26 Carter v. Canada (Attorney General), 2015

The principle of *stare decisis* is a cornerstone of Canada's "judge-made" common law tradition. The term is an abbreviation of the Latin phrase *stare decisis et non quieta movere*, which means to "stand by decisions and not disturb settled matters."[1] Because the Supreme Court of Canada is at the apex of a hierarchical judicial system, the principle of *stare decisis* means that its rulings are binding on all other courts. However, this principle has not prevented the Supreme Court from overruling its own earlier decisions. The case here is one of the court's more notable reversals.

At issue in *Carter v. Canada (Attorney General)* was whether *Criminal Code* provisions prohibiting physician-assisted dying infringe life, liberty, and security of the person in a manner not in accordance with the principles of fundamental justice as provided in section 7 of the Charter and, if so, whether the infringement is justifiable under section 1. The Supreme Court ruled unanimously that section 7 was violated and that the legislation could not be saved under section 1. In so doing, the court overruled its earlier 1993 ruling in *Rodriguez v. British Columbia*[2] in which a majority had upheld the validity of a blanket prohibition on assisted suicide.

In both cases, the Charter claim was made by a woman dying from ALS (amyotrophic lateral sclerosis) who wanted the ability to call on a physician to assist her to die when she considered that her suffering was no longer tolerable. A majority in the earlier *Rodriguez* ruling held that although the ban on physician-assisted suicide denies the right to life, liberty, and security of the person, this denial was consistent with the principles of fundamental justice. However, in *Carter* the court ruled unanimously that the prohibition of section 7 was inconsistent with the principles of fundamental justice and also that this denial could not be justified under section 1.

The federal and Ontario attorneys general each argued that the trial judge was bound by the Supreme Court's position in *Rodriguez* and therefore was not entitled to revisit the constitutionality of the prohibition on assisted suicide. The Supreme Court acknowledged that *stare decisis* "provides certainty while permitting the orderly development of the law in incremental steps." Nevertheless, this principle should not operate as a straitjacket that condemns law to stagnation. Thus, trial courts are entitled to reconsider settled rulings of higher courts in the following two situations: where a new legal issue is raised and where there is a change in the circumstances or evidence that fundamentally shifts the parameters

1 As referred to in Joseph J. Arvay, Q.C., Sheila Tucker, and Alison M. Latimer, "*Stare Decisis* and Constitutional Supremacy: Will Our Charter Past Become an Obstacle to Our Charter Future?" (2012) 58 *Supreme Court Law Review* (2d) 61 at 64.

2 *Rodriguez v. British Columbia*, [1993] 3 SCR 519.

of the debate. For the court, both conditions were met in this case. To add additional authority to its new position, the decision was delivered by "The Court."

As frequently occurs, the Supreme Court suspended the effects of its declaration of the law's invalidity for 12 months. The court made clear that it was not prepared to grant a free-standing exemption from prosecution for physician-assisted suicides. In its view, the kind of complex regulatory regime called for is better created by Parliament than by the courts. The Supreme Court indicated that the legislation would need to reconcile the Charter rights of patients and physicians, and also that physicians should not be compelled to provide assistance in dying.

The federal Harper government did little to develop a legislative response to the ruling in its remaining months in office. As the deadline for revised legislation neared, the attorney general of the newly elected Liberal government approached the Supreme Court for additional time to develop a legislative response. Suspended declarations of invalidity can be controversial because they delay the remedial effects of judicial review.[3] By seeking yet more time, a government is effectively asking the court to bear institutional responsibility for further delaying remedies. When federal Justice department lawyers were seeking an extension of the declaration of invalidity to enact a regulatory framework for physician-assisted suicide, Supreme Court Justice Russell Brown suggested that the government ask Parliament to invoke section 33.[4] Nevertheless, a divided Supreme Court agreed to give Parliament an additional four months.

Despite the extension, time ran out before Parliament passed the government's legislative response to the *Carter* ruling. The bill was extremely contentious, both in terms of its process (which included closures in debate) and its substance, as critics argued that the bill was far more restrictive than suggested by the Supreme Court's ruling. Many argued that the bill would be challenged and declared unconstitutional, leading to parliamentary pressure on the government to release the legal advice it received with respect to developing and drafting the legislation. ~

3 Robert Leckey, *Bills of Rights in the Common Law* (Cambridge, UK: Cambridge University Press, 2015).

4 Tonda MacCharles, "Ottawa Surprises Top Court Judges by Allowing Assisted Suicide to Proceed in Quebec" *Toronto Star* (January 11, 2016), online at <http://www.thestar.com/news/canada/2016/01/11/ottawa-surprises-top-court-judges-by-asking-for-more-time-on-assisted-suicide.html>.

Discussion Questions

1. The federal legislative response was more restrictive than suggested by the Supreme Court. In the event of a subsequent Charter challenge, is this an appropriate issue for judicial deference for Parliament's legislative response? Why or why not?
2. Was a suspended declaration of invalidity an appropriate remedy in this case? Why or why not?
3. Should Parliament enact the notwithstanding clause when more time is required to redress legislative problems identified by the Supreme Court, rather than request additional time?

CARTER v. CANADA (ATTORNEY GENERAL)

2015 SCC 5, [2015] 1 SCR 331

Hearing: October 15, 2014; Judgment: February 6, 2015.

Interveners: Attorney General of Ontario, Attorney General of Quebec, Council of Canadians with Disabilities, Canadian Association for Community Living, Christian Legal Fellowship, Canadian HIV/AIDS Legal Network, HIV & AIDS Legal Clinic Ontario, Association for Reformed Political Action Canada, Physicians' Alliance against Euthanasia, Evangelical Fellowship of Canada, Christian Medical and Dental Society of Canada, Canadian Federation of Catholic Physicians' Societies, Dying With Dignity, Canadian Medical Association, Catholic Health Alliance of Canada, Criminal Lawyers' Association (Ontario), Farewell Foundation for the Right to Die, Association québécoise pour le droit de mourir dans la dignité, Canadian Civil Liberties Association, Catholic Civil Rights League, Faith and Freedom Alliance, Protection of Conscience Project, Alliance of People With Disabilities Who are Supportive of Legal Assisted Dying Society, Canadian Unitarian Council, Euthanasia Prevention Coalition and Euthanasia Prevention Coalition—British Columbia.

Present: McLachlin C.J. and LeBel, Abella, Rothstein, Cromwell, Moldaver, Karakatsanis, Wagner, and Gascon JJ.

The following is the judgment delivered by **THE COURT:**

I. Introduction

[1] It is a crime in Canada to assist another person in ending her own life. As a result, people who are grievously and irremediably ill cannot seek a physician's assistance in dying and may be condemned to a life of severe and intolerable suffering. A person facing this prospect has two options: she can take her own life prematurely, often by violent or dangerous means, or she can suffer until she dies from natural causes. The choice is cruel.

[2] The question on this appeal is whether the criminal prohibition that puts a person to this choice violates her *Charter* rights to life, liberty and security of the person (s. 7) and to equal treatment by and under the law (s. 15). This is a question that asks us to balance competing values of great importance. On the one hand stands the autonomy and dignity of a competent adult who seeks death as a response to a grievous and irremediable medical condition. On the other stands the sanctity of life and the need to protect the vulnerable. …

[4] We conclude that the prohibition on physician-assisted dying is void insofar as it deprives a competent adult of such assistance where (1) the person affected clearly consents to the termination of life; and (2) the person 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. We therefore allow the appeal.

II. Background

[5] In Canada, aiding or abetting a person to commit suicide is a criminal offence … . This means that a person cannot seek a physician-assisted death. Twenty-one years ago, this Court upheld this blanket prohibition on assisted suicide by a slim majority … .

[6] Despite the Court's decision in *Rodriguez*, the debate over physician-assisted dying continued. Between 1991 and 2010, the House of Commons and its committees debated no less than six private member's bills seeking to decriminalize assisted suicide. None was passed. While opponents to legalization emphasized the inadequacy of safeguards and the potential to devalue human life, a vocal minority spoke in favour of reform, highlighting the importance of dignity and autonomy and the limits of palliative care in addressing suffering. The Senate considered the matter as well, issuing a report on assisted suicide and euthanasia in 1995. The majority expressed concerns about the risk of abuse under a permissive regime and the need for respect for life. A minority supported an exemption to the prohibition in some circumstances.

[7] More recent reports have come down in favour of reform. In 2011, the Royal Society of Canada published a report on end-of-life decision-making and recommended that the *Criminal Code* be modified to permit assistance in dying in some circumstances. The Quebec National Assembly's Select Committee on Dying with Dignity issued a report in 2012, recommending amendments to legislation to recognize medical aid in dying as appropriate end-of-life care (now codified in *An Act respecting end-of-life care*, CQLR, c. S-32.0001 (not yet in force)).

[8] The legislative landscape on the issue of physician-assisted death has changed in the two decades since *Rodriguez*. … By 2010, however, eight jurisdictions permitted some form of assisted dying: the Netherlands, Belgium, Luxembourg, Switzerland, Oregon, Washington, Montana, and Colombia. … Together, these regimes have produced a body of evidence about the practical and legal workings of physician-assisted death and the efficacy of safeguards for the vulnerable. …

[10] The debate in the public arena reflects the ongoing debate in the legislative sphere. Some medical practitioners see legal change as a natural extension of the principle of patient autonomy, while others fear derogation from the principles of medical ethics. Some people with disabilities oppose

the legalization of assisted dying, arguing that it implicitly devalues their lives and renders them vulnerable to unwanted assistance in dying, as medical professionals assume that a disabled patient "leans towards death at a sharper angle than the acutely ill—but otherwise non-disabled—patient." … Other people with disabilities take the opposite view, arguing that a regime which permits control over the manner of one's death respects, rather than threatens, their autonomy and dignity, and that the legalization of physician-assisted suicide will protect them by establishing stronger safeguards and oversight for end-of-life medical care.

[11] The impetus for this case arose in 2009, when Gloria Taylor was diagnosed with a fatal neurodegenerative disease, amyotrophic lateral sclerosis (or ALS), which causes progressive muscle weakness. ALS patients first lose the ability to use their hands and feet, then the ability to walk, chew, swallow, speak and, eventually, breathe. Like Sue Rodriguez before her, Gloria Taylor did "not want to die slowly, piece by piece" or "wracked with pain," and brought a claim before the British Columbia Supreme Court challenging the constitutionality of the *Criminal Code* provisions that prohibit assistance in dying … . She was joined in her claim by Lee Carter and Hollis Johnson, who had assisted Ms. Carter's mother, Kathleen ("Kay") Carter, in achieving her goal of dying with dignity by taking her to Switzerland to use the services of DIGNITAS, an assisted-suicide clinic; Dr. William Shoichet, a physician from British Columbia who would be willing to participate in physician-assisted dying if it were no longer prohibited; and the British Columbia Civil Liberties Association, which has a long-standing interest in patients' rights and health policy and has conducted advocacy and education with respect to end-of-life choices, including assisted suicide.

[12] By 2010, Ms. Taylor's condition had deteriorated to the point that she required a wheelchair to go more than a short distance and was suffering pain from muscle deterioration. She required home support for assistance with the daily tasks of living, something that she described as an assault on her privacy, dignity, and self-esteem. She continued to pursue an independent life despite her illness, but found that she was steadily losing the ability to participate fully in that life. Ms. Taylor informed her family and friends of a desire to obtain a physician-assisted death. She did not want to "live in a bedridden state, stripped of dignity and independence," she said; nor did she want an "ugly death." …

[13] Ms. Taylor, however, knew she would be unable to request a physician-assisted death when the time came, because of the *Criminal Code* prohibition and the fact that she lacked the financial resources to travel to Switzerland, where assisted suicide is legal and available to non-residents. This left her with what she described as the "cruel choice" between killing herself while she was still physically capable of doing so, or giving up the ability to exercise any control over the manner and timing of her death. …

V. Issues on Appeal

[40] The main issue in this case is whether the prohibition on physician-assisted dying found in s. 241(*b*) of the *Criminal Code* violates the claimants' rights under ss. 7 and 15 of the *Charter*. For the purposes of their claim, the appellants use "physician-assisted death" and "physician-assisted dying" to describe the situation where a physician provides or administers medication that intentionally brings about the patient's death, at the request of the patient. The appellants advance two claims: (1) that the prohibition on physician-assisted dying deprives competent adults, who suffer a grievous and irremediable medical condition that causes the person to endure physical or psychological suffering that is intolerable to that person, of their right to life, liberty and security of the person under s. 7 of the *Charter*; and (2) that the prohibition deprives adults who are physically disabled of their right to equal treatment under s. 15 of the *Charter*.

[41] Before turning to the *Charter* claims, two preliminary issues arise: (1) whether this Court's decision in *Rodriguez* can be revisited; and (2) whether the prohibition is beyond Parliament's power because physician-assisted dying lies at the core of the provincial jurisdiction over health.

VI. Was the Trial Judge Bound by Rodriguez?

…

[43] Canada and Ontario argue that the trial judge was bound by *Rodriguez* and not entitled to revisit the constitutionality of the legislation prohibiting assisted suicide. Ontario goes so far as to argue that "vertical *stare decisis*" is a *constitutional* principle that requires all lower courts to rigidly follow this Court's *Charter* precedents unless and until this Court sets them aside.

[44] The doctrine that lower courts must follow the decisions of higher courts is fundamental to our legal system. It provides certainty while permitting the orderly development of the law in incremental steps. However, *stare decisis* is not a straitjacket that condemns the law to stasis. Trial courts may reconsider settled rulings of higher courts in two situations: (1) where a new legal issue is raised; and (2) where there is a change in the circumstances or evidence that "fundamentally shifts the parameters of the debate" (*Canada (Attorney General) v. Bedford*, 2013 SCC 72, [2013] 3 S.C.R. 1101, at para. 42).

[45] Both conditions were met in this case. The trial judge explained her decision to revisit *Rodriguez* by noting the changes in both the legal framework for s. 7 and the evidence

on controlling the risk of abuse associated with assisted suicide.

[46] The argument before the trial judge involved a different legal conception of s. 7 than that prevailing when *Rodriguez* was decided. In particular, the law relating to the principles of overbreadth and gross disproportionality had materially advanced since *Rodriguez*. The majority of this Court in *Rodriguez* acknowledged the argument that the impugned laws were "over-inclusive" when discussing the principles of fundamental justice (see p. 590). However, it did not apply the principle of overbreadth as it is currently understood, but instead asked whether the prohibition was "arbitrary or unfair in that it is unrelated to the state's interest in protecting the vulnerable, and that it lacks a foundation in the legal tradition and societal beliefs which are said to be represented by the prohibition" (p. 595). By contrast, the law on overbreadth, now explicitly recognized as a principle of fundamental justice, asks whether the law interferes with some conduct that has no connection to the law's objectives (*Bedford*, at para. 101). This different question may lead to a different answer. The majority's consideration of overbreadth under s. 1 suffers from the same defect: see *Rodriguez*, at p. 614. Finally, the majority in *Rodriguez* did not consider whether the prohibition was grossly disproportionate.

[47] The matrix of legislative and social facts in this case also differed from the evidence before the Court in *Rodriguez*. The majority in *Rodriguez* relied on evidence of (1) the widespread acceptance of a moral or ethical distinction between passive and active euthanasia (pp. 605-7); (2) the lack of any "halfway measure" that could protect the vulnerable (pp. 613-14); and (3) the "substantial consensus" in Western countries that a blanket prohibition is necessary to protect against the slippery slope (pp. 601-6 and 613). The record before the trial judge in this case contained evidence that, if accepted, was capable of undermining each of these conclusions. …

VIII. Section 7

…

[55] In order to demonstrate a violation of s. 7, the claimants must first show that the law interferes with, or deprives them of, their life, liberty or security of the person. Once they have established that s. 7 is engaged, they must then show that the deprivation in question is not in accordance with the principles of fundamental justice.

[56] For the reasons below, we conclude that the prohibition on physician-assisted dying infringes the right to life, liberty and security of Ms. Taylor and of persons in her position, and that it does so in a manner that is overbroad and thus is not in accordance with the principles of fundamental justice. It therefore violates s. 7.

A. Does the Law Infringe the Right to Life, Liberty and Security of the Person?

(1) Life

…

[62] This Court has most recently invoked the right to life in *Chaoulli v. Quebec (Attorney General)*, … where evidence showed that the lack of timely health care could result in death … and in *PHS*, where the clients of Insite were deprived of potentially lifesaving medical care … . In each case, the right was only engaged by the threat of death. In short, the case law suggests that the right to life is engaged where the law or state action imposes death or an increased risk of death on a person, either directly or indirectly. Conversely, concerns about autonomy and quality of life have traditionally been treated as liberty and security rights. We see no reason to alter that approach in this case.

[63] This said, we do not agree that the existential formulation of the right to life *requires* an absolute prohibition on assistance in dying, or that individuals cannot "waive" their right to life. This would create a "duty to live," rather than a "right to life," and would call into question the legality of any consent to the withdrawal or refusal of lifesaving or life-sustaining treatment. The sanctity of life is one of our most fundamental societal values. Section 7 is rooted in a profound respect for the value of human life. But s. 7 also encompasses life, liberty and security of the person during the passage to death. It is for this reason that the sanctity of life "is no longer seen to require that all human life be preserved at all costs" (*Rodriguez*, at p. 595, per Sopinka J.). And it is for this reason that the law has come to recognize that, in certain circumstances, an individual's choice about the end of her life is entitled to respect. It is to this fundamental choice that we now turn.

(2) Liberty and Security of the Person

[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." … Security of the person encompasses "a notion of personal autonomy involving … control over one's bodily integrity free from state interference" … and it is engaged by state interference with an individual's physical or psychological integrity, including any state action that causes physical or serious psychological suffering … . While liberty and security of the person are distinct interests, for the purpose of this appeal they may be considered together. …

[66] We agree with the trial judge. An individual's response to a grievous and irremediable medical condition is a matter critical to their dignity and autonomy. The law allows

people in this situation to request palliative sedation, refuse artificial nutrition and hydration, or request the removal of life-sustaining medical equipment, but denies them the right to request a physician's assistance in dying. This interferes with their ability to make decisions concerning their bodily integrity and medical care and thus trenches on liberty. And, by leaving people like Ms. Taylor to endure intolerable suffering, it impinges on their security of the person.

[67] The law has long protected patient autonomy in medical decision-making. … This right to "decide one's own fate" entitles adults to direct the course of their own medical care [and] it is this principle that underlies the concept of "informed consent" and is protected by s. 7's guarantee of liberty and security of the person … . It is this same principle that is at work in the cases dealing with the right to refuse consent to medical treatment, or to demand that treatment be withdrawn or discontinued … .

[68] … [Section] 7 recognizes the value of life, but it also honours the role that autonomy and dignity play at the end of that life. We therefore conclude that ss. 241(*b*) and 14 of the *Criminal Code*, insofar as they prohibit physician-assisted dying for competent adults who seek such assistance as a result of a grievous and irremediable medical condition that causes enduring and intolerable suffering, infringe the rights to liberty and security of the person. …

(3) Summary on Section 7: Life, Liberty and Security of the Person

[70] For the foregoing reasons, we conclude that the prohibition on physician-assisted dying deprived Ms. Taylor and others suffering from grievous and irremediable medical conditions of the right to life, liberty and security of the person. The remaining question under s. 7 is whether this deprivation was in accordance with the principles of fundamental justice.

B. The Principles of Fundamental Justice

[71] Section 7 does not promise that the state will never interfere with a person's life, liberty or security of the person—laws do this all the time—but rather that the state will not do so in a way that violates the principles of fundamental justice.

[72] Section 7 does not catalogue the principles of fundamental justice to which it refers. Over the course of 32 years of *Charter* adjudication, this Court has worked to define the minimum constitutional requirements that a law that trenches on life, liberty or security of the person must meet … . While the Court has recognized a number of principles of fundamental justice, three have emerged as central in the recent s. 7 jurisprudence: laws that impinge on life, liberty or security of the person must not be arbitrary, overbroad, or have consequences that are grossly disproportionate to their object.

[73] … The first step is … to identify the object of the prohibition on assisted dying.

[74] The trial judge, relying on *Rodriguez*, concluded that the object of the prohibition was to protect vulnerable persons from being induced to commit suicide at a time of weakness. … All the parties except Canada accept this formulation of the object.

[75] Canada agrees that the prohibition is intended to protect the vulnerable, but argues that the object of the prohibition should also be defined more broadly as simply "the preservation of life." … We cannot accept this submission.

[76] First, it is incorrect to say that the majority in *Rodriguez* adopted "the preservation of life" as the object of the prohibition on assisted dying. …

[77] Second, … [i]f the object of the prohibition is stated broadly as "the preservation of life," it becomes difficult to say that the means used to further it are overbroad or grossly disproportionate. The outcome is to this extent foreordained.

[78] Finally, the jurisprudence requires the object of the impugned law to be defined precisely for the purposes of s. 7. … Section 241(*b*) is not directed at preserving life, or even at preventing suicide—attempted suicide is no longer a crime. Yet Canada asks us to posit that the object of the prohibition is to preserve life, whatever the circumstances. This formulation goes beyond the ambit of the provision itself. The direct target of the measure is the narrow goal of preventing vulnerable persons from being induced to commit suicide at a time of weakness.

[79] Before turning to the principles of fundamental justice at play, a general comment is in order. In determining whether the deprivation of life, liberty and security of the person is in accordance with the principles of fundamental justice under s. 7, courts are not concerned with competing social interests or public benefits conferred by the impugned law. These competing moral claims and broad societal benefits are more appropriately considered at the stage of justification under s. 1 of the *Charter* … .

[80] … A claimant under s. 7 must show that the state has deprived them of their life, liberty or security of the person and that the deprivation is not in accordance with the principles of fundamental justice. They should not be tasked with also showing that these principles are "not overridden by a valid state or communal interest in these circumstances." …

[82] This is not to say that such a deprivation cannot be *justified* under s. 1 of the *Charter*. In some cases the government, for practical reasons, may only be able to meet an important objective by means of a law that has some

fundamental flaw. But this does not concern us when considering whether s. 7 of the *Charter* has been breached.

(1) Arbitrariness

[83] The principle of fundamental justice that forbids arbitrariness targets the situation where there is no rational connection between the object of the law and the limit it imposes on life, liberty or security of the person. … An arbitrary law is one that is not capable of fulfilling its objectives. It exacts a constitutional price in terms of rights, without furthering the public good that is said to be the object of the law.

[84] The object of the prohibition on physician-assisted dying is to protect the vulnerable from ending their life in times of weakness. A total ban on assisted suicide clearly helps achieve this object. Therefore, individuals' rights are not limited arbitrarily.

(2) Overbreadth

[85] The overbreadth inquiry asks whether a law that takes away rights in a way that generally supports the object of the law, goes too far by denying the rights of some individuals in a way that bears no relation to the object. … The question is not whether Parliament has chosen the least restrictive means, but whether the chosen means infringe life, liberty or security of the person in a way that has no connection with the mischief contemplated by the legislature. The focus is not on broad social impacts, but on the impact of the measure on the individuals whose life, liberty or security of the person is trammelled.

[86] Applying this approach, we conclude that the prohibition on assisted dying is overbroad. …

[87] Canada argues that it is difficult to conclusively identify the "vulnerable," and that therefore it cannot be said that the prohibition is overbroad. Indeed, Canada asserts, "every person is *potentially* vulnerable" from a legislative perspective … .

[88] We do not agree. … [T]hat argument is more appropriately addressed under s. 1 … .

(3) Gross Disproportionality

[89] This principle is infringed if the impact of the restriction on the individual's life, liberty or security of the person is grossly disproportionate to the object of the measure. As with overbreadth, the focus is not on the impact of the measure on society or the public, which are matters for s. 1, but on its impact on the rights of the claimant. The inquiry into gross disproportionality compares the law's purpose, "taken at face value," with its negative effects on the rights of the claimant, and asks if this impact is completely out of sync with the object of the law. … The standard is high: the law's object and its impact may be incommensurate without reaching the standard for *gross* disproportionality … .

[90] … [T]he impact of the prohibition is severe: it imposes unnecessary suffering on affected individuals, deprives them of the ability to determine what to do with their bodies and how those bodies will be treated, and may cause those affected to take their own lives sooner than they would were they able to obtain a physician's assistance in dying. Against this it is argued that the object of the prohibition—to protect vulnerable persons from being induced to commit suicide at a time of weakness—is also of high importance. We find it unnecessary to decide whether the prohibition also violates the principle against gross disproportionality, in light of our conclusion that it is overbroad. …

IX. Does the Prohibition on Assisted Suicide Violate Section 15 of the *Charter*?

[93] Having concluded that the prohibition violates s. 7, it is unnecessary to consider this question.

X. Section 1

[94] In order to justify the infringement of the appellants' s. 7 rights under s. 1 of the *Charter*, Canada must show that the law has a pressing and substantial object and that the means chosen are proportional to that object. …

[95] It is difficult to justify a s. 7 violation … . The rights protected by s. 7 are fundamental, and "not easily overridden by competing social interests" … . And it is hard to justify a law that runs afoul of the principles of fundamental justice and is thus inherently flawed … . However, in some situations the state may be able to show that the public good—a matter not considered under s. 7, which looks only at the impact on the rights claimants—justifies depriving an individual of life, liberty or security of the person under s. 1 of the *Charter*. More particularly, in cases such as this where the competing societal interests are themselves protected under the *Charter*, a restriction on s. 7 rights may in the end be found to be proportionate to its objective.

[96] Here, the limit is prescribed by law, and the appellants concede that the law has a pressing and substantial objective. The question is whether the government has demonstrated that the prohibition is proportionate.

[97] At this stage of the analysis, the courts must accord the legislature a measure of deference. Proportionality does not require perfection … . Section 1 only requires that the limits be "reasonable." This Court has emphasized that there may be a number of possible solutions to a particular social problem, and suggested that a "complex regulatory response" to a social ill will garner a high degree of deference … .

[98] On the one hand … physician-assisted death involves complex issues of social policy and a number of competing societal values. Parliament faces a difficult task in addressing this issue; it must weigh and balance the perspective of those who might be at risk in a permissive regime against that of those who seek assistance in dying. It follows that a high degree of deference is owed to Parliament's decision to impose an absolute prohibition on assisted death. On the other hand, … the absolute prohibition could not be described as a "complex regulatory response." … The degree of deference owed to Parliament, while high, is accordingly reduced.

(1) Rational Connection

[99] … To establish a rational connection, the government need only show that there is a causal connection between the infringement and the benefit sought "on the basis of reason or logic." …

[100] … We … conclude that there is a rational connection between the prohibition and its objective. …

(2) Minimal Impairment

…

[103] The question in this case comes down to whether the absolute prohibition on physician-assisted dying … is the least drastic means of achieving the legislative objective. …

[104] This question lies at the heart of this case. …

[114] At trial Canada went into some detail about the risks associated with the legalization of physician-assisted dying. In its view, there are many possible sources of error and many factors that can render a patient "decisionally vulnerable" and thereby give rise to the risk that persons without a rational and considered desire for death will in fact end up dead. It points to cognitive impairment, depression or other mental illness, coercion, undue influence, psychological or emotional manipulation, systemic prejudice (against the elderly or people with disabilities), and the possibility of ambivalence or misdiagnosis as factors that may escape detection or give rise to errors in capacity assessment. Essentially, Canada argues that, given the breadth of this list, there is no reliable way to identify those who are vulnerable and those who are not. As a result, it says, a blanket prohibition is necessary.

[115] The evidence accepted by the trial judge does not support Canada's argument. …

[117] … We agree with the trial judge that the risks associated with physician-assisted death can be limited through a carefully designed and monitored system of safeguards.

[118] … Canada argues that a blanket prohibition should be upheld unless the appellants can demonstrate that an alternative approach eliminates all risk. This effectively reverses the onus under s. 1, requiring the claimant whose rights are infringed to prove less invasive ways of achieving the prohibition's object. The burden of establishing minimal impairment is on the government.

[119] We agree [with the trial judge that Canada had not discharged this burden]. A theoretical or speculative fear cannot justify an absolute prohibition. … Justification under s. 1 is a process of demonstration, not intuition or automatic deference to the government's assertion of risk. …

[120] Finally, it is argued that without an absolute prohibition on assisted dying, Canada will descend the slippery slope into euthanasia and condoned murder. Anecdotal examples of controversial cases abroad were cited in support of this argument, only to be countered by anecdotal examples of systems that work well. The resolution of the issue before us falls to be resolved not by competing anecdotes, but by the evidence. … We should not lightly assume that the regulatory regime will function defectively, nor should we assume that other criminal sanctions against the taking of lives will prove impotent against abuse.

[121] We … conclude that the absolute prohibition is not minimally impairing.

(3) Deleterious Effects and Salutary Benefits

[122] This stage of the *Oakes* analysis weighs the impact of the law on protected rights against the beneficial effect of the law in terms of the greater public good. Given our conclusion that the law is not minimally impairing, it is not necessary to go on to this step.

[123] We conclude that s. 241(*b*) and s. 14 of the *Criminal Code* are not saved by s. 1 of the *Charter*.

XI. Remedy

…

[126] We have concluded that the laws prohibiting a physician's assistance in terminating life (*Criminal Code*, s. 241(*b*) and s. 14) infringe Ms. Taylor's s. 7 rights to life, liberty and security of the person in a manner that is not in accordance with the principles of fundamental justice, and that the infringement is not justified under s. 1 of the *Charter*. To the extent that the impugned laws deny the s. 7 rights of people like Ms. Taylor they are void by operation of s. 52 of the *Constitution Act, 1982*. It is for Parliament and the provincial legislatures to respond, should they so choose, by enacting legislation consistent with the constitutional parameters set out in these reasons.

[127] 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.

[128] We would suspend the declaration of invalidity for 12 months. …

[130] A number of the interveners asked the Court to account for physicians' freedom of conscience and religion when crafting the remedy in this case. …

[132] In our view, nothing in the declaration of invalidity which we propose to issue would compel physicians to provide assistance in dying. The declaration simply renders the criminal prohibition invalid. What follows is in the hands of the physicians' colleges, Parliament, and the provincial legislatures. However, we note—as did Beetz J. in addressing the topic of physician participation in abortion in *Morgentaler*—that a physician's decision to participate in assisted dying is a matter of conscience and, in some cases, of religious belief (pp. 95-96). In making this observation, we do not wish to pre-empt the legislative and regulatory response to this judgment. Rather, we underline that the *Charter* rights of patients and physicians will need to be reconciled.