada decision in *Carter* in no way compels doctors or other healthcare workers to cooperate unwillingly in providing MAID. *Carter* was predicated on two key factual

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<sup>1</sup> As reflected in Bill C-14, *Carter* requires the limiting of MAID to persons over the age of 18 years of age (paras. 3-4), the limiting of MAID to those individuals who are suffering from an actual physical ailment, disease or disability (paras. 68, 86, 127), and the prerequisite of mental competency at the time of request for MAID as a criterion for the provision of MAID.

<sup>2</sup> *Carter* at para. 125.

<sup>3</sup> *Carter* at para. 132.

conditions: a willing patient and a willing doctor. The applicants in *Carter* neither sought nor received a *Charter* right to compel doctors and other healthcare practitioners to provide, or refer for, MAID.

Despite the foregoing, provincial Colleges of Physicians, as well as Nurses' Associations have instituted requirements that their respective members participate in MAID, in disregard of conscience rights, on pain of professional sanction and reprisal. Parliaments' opportunity is manifest: the offending professional requirements violate both the law in *Carter* and the *Canadian Charter of Rights and Freedoms* (the "*Charter*") protections under s. 2(a), and s. 7.<sup>4</sup> Parliament can and should bring uniformity and clarity to the issue of conscience rights and MAID. Doctors, educators, medical students<sup>5</sup> and the various Colleges would all benefit from the inclusion in Bill C-14 of the protections for conscience and religious rights, as *Carter* mandates.

In addition to legal reasons, there are also strong pragmatic reasons for protecting conscience rights. Tens of thousands of Canadians trust and rely daily on the premise that their doctors and nurses will act in an ethical and conscientious manner in the provision of service. Provincial Colleges of Physicians have ethical requirements for doctors, and expect physicians to be governed by a strong sense of moral and ethical responsibility in daily practice.<sup>6</sup> Yet many of the same

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<sup>4</sup> On the rights of liberty and security, the Court in *Carter* stated at paragraph 64: "Underlying both of these rights is a concern for the protection of individual autonomy and dignity. Liberty protects 'the right to make fundamental personal choices free from state interference'". Some colleges of physicians have regulations which threaten professional sanction for medical practitioners who abstain from MAID. These provisions violate s. 7 of the *Charter*.

<sup>5</sup> Educators and medical students are uncertain as to the rights of doctors: see <http://www.cbc.ca/news/canada/toronto/doctor-assisted-dying-medical-students-canada-1.3550703>

<sup>6</sup> During the April 22, 2016 Parliamentary debate on Bill C-14, the Minister of Justice and Attorney General, the Honourable Jody Wilson-Raybould, noted that Bill C-14 provides doctors and nurses with the opportunity to make ethical decisions, stating: "The bill would also require that the person have a grievous and irremediable condition, which is defined in the bill. The definition is intended to be applied flexibly by physicians and nurse practitioners who can use their training, ethics, and good judgment to apply the criteria." <https://openparliament.ca/bills/42-1/C-14/> This type of judgment and ethical practice of medicine is a professional requirement, and must be respected on both side of the MAID equation – both for practitioners who wish to opt out of MAID due to ethical or conscience

Colleges of Physicians permit no room for abstention on the basis of conscience or religion.<sup>7</sup> Parliament must consider the somber repercussions of mandating the overriding of a physician's conscience in one aspect of service (such as MAID) and the necessary implications this could have in other circumstances where a physician's ethics and conscience is expected to govern.

It is also of importance for Parliament to recognize that, while there is a right to die under the requirements set forth in *Carter*, those who avail themselves of MAID will be gone, while those who are tasked with implementing it will remain. It is in the best interests of all Canadians that those practitioners who care for patients on a daily basis be able to perform their duties with a clear conscience, and the knowledge that they have been true to both themselves and their perception of their medical and ethical mandate.<sup>8</sup>

We consequently continue to recommend the inclusion in Bill C-14 of codified protections for conscience as anticipated in *Carter*, similar to the recognition and protection of conscience and religious rights in the *Civil Marriage Act*.<sup>9</sup>

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considerations and for those practitioners who must make judgment calls with respect to the implementation of MAID.

<sup>7</sup> The Ontario, Manitoba, and Alberta all have instituted requirements that mandate participation in MAID (either actively or through referral), irrespective of the conscience or religious beliefs of physicians, on penalty of professional sanction.

<sup>8</sup> See for example the traditional *Hippocratic Oath*: <http://classics.mit.edu/Hippocrates/hippooath.html>

<sup>9</sup> *Civil Marriage Act*, SC 2005, c 33, **at preamble**: WHEREAS everyone has the freedom of conscience and religion under section 2 of the Canadian Charter of Rights and Freedoms; WHEREAS nothing in this Act affects the guarantee of freedom of conscience and religion and, in particular, the freedom of members of religious groups to hold and declare their religious beliefs and the freedom of officials of religious groups to refuse to perform marriages that are not in accordance with their religious beliefs; WHEREAS it is not against the public interest to hold and publicly express diverse views on marriage; **s. 3.1**: For greater certainty, no person or organization shall be deprived of any benefit, or be subject to any obligation or sanction, under any law of the Parliament of Canada solely by reason of their exercise, in respect of marriage between persons of the same sex, of the freedom of conscience and religion guaranteed under the Canadian Charter of Rights and Freedoms or the expression of their beliefs in respect of marriage as the union of a man and woman to the exclusion of all others based on that guaranteed freedom.