ABSTRACT

In December, 2013, the Canadian Medical Association (CMA) Board of Directors decided to shape the debate and law concerning euthanasia and assisted suicide and revisit CMA policy opposing physician participation in the procedures. By the summer of 2014 it was clear that the overwhelming majority of physicians supported the existing policy. However, it appears that the Board decided the policy should be changed before the Supreme Court of Canada decided the case of *Carter v. Canada*.

The Board sponsored an ostensibly neutral resolution affirming support for the right of physicians to follow their conscience in deciding whether or not to provide euthanasia/assisted suicide if the law changed. The resolution was overwhelmingly approved. Unnoticed at the time was that the resolution was not conditional upon eligibility criteria, such as decision-making capacity or terminal illness.

The CMA intervention at the Supreme Court of Canada in the *Carter* case emphasized that existing CMA policy against euthanasia and assisted suicide would be changed to reflect the resolution. It conveyed the message that the Association would support physicians who decided to participate in euthanasia or assisted suicide no matter how broadly the Court or legislatures might cast the rules governing the procedures.

The Board reversed CMA policy about two months before the Court ruled. It formally approved physician assisted suicide and euthanasia, subject only to legal constraints. The policy did not exclude minors, the incompetent or the mentally ill, nor did it limit euthanasia and assisted suicide to the terminally ill or those with uncontrollable pain. It classified both as "end of life care," promising support for patient access to the procedures should they be legalized. Support for physicians refusing to participate in euthanasia or assisted suicide was qualified by the statement that there should be no "undue delay" in providing them. Implicit in all of this was a new ethical paradigm: that in some circumstances, physicians have a professional obligation to kill patients or to help them kill themselves.

The new policy effectively wrote a blank cheque for the Supreme Court of Canada to legalize euthanasia and physician assisted suicide on any terms acceptable to the judges. After the Court struck down the law CMA officials expressed concern about the criteria set by the Court. It was implied that the Supreme Court was to blame for anxiety and profound discomfort among Canadian physicians because it had imposed upon them an obligation to kill, contrary to centuries of medical ethics and practice.

However, the concerns voiced by CMA officials after the *Carter* ruling existed when the CMA intervened in the case, and the CMA did not raise them then. In fact, the Supreme Court gave legal effect to a policy the CMA had already adopted, and the criteria the Court set for the procedures were actually more restrictive than anything the CMA had proposed. The Court cannot be blamed because CMA leaders were ill-prepared to deal with the consequences of a ruling entirely consistent with their own policy.

The consequences fell most heavily upon physicians who refused, for reasons of conscience, to provide euthanasia and assisted suicide or to collaborate in providing the services by referral or other means. Since *Carter*, the debate in Canada has been largely about whether or under what circumstances physicians and institutions should be allowed to refuse to provide or facilitate the services. While it is generally agreed that physicians should not be compelled to personally provide them, there are strident demands that physicians unwilling to kill their patients or help them commit suicide should be forced to refer patients to someone who will.

This review demonstrates that the CMA Board of Directors focus in 2014 was on the role physicians would play in providing euthanasia and assisted suicide should the law change. The Board knew that the overwhelming majority of Canadian physicians would refuse to participate in euthanasia or assisted suicide. The fundamental conflict presented by imposing an obligation to kill upon unwilling physicians was foreseeable and had been foreseen by CMA officials. Attacks upon physician freedom of conscience, particularly with respect to referral, were predictable.

However, the Board failed to consider physician freedom of conscience in relation to assisted suicide and euthanasia except the extent that it could be used to further its policy goals. As a result, after the *Carter* ruling, CMA officials were quite unprepared to mount a cogent, articulate and persuasive defence of physician freedom of conscience, especially in relation to referral. They discovered that state

authorities and the public were often unreceptive and even hostile to physicians unwilling to arrange for patients to be killed by someone else. Negotiating at a significant disadvantage of their own making, they were desperate to find a policy "acceptable to the regulators" and to objecting physicians whose fundamental freedoms they had rashly jeopardized.

The CMA has since produced a strong defence of physician freedom of conscience in relation to referral for euthanasia and assisted suicide, and sound protection of conscience provisions have been incorporated into a revised CMA policy on the procedures. However, by the time these statements appeared, objecting physicians were on the defensive in a treacherous and even hostile environment, compelled to launch an expensive constitutional challenge to defend fundamental freedoms of conscience and religion. The outcome of that case will determine if they will be able to continue to practise medicine if they refuse to collaborate in killing their patients.

The World Medical Association (WMA) and national medical associations are free to decide to change their policies on physician participation in euthanasia or assisted suicide. This review demonstrates that they should not follow the example of the Canadian Medical Association if they wish to safeguard the fundamental freedoms of physicians and health care workers.

Full text in English only available at https://https://www.consciencelaws.org/background/procedures/assist029-01.aspx

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Canadian Medical Association and Euthanasia and Assisted Suicide in Canada

Critical review of CMA approach to changes in policy and law