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Therapeutic Homicide and Suicide in Canada:
Collaboration, Conscription, Coercion and Conscience

Presented at the Central Oregon Right to Life Conference
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Preface

Thank you for the invitation to make this presentation on behalf of the Protection of Conscience Project.

Rather than use our time to talk about the Project, I have made background information and materials available in the display. After the presentation, I can answer questions or speak privately with people who would like to know more.

The presentation today is about therapeutic homicide and suicide in Canada. More specifically it is about expectations of collaboration, conscription of health care workers, and ongoing attempts to compel participation in morally contested services.

Introduction

Abortion

To introduce the subject I am going to review Canada's legalization of abortion and its impact on freedom of conscience and religion.

Abortion law reform

In Canada in the mid-1960's, abortion law reform activists frequently portrayed themselves as champions of freedom of conscience.[1,2, 3] Abortion, they said, was a matter of "individual conscience,"and "Nobody would be forcing abortion procedures on anybody else."[4,5] The law, they said, would allow those opposed to abortion "to follow their conscience."[6,7] This kind of high-sounding rhetoric was very reassuring.

In 1969 the federal government amended the *Criminal Code*. Abortion remained a criminal offence, unless a hospital therapeutic abortion committee certified, in advance, that continuing the pregnancy would endanger the life or health of the mother. Abortions had to be performed by a physician in an accredited hospital.[8]

Protection of conscience

During debate on the *Criminal Code* amendment, a protection of conscience clause was proposed.[9] Justice Minister John Turner responded that the bill imposed no duty on hospitals to set up committees, and no duty on doctors

to provide or even apply for abortions. He also claimed that including a conscience clause would trespass in provincial constitutional jurisdiction, since provinces regulate health care professions and institutions.1[10]

This is a key point in Canadian constitutional law. Criminal law is within federal jurisdiction. Health law is within provincial jurisdiction.

The protection of conscience clause was rejected and the bill passed.

Revision of the CMA *Code of Ethics* (1970)

In revising its *Code of Ethics*[11] to accommodate the new abortion law, the Canadian Medical Association (CMA) instructed objecting physicians to disclose their beliefs to patients, so that patients might consult other physicians. The Association insisted that no health care personnel should be required to participate in abortion.[12,13]

Abortion and freedom of conscience

As soon as the new abortion law went into effect, the number of abortions increased exponentially, from under 300 in eleven years to more than 11,000 in the first year.[14,15] By 1974 it had become clear that most abortions were being performed for “non-medical - social, psycho-social or socioeconomic - reasons.”[16] Dramatic yearly increases in abortion rates continued for a decade.[17,18,19,20]

Promises of tolerance and respect for freedom of conscience, made to secure passage of the new abortion law, often proved worthless after the law had passed.

One provincial health minister said that "all hospitals which ban abortions on religious grounds may be forced to change their policies."[21] Between 1970 and 1974 there were repeated calls that all publicly funded hospitals - or all hospitals - must be made to perform abortions. [22] By 1977, forty per cent of objecting hospital employees had been compelled to participate in the procedure.[23]

CMA controversy re: *Code of Ethics* (1977-78)

It was in this environment that the CMA revised its *Code of Ethics* in 1977 by adding a requirement that objecting physicians must “advise the patient of other sources of assistance.”[24,25] This was widely understood to mean referral, and a serious controversy erupted.[24,26,27,28,29,30] The requirement was removed and the original wording restored the following year.[31,32] We will return to the issue of referral presently.

Quebec and abortion

Dr. Henry Morgentaler of Quebec became Canada’s foremost abortion activist. He was repeatedly charged for defying the law, but repeatedly acquitted in jury trials. In 1976, Quebec’s newly elected Parti Quebecois government declared that, despite the *Criminal Code*, no Quebec physicians would henceforth be charged for providing abortion.[33]

This is another lesson in Canadian constitutional law. The federal government in Canada *makes* criminal law, but *enforcing* it is the responsibility of provincial governments. By guaranteeing Quebec physicians immunity from prosecution for providing abortions, Quebec’s Attorney General effectively legalized abortion on demand in the province.

What did the federal government do in response?

Nothing. It is possible that the government was not displeased with the situation, and abortion is a hot political potato.[34] Moreover, the Parti Quebecois is an officially separatist party. Separatists want Quebec to secede from Canada and become an independent French speaking country. This was a major concern for the federal government. It was unwilling to encourage separatist sentiments by picking a fight with the newly elected separatist government on an already volatile issue.

R v. Morgentaler

1982 saw the proclamation of the *Canadian Charter of Rights and Freedoms*, usually referred to as "the *Charter*." The *Charter* is Canada's equivalent of your *Bill of Rights*. This proved to be the beginning of the end for Canada's abortion law. In 1988, the Supreme Court of Canada applied the *Charter* to strike down the abortion law.[35] Canada has been without any legal restrictions on abortion ever since. *Regina vs. Morgentaler* is Canada's equivalent of your *Roe v. Wade*.

Post-Morgentaler era (1988)

After the *Morgentaler* decision the Canadian Medical Association reaffirmed its longstanding policy; objecting physicians should not be required to participate in abortion, but should disclose their views to patients, so that patients might consult other physicians.[36] It also rejected discrimination against both objecting or non-objecting physicians.

However, the *Charter of Rights* and the *Morgentaler* decision changed the legal, political and social landscape. Since 1988, Canadian pro-abortion activists have claimed that the *Morgentaler* decision made access to abortion a constitutional right. This claim is not supported by the text of the ruling, but it continues to have powerful rhetorical force.

Objecting health care workers, particularly nurses, continued to face discrimination and harassment before and after *Morgentaler*.[37,38,39,40,41] At least one major maternity hospital in Canada refuses to hire qualified maternity nurses who refuse to assist with abortions, including post-viability abortions.[42]

There is one further point. Canadians are guaranteed universal access to medically required services by Medicare, Canada's state-run health insurance system.[43] Since 1969, most legal abortions in Canada have been paid for or at least subsidized by taxpayers.[44] As a result, objecting physicians and health care providers face an entrenched attitude of entitlement.

Since "we all pay for this medical system to receive services," said one of Canada's chief medical regulators, "if a citizen or taxpayer goes to access those services and they are blocked from receiving legitimate services by a physician, we don't feel that's acceptable."[45]

Now, I should not be understood to be taking sides in controversies about American health insurance policy. What I am describing is *not* a *necessary* consequence of adopting a state-run health insurance system. It indicates *only* that it is a *possible* consequence, and that it is an important factor in disputes about freedom of conscience and religion in health care in Canada.

The issue of referral

We return now to the issue of referral.

Since all abortions are legal and normally tax-paid, any patient can ask any physician to provide or arrange for an abortion, and nothing prevents any physician from doing so immediately - except medical judgement or moral convictions. After *Morgentaler*, the activist spotlight shone on this point with increasing intensity.

Activists do not usually demand that unwilling physicians be forced to *perform* abortions. Instead, they insist that objecting physicians must help the patient find a colleague willing to do so: that they must refer patients for abortion.

However, many objecting physicians believe that referral makes them collaborators in what they believe to be an immoral act, just as giving a gun to a robber would make one a collaborator in a bank robbery.

CMA reaffirms referral policy (2006)

The issue of referral has been constantly simmering since at least the mid-1970's. It came to a boil in 2006, when two law professors claimed that refusal to refer for abortion was malpractice that could lead to "lawsuits and disciplinary proceedings."[46]

A flood of protests followed.[47,48,49,50] Once more, the CMA affirmed the policy that referral was not required. However, the Director of Ethics added that, upon request, an objecting physician should indicate where a referral might be obtained, so as not to delay abortions.[51] We will see that this did not satisfy those who, by this time, had taken to calling themselves “reproductive rights” activists.

From abortion to euthanasia

Developments leading to the legalization of euthanasia and assisted suicide occurred while all of this was going on. Now we move from therapeutic abortion to therapeutic homicide and suicide, and I’ll begin to connect the dots.

Background

Euthanasia: Rodriguez (1993)

Sue Rodriguez had amyotrophic lateral sclerosis (“ALS” or “Lou Gehrig’s Disease”). In 1993 she asked the courts to authorize a physician to assist her in suicide. The Supreme Court of Canada rejected her claim and upheld the law.[52] Chief Justice Antonio Lamer was one of the dissenting minority who supported Rodriguez’ application.

Jocelyn Downie (1993-2008)

One of his clerks was a young lawyer named Jocelyn Downie.[53] She became a leading euthanasia advocate,[54, 55, 56] but also had other interests. Recall that, in 2006, two law professors threatened objecting physicians with malpractice suits if they refused to refer for abortion. Jocelyn Downie was one of those professors.

Conscience Research Group (2009)

In 2009, Professor Downie and others formed the Conscience Research Group.[57] They planned to convince medical regulators to force physicians to refer for "reproductive health" services - contraception, abortion and so forth.[58] Only the province of Quebec then had such a policy.

Royal Society Panel (2009-2011)

Two members of the Conscience Research Group, including Professor Downie,[59] - were appointed to a Royal Society panel of experts stacked with euthanasia advocates.[60,61,62,63,64,65] The panel eventually recommended legalization of assisted suicide and euthanasia.[66,67]

The experts also insisted that health care professionals unwilling to kill patients or help them commit suicide must refer them to someone willing to do so (of course, they used more genteel language).[68] This was justified, they said, *because* it was *agreed* that objectors are obliged to refer for "reproductive health services."[69] This was a false claim, and Professor Downie, at least, must have known that.

Carter v. Canada (2011-2012)

While the Conscience Research Group and Royal Society experts were busy, the British Columbia Civil Liberties Association and others filed what became the landmark case of *Carter v. Canada (Attorney General)*.[70]

The plaintiffs specifically wanted *physician* assisted suicide and *physician* administered euthanasia because, they said, these were medical treatments. Medical treatments, they said, fell under provincial health care jurisdiction, and could not be prohibited by the *Criminal Code*. And they wanted euthanasia and assisted suicide for any grievously and irremediably ill patient - not just for the terminally ill. Jocelyn Downie helped prepare their expert witnesses.[71]

In June, 2012, a British Columbia Supreme Court judge ruled that physicians must be allowed to provide assisted suicide and euthanasia, essentially on the terms sought by the plaintiffs.[72] The ruling was appealed, and the case began the journey to the Supreme Court of Canada.

Euthanasia, assisted suicide and freedom of conscience

Canadian Medical Association (2013)

When the Canadian Medical Association met in the summer of 2013, the *Carter* case was under appeal, and the government of Quebec had introduced its own provincial euthanasia bill. However, the CMA was officially against physician participation in either assisted suicide or euthanasia.[73] Following a contentious debate, delegates passed a resolution supporting physician conscientious objection to the procedures.[74]

Conscience Research Group policy (2013-2014)

In the fall of 2013, Jocelyn Downie and two members of the Conscience Research group published a *Model Conscientious Objection Policy* for provincial Colleges of Physicians and Surgeons (Canada's medical regulators).[75] The model policy demands that physicians who refuse to provide legal, publicly funded services must "make a timely referral" to someone "willing and able to accept the

patient and provide the service." If that is not possible, objecting physicians must provide the services themselves. Clearly, this would apply not only to abortion, but to any legal morally contested procedure. The draft policy was presented to a group including officials from four provincial Colleges of Physicians and Surgeons.[76]

Crusade against objecting physicians (2014)

Now, to illustrate the impact this kind of policy would have on freedom of conscience and religion, consider what happened in Ottawa in the spring of 2014.

A 25 year old woman went to an Ottawa walk-in clinic for a birth control prescription. The physician on duty did not prescribe or refer for contraceptives. The receptionist gave the woman a letter explaining this. The woman obtained the prescription at a clinic two minutes away and posted the letter on Facebook. A venomous feeding frenzy erupted, sparking a witch hunt. Two more NFP only physicians - both Catholics - were discovered lurking in the nation's capital.[77]

News that three out of 4,000 area physicians did not prescribe The Pill made headlines. It was front page news and a public scandal that three Ottawa physicians would not recommend, facilitate or do what they believed to be immoral, unethical, or harmful.[78] A *Medical Post* reporter expressed doubt that this was even legal.[79] It eventually became the subject of a province-wide CBC Radio programme.[80]

This was a wildly disproportionate response to news that a young woman had to drive around the block to get birth control pills.

Had the Conscience Research Group's *Model Policy* been in place, the three physicians would also have been disciplined for professional misconduct, ordered to do what they found morally objectionable and contrary to their medical judgement, and dismissed from the profession if they refused.

And that is exactly what the *Model Policy* would require if euthanasia and assisted suicide were legal and, if instead of The Pill, the patient wanted a lethal injection or lethal prescription.[81,82]

Quebec euthanasia law (2014)

As the crusade against the Ottawa physicians came to an end, the Quebec government passed a euthanasia law. It declares that eligible patients have a *right* to "end-of life-care" - including euthanasia. It authorizes euthanasia by physicians, but not assisted suicide.[83]

Hospices can refuse to permit or provide euthanasia on their premises,[84] a concession granted to ensure passage of the bill. An objecting physician who refuses a patient request must notify a designated administrator, who must then find a willing provider.[85] However, the law also states that objectors must "ensure that continuity of care is provided. . . *in accordance with their Code of Ethics*."[86] This, in Quebec, requires referral to a willing provider.[87,88]

Euthanasia under the terms of the Quebec law amounted to first degree murder, but - as in 1976 with respect to abortion - the provincial attorney general promised immunity from prosecution. As in 1976, the federal government did not intervene.

The law did not take effect until December, 2015. This was not only long after the expected ruling

by the Supreme Court, but also after the next federal election. It made legal and political sense to take no action at least until after the Supreme Court had ruled in *Carter*.

CMA approves euthanasia/assisted suicide (2014)

Now we turn to changes in Canadian Medical Association policy on euthanasia and assisted suicide. It appears that, during the first half of 2014, the CMA Board of Directors decided that the Association should reverse its policy and support legalization of the procedures.[89,90,91,92,93,94, 95]

However, the Directors did not put this to the delegates at the Annual General Council in August, 2014. Instead, they proposed a policy of neutrality: that the CMA should neither prohibit nor approve "physician assisted death," but allow physicians to "follow their conscience" on the issue.[96,97]

On the face of it, this committed the CMA to impartially defend both objecting and non-objecting physicians - nothing more. On the other hand, voting against it would have been a vote against freedom of conscience. It is not surprising that the motion passed by a margin of over 90%.

At the Supreme Court of Canada in the fall, the CMA insisted that "no physician should be compelled *to participate in or provide"* euthanasia or assisted suicide, and that the law should protect both objecting and non-objecting physicians. It did not argue for or against legalizing the procedures, but assured the Court that its policy against physician participation would be changed.[98]

When the Directors changed the policy in December, however, notwithstanding their appeal to neutrality at the Annual General Council, they did not adopt a neutral position. Instead, subject to the decision of the Supreme Court, they formally approved physician assisted suicide and euthanasia as "end of life care," and not just for the terminally ill or those with uncontrollable pain. Moreover, they did not exclude euthanasia for minors, the incompetent or the mentally ill.[99] Finally, they deleted cautionary statements that remained valid when the policy was revised.[100]

The policy supports physician freedom of conscience with respect to providing or participating in the procedures. However, this is qualified by the assertion that there should be no "undue delay" in providing them. Thus, the policy tacitly makes freedom of conscience for objecting physicians conditional upon timely patient access to the treatments.

The policy change was announced more than a month *before* the Supreme Court of Canada ruled in *Carter* - probably with the not unreasonable expectation that the judges would read it before the ruling[101] - which they did.[102] By doing all of this, the Board of Directors effectively wrote a blank cheque for the Supreme Court to legalize euthanasia and assisted suicide on any terms acceptable to the judges.

Ontario and Saskatchewan

Before we turn to the Supreme Court of Canada decision in *Carter*, we have to catch up on other important developments.

College of Physicians and Surgeons of Ontario (2008-2015)

The first concerns the College of Physicians and Surgeons of Ontario (CPSO). The CPSO is a

regulator like the Oregon Medical Board. In 2008, the CPSO drafted a human rights policy demanding that physicians set aside their personal beliefs in providing medical care.[103,104,105,106] A tidal wave of protest forced the College to back down.[107,108,109]

Fast forward from 2008 to 2013. The Conscience Research Group made its pitch for mandatory referral to medical regulators, including the CPSO policy manager.[110] In 2014, the Group's model policy was discussed by CPSO registrar with colleagues, [111] the Ontario College conducted what appears to have been a sham public consultation.[112] It ultimately enacted a new policy to force objecting physicians to make an "effective referral" for services they refuse to provide.[113]

The great majority of almost 16,000 submissions had opposed this,[114] but College officials wrote the final version of a new policy nine days *before* the consultation closed, and nine days *before* 80% of the submissions had been received.[115] Apparently to ensure the policy would pass, they included a disclaimer that it would not apply to euthanasia or assisted suicide. This was a strategic concession that lasted less than a year.

College of Physicians and Surgeons of Saskatchewan (2015)

While this was happening in Ontario, the College of Physicians and Surgeons of Saskatchewan was considering a virtual clone of the Conscience Research Group model policy.[116] It had been proposed by the Associate Registrar, who wanted all medical regulators to adopt it.[117] He acknowledged that effective referral would be required not just for "birth control and abortion" but for assisted suicide as well, admitting that doctors could be disciplined or dismissed if they refused.[118] Following nine months of controversy, a less problematic and somewhat ambiguous policy was adopted - with the disclaimer that it does not apply to euthanasia and assisted suicide.

Supreme Court rules in *Carter* (February, 2015)

Now, at last, we come to the decision of the Supreme Court of Canada in *Carter*, announced on 6 February, 2015. The nine judges unanimously ruled that physicians should be allowed to provide euthanasia or assisted suicide in some circumstances.[119] They suspended the ruling for a year to give governments and the medical profession a chance to enact new laws and regulations.

However, the federal government seems to have done nothing for five months. It appointed a three member panel in July,[120] but promptly called a federal election, thus delaying panel consultations until late October. In the absence of action by the federal government, others took the initiative.

The Canadian Medical Association approved a procedural framework for euthanasia and assisted suicide. This included a protection of conscience provision acceptable to groups representing objecting physicians.[121]

Provincial-Territorial Expert Advisory Group

At about the same time, a nine member Expert Advisory Group was formed under the auspices of the Ontario government.[122] Jocelyn Downie was one of the expert group members,[123] one of at least three who supported mandatory referral for morally contested services.[124,125]

Recommendations

The experts made a number of recommendations to broaden and maximize the impact of the *Carter* ruling. I leave those aside to focus on freedom of conscience.

1) **Institutions:** The Experts said that all health care and residential facilities like nursing, retirement and group homes, should be forced to allow euthanasia and assisted suicide on their premises, or to arrange for it elsewhere. They wanted no exceptions for private and faith-based institutions. They even wanted the state to prohibit people from establishing private facilities to avoid the requirement.

2) They recommended that physicians unwilling to kill their patients or help them commit suicide be forced to make an effective referral or direct transfer of care to someone who would. Alternatively, they should be forced to connect the patient to a publicly-funded system modelled on existing organ transplant networks.

The idea is simple. Physicians now enroll patients in systems that deliver hearts to save their lives, so physicians should be required to enroll patients in systems that deliver lethal injections to end them.

Quebec and Ontario

By the time the Experts made their report, the Conservatives had lost the federal election to the Liberals. Since it was unlikely the new government could enact a new law before the deadline set by the Supreme Court, Colleges of Physicians began to draft policies to guide physicians in the interim.

Quebec euthanasia law

Quebec was ahead of the game. Its euthanasia law came into effect in December last year. By that time the Quebec Health Minister was demanding that all palliative care homes provide euthanasia - even though the law allows them to refuse.[126] Recall the pattern encountered in the legalization of abortion. Promise freedom of conscience to change the law, then break the promise after the law changes.

CPSO (2016)

We see the same pattern in Ontario. Nine months after saying that the mandatory effective referral policy would not apply to euthanasia or assisted suicide, the College of Physicians and Surgeons decided that it would.[127] The decision was made a month *before* the College began the public consultation about the proposal.[128] Once more, the policy met with overwhelming opposition, which, once more, the College ignored. In January, 2016, it officially approved the mandatory referral policy it had decided to impose almost three months earlier.[129]

Supreme Court grants extension

At about the same time, the Supreme Court granted the new Liberal government a further four months to enact a new law. However, during that time it also allowed euthanasia to proceed in Quebec under its law, and authorized superior courts elsewhere to grant euthanasia or assisted suicide requests in accordance with the *Carter* ruling.[130]

The first Quebec euthanasia cases were reported the day the extension was granted.[131] The first judicially authorized euthanasia case occurred at the end of February in Vancouver. The practitioner was one of British Columbia's most prominent abortion providers,[132,133] who considers providing euthanasia consistent with her "pro-choice" philosophy.[134]

Federal committees

After the Supreme Court granted the extension, a Special Joint Committee of the House of Commons and Senate held hearings and received written submissions. I will mention here remarks by only two witnesses: Dr. Jeff Blackmer, representing the Canadian Medical Association, and Dr. Gus Grant, Registrar of the College of Physicians and Surgeons of Nova Scotia.

Dr. Blackmer reminded the Committee that no jurisdiction that permits euthanasia or assisted suicide requires effective referral by objecting physicians, yet access to the services is not a problem. He guaranteed that access would not be a problem in Canada, since only "a very small percentage" of physicians find referral "categorically, morally unacceptable," and about 24,000 physicians were willing to participate.[135]

Notice that this is a purely pragmatic argument; freedom of conscience should be accommodated because access will not be a problem.

Dr. Gus Grant disagreed, calling Dr. Blackmer's argument "naive." Explicitly referring to conscientious objection to abortion and contraception, he complained that objecting physicians often "choose not to assist women to access a legal and medical service that runs counter to their personal beliefs."

Dr. Grant made clear his support for a uniform policy on conscientious objection across the country.[136] Not coincidentally, he was one of the college officials to whom the Conscience Research Group pitched their *Model Conscientious Objection Policy* three years before.[137]

Ultimately, the Special Joint Committee recommended that,"at a minimum," a policy of effective referral be imposed upon objecting physicians. It also recommended that all publicly funded facilities, including denominational institutions, be compelled to *provide* euthanasia and assisted suicide: not merely to allow it or arrange for it to be done elsewhere.[138]

The new law

The euthanasia/assisted suicide bill introduced by the government in mid-April became law in mid-June. In brief, the *Criminal Code* now provides exceptions to the law against murder and assisted suicide for physicians and nurse practitioners, as it once provided exceptions to the law against abortion.[139] It includes a single substantive statement about freedom of conscience:

> 241.2(9) For greater certainty, nothing in this section compels an individual to provide or assist in providing medical assistance in dying.

This, of course, is really no more than what Justice Minister John Turner said about the abortion law in 1969.

Euthanasia and assisted suicide in Canada

Well, setting aside freedom of conscience for the moment, what is Canada's law on euthanasia and assisted suicide?

We actually have three: the Supreme Court ruling in *Carter*, the Quebec euthanasia law, and the *Criminal Code*. The only thing that everyone agrees upon is that the *Carter* ruling is the standard that other laws have to meet, so we'll start with that.

Criteria for euthanasia/assisted suicide

Carter:

The *Carter* ruling requires that physicians be allowed to provide euthanasia or assisted suicide

- for competent adults who clearly consent,
- and who have a grievous and irremediable medical condition,
- including illness, disease, or disability,
- that causes enduring and intolerable physical or psychological suffering
- that cannot be relieved by means acceptable to the individual.

The Court did not rule out allowing this in other situations. That will have to be decided by Parliament or by further litigation.[140]

Quebec:

The Quebec law is more restrictive than *Carter* because

- it allows only euthanasia,
- and only for someone "at the end of life"[141]
- who is in an "advanced state of irreversible decline in capability."[142]

Otherwise, it is essentially the same as *Carter*.

***Criminal Code*:**

The *Criminal Code* is more permissive than *Carter* in one respect. It allows both physicians and nurse practitioners to provide the services.

It is more specific than *Carter* because it requires that candidates be at least 18 years old. This is consistent with *Carter's* requirement that they be adults.

Candidates must also be eligible for government health insurance, a provision intended to prevent suicide tourism. The Court was silent on this issue.

However, the *Criminal Code* adds three criteria not found in *Carter*.

- First: the illness, disease or disability must be "incurable."

- Second: the candidate must be "in an advanced state of irreversible decline in capability," a provision borrowed from the Quebec law.
- Third: the natural death of the candidate must be "reasonably foreseeable," though no timeline is required. This is similar to the Quebec law.[143]

The B.C. Civil Liberties Association has filed a lawsuit alleging that these provisions are unconstitutional.[144]

Moving the goalposts

The new law requires the Minister of Justice to order "independent reviews" to explore the extension of euthanasia and assisted suicide

- to adolescents and children (the legal term being "mature minors");
- to incompetent people who made advance directives when competent, like people with dementia;
- to the mentally ill, as therapies for mental illness.[145]

I expect that, sooner or later, the *Carter* goalposts will move in these directions.

Where are we now?

There is some hope that the federal and provincial governments will create a central agency to connect patients with willing physicians, thus accommodating both patients and objecting professionals.

Religiously affiliated hospitals are incorporated into the state health care system,[146] on terms which seem to have largely respected their denominational integrity. Now they face increasingly strident demands that they be forced to provide euthanasia and assisted suicide.

Colleges of Physicians and Surgeons in Ontario and Nova Scotia demand effective referral for euthanasia and assisted suicide by objecting physicians. Ontario, in addition, has the same policy for every morally contested procedure. Two lawsuits have been filed against the Ontario College as a result.[147,148]

In Quebec, objecting physicians are required to notify a designated administrator, who will then find someone willing to provide euthanasia. This has been described as an "elegant solution,"[149] but it is unacceptable to some -not all- objecting physicians (there is a range of views on this point) who believe that this makes them morally complicit in killing patients.[150]

Drawing the line between co-operation and collaboration

Other regulators have adopted the following approach for all morally contested services:

- Objecting physicians are expected to provide information needed for informed medical decision making, such as prognosis, the treatments or procedures available, benefits and burdens of treatment, etc. A physician unwilling to provide this kind of information is required to refer the patient to someone who will. This referral is for information, not for the

morally contested service.

- If need be, objecting physicians are expected to advise patients how they can find other physicians or health care providers.
- While most policies do not say so explicitly, objecting physicians are not expected to make an effective referral for a morally contested service.

This is generally accepted by objecting physicians. They are willing to cooperate to enable a patient to make informed decisions and find other physicians, but they refuse to collaborate in wrongdoing.

That is the ongoing issue; drawing the line between cooperation and collaboration. This is complicated by occasional attempts at conscription: claims that their membership in a professional collective obliges them to support or enable the provision of euthanasia and assisted suicide by colleagues.[151]

Freedom of conscience advocacy

There is good news. Physicians have finally begun to defend their fundamental freedoms. In June last year, for the first time ever, the Christian Medical and Dental Society and Federation of Catholic Physicians' Societies held a joint conference in Calgary to focus on freedom of conscience.

The Coalition for HealthCARE and Conscience has been continuously engaging the public and lobbying federal and provincial governments, regulators, and the Canadian Medical Association.

Representatives of various Christian denominations and Jewish and Muslim communities have come together to make joint statements about euthanasia, and to support freedom of conscience and religion.

All of this had some impact.[152] Opposition members of parliament and senators introduced or supported protection of conscience motions and amendments. In the end, however, the Liberal majority government allowed only revisions to the preamble, which, in Canadian law, counts for almost nothing. Only a single substantive section was added to the law:

> 241.2(9) For greater certainty, nothing in this section compels an individual to provide or assist in providing medical assistance in dying.

Deliberate omission

And that is true. Nothing in the *Criminal Code* compels individuals or institutions to kill people or help them commit suicide. But nothing in the *Criminal Code* <u>prevents</u> such compulsion. This omission was deliberate, and this omission is significant.

The federal government knew that Ontario physicians were being ordered to make effective referrals for euthanasia and assisted suicide. It could have prevented this by making it a crime to force someone to be a party to homicide or suicide.

At the Justice Committee hearings on the proposed law, the Minister of Justice was asked twice, point blank, if this could be done. The Deputy Minister of Justice was asked the same question. Both evaded the questions.[153],[154]

Project submissions to parliament

The Project had made exactly this recommendation in its submission to the Justice Committee, but, like most others, the submission was not distributed to committee members. In consequence, I wrote (snail mail) to every member of parliament and every senator to answer the questions evaded by the Minister and Deputy Minister of Justice. With the letter was an amendment that was strictly and fully within federal jurisdiction, using only the language of the government's bill and the criminal law.

> The proposed amendment would establish that, as a matter of law and national public policy, no one can be compelled to become a party to homicide or suicide, or punished or disadvantaged for refusing to do so.
>
> This would not prevent the provision of euthanasia or assisted suicide by willing practitioners. . .
>
> However, [it] would prevent state institutions or . . .those in positions of power and influence from harassing, punishing or disadvantaging anyone who refuses to be a party to inflicting death on others. . .
>
> . . . The proposed amendment does not infringe the constitutional jurisdiction of provinces . . . Rather, it would re-establish and preserve a foundational principle of democratic civility: that no one and no state institution should be allowed to compel unwilling citizens to be parties to killing other people.

An amendment of exactly this kind was rejected in the Senate[155]

- because it would "make an offence out of something that is currently part of the practice of medicine,"
- because it would interfere in provincial jurisdiction,
- and because federal-provincial discussions were said to be resolving the issue.[156]

After the new law was proclaimed, the College of Physicians and Surgeons of Ontario resolved the issue on its own terms. It simply stated that its policy of "effective referral" was consistent with the *Criminal Code*.[157]

Government of Canada supports totalitarian claims

To sum up, the federal government knew full well that physicians were being ordered to be parties to homicide and suicide, it had the power to prevent it, and it was repeatedly asked to do so. It steadfastly refused.

This demonstrates that the government of Canada and its supporters deem it acceptable to force objecting physicians, "at a minimum," to arrange for their patients to be killed or helped to kill themselves.[158] They deem it acceptable to force all publicly funded health care institutions - including denominational institutions - to kill patients in their care or help them commit suicide.[159] The government of Canada considers this acceptable, because it could have prevented it, but

deliberately chose to enable it.

Killing is not surprising. Even murder is not surprising. But to claim that the state, or a learned or privileged class or profession can legitimately compel unwilling souls to collaborate in inflicting death upon another person, and justly punish them if they refuse - such claims are extraordinary, and extraordinarily dangerous.

In Hannah Arendt's terms, these are totalitarian claims. They seek total domination of will and intellect in moral decision-making, even in matters of life and death.[160] Such claims would have been completely unacceptable in Canada only two generations ago.

Closing

Well, what has all of this to do with your country?

I think you are the best judges of that. If there are lessons for the United States from this series of unfortunate events in Canada, I'm sure you will find them.

In closing, however, I will draw your attention to two points, and end with a reference to your Constitution.

The person is central

First: reasoning from different beliefs about what man is and what is good for him leads to different moral or ethical conclusions. Is lethally injecting a patient harmful - or beneficial? Is it medical treatment - or not?

Such questions cannot be answered without reference to the nature of the human person. A credal concept of the human person is what determines not only what counts as harm, but how one approaches every moral or ethical problem, not only in medicine,[161,162] but in law.

Change the credal concept of the human person that informs the law, and you will change the meaning of the law, even if you do not change the wording of the law itself. What lies at the root of current controversies about freedom of conscience and religion is fundamental disagreement about the nature of the human person. An effective defence of freedom of conscience must take this into account.

Freedom of conscience: distinctions and limits

Second: judges or legislators often purport to "balance" conflicting rights claims by limiting freedom of conscience. I urge those defending freedom of conscience in such cases to insist upon a critical distinction that neither legislators nor judges have been in the habit of making.

Freedom of conscience is exercised in two different ways. The first is by pursuing some good that one thinks should be done; call this perfective freedom of conscience, because the pursuit of the good as one understands it is thought to be perfective of the human person. The second is refusing to do what one believes to be wrong; call this preservative freedom of conscience - preservative of personal integrity.

It is not unusual to limit perfective freedom of conscience. This may do people some wrong, but it does not necessarily do them an injury. In contrast, to limit or repress preservative freedom of conscience by forcing people to do something they believe to be wrong is always an assault on their personal dignity and essential humanity. It is inconsistent with the best traditions and aspirations of liberal democracy. It is incoherent, because posits an ethical duty to do what one believes to be unethical. It instills attitudes more suited to totalitarian regimes than to the demands of responsible freedom.

This does not mean that no restriction can ever be placed on preservative freedom of conscience. It does mean, however, that if the restriction can be justified at all, it will only be as a last resort and only in the most exceptional circumstances.[163]

A constitutional question

Finally, your Constitution. I am not a lawyer, and the Project does not give legal advice, but I note that your 13th Amendment abolished not only slavery, but "involuntary servitude."

Now, "involuntary servitude" refers to an historical practice associated to slavery. However, I suggest that to compel people to serve ends they find morally abhorrent is to reduce them to the status of tools, to treat them as things to be used for ends chosen by others, thus imposing upon them an odious form of involuntary servitude. That would seem to be the current situation of the owners of Stormans pharmacies in Washington state.

This conclusion seems consistent with the thinking of Dr. Martin Luther King Jr., who condemned segregation as "morally wrong and awful" precisely because it relegated persons "to the status of things."[164] Others have made similar observations.[165,166,167,168]

Lawyers present may think that this is grasping at straws. Well, that is how I get most of my exercise.

With this, I conclude, and thank you for your patience.

Notes:

1. The *Globe and Mail*, for example, demanded liberalization of the law "to enable doctors to perform their duties according to their conscience and their calling."“Free the Doctor." *Globe and Mail*, 18 May, 1965. Quoted in de Valk, Alphonse, *Morality and Law in Canadian Politics: The Abortion Controversy*. Dorval, Quebec: Palm Publishers, 1974, p. 18

2. The *Globe and Mail* later said that abortion law reform should be based on the principle "that where religious moralities conflict, the State should support none, but leave the choice to individual conscience.”"Now the job is to be done, let it be done right", *Globe and Mail*, 21 December, 1967. Quoted in de Valk, *supra*, p. 56

3. One private member's bill on abortion introduced in1967 included a conscience clause almost identical to the conscience clause in the British *Abortion Act*. 2nd Session, 27th Parliament, 16 Elizabeth II 1967. The House of Commons of Canada, Bill C-136: *An Act Concerning the*

Termination of Pregnancy by Registered Medical Practitioners.
(http://www.consciencelaws.orgarchive/documents/1967-06-16-bill-c136.pdf)/

4. 2nd Session, 27th Parliament, 16 Elizabeth II 1967. The House of Commons of Canada, Bill C-122: An Act to Amend the *Criminal Code* (Abortion)
(http://www.consciencelaws.org/archive/documents/1967-05-30-bill-c122.pdf)

5. Second Session-Twenty-seventh Parliament 1967: Standing Committee on Health and Welfare, *Minutes of Proceedings and Evidence No. 1* (Thursday, June 29, 1967 and Tuesday, October 3rd, 1967), p. 3-6
(http://www.consciencelaws.org/archive/documents/1967-health-welfare.pdf)

6. Perron L. "Abortion Issue." (Letter to the Editor) *Ottawa Journal*, 1 February, 1969

7. "No one is going to force a doctor to perform an abortion if he does not want to perform it. . . This legislation will show respect for people who do not believe in abortions." *House of Commons Debates, Official Report*: First Session, 28th Parliament, 18 Elizabeth II (Hereinafter "Hansard") 9 May, 1969, p. 8526-8527
(http://www.consciencelaws.org/archive/documents/1969-05-09-hansard-macinnis.pdf)

8. *Criminal Code*, Section 287.
(http://laws-lois.justice.gc.ca/eng/acts/C-46/page-68.html?txthl=abortion#s-287) Accessed 2016-06-21

9. Opposition parties proposed seven protection of conscience amendments. It was agreed that debate on one of them would dispose of all seven. What was debated was to the following effect: "Nothing in the new law shall be construed as obliging any hospital to establish a therapeutic abortion committee, or any qualified medical practitioner to procure an abortion, or any member of a hospital staff to assist in abortion." This paraphrase reflects the effects of sub-amendment added to the original amendment. See *Hansard* (28 April, 1969) , p. 8056, 8063 (http://www.consciencelaws.org/archive/documents/1969-04-28-hansard.pdf). The original conscience clause had been proposed by Robert McCleave, an M.P. who was *in favour* of abortion. *Hansard* (28 April, 1969), p. 8069
(http://www.consciencelaws.org/archive/documents/1969-04-28-hansard.pdf)

10. *Hansard* (28 April, 1969), p. 8058-8059
(http://www.consciencelaws.org/archive/documents/1969-04-28-hansard.pdf)

11. "The Physician and the Liberal Society: Understanding in Winnipeg." Association News, *CMAJ* July 18, 1970, Vol. 103, p. 195
(http://pubmedcentralcanada.ca/pmcc/articles/PMC1930397/) Accessed 2016-07-22)

12. Canadian Medical Association *Code of Ethics* (1970) Transcribed from the original by A. Keith W. Brownell MD, FRCPC and Elizabeth "Libby" Brownell RN, BA (April 2001)

(http://www.royalcollege.ca/portal/page/portal/rc/common/documents/bioethics/primers/medical_ethics/CMACodeofEthics1970.pdf) Accessed 2015-06-17

13. "Canadian Medical Association 104th Annual Meeting, Halifax, Nova Scotia." *CMAJ* Volume 104(12) 1132-1134, June 19, 1971 (http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1931049/pdf/canmedaj01621-0080.pdf) Accessed 2016-07-122

14. Waring G. "Report from Ottawa." *CMAJ* Nov. 11, 1967, vol. 97, 1233 (http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1923621/?page=1) Accessed 2016-06-15.

15. In 1970, the first year under the new rules, there were more than 11,000. In 1971 there were almost 39,000. "Therapeutic abortion: government figures show big increase in '71." *CMAJ* May 20, 1972, Vol. 106, 1131 (http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1940714/?page=1) Accessed 2016-06-15

16. Geekie D.A. "Abortion: a review of CMA policy and positions." *CMAJ* September 7, 1974, Vol. 111, 474-477 (http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1947796/pdf/canmedaj01589-0082.pdf) Accessed 2016-07-22

17. The number of abortions increased from 11,152 in 1970 to almost 39,000 in 1971, an increase from a rate of 3.0 to 8.3 per 100 live births.
"Therapeutic abortion: government figures show big increase in '71." *CMAJ,* May 20, 1972, Vol. 106, 1131 (http://pubmedcentralcanada.ca/pmcc/articles/PMC1940714/?page=1) Accessed 2016-07-22

18. By 1975 the rate was 13.8/100. [J.B.S. "1975 abortion report more informative than its predecessors." *CMAJ*, October 22, 1977, Vol. 117, 933 (http://pubmedcentralcanada.ca/pmcc/articles/PMC1880128/?page=1) Accessed 2016-07-22

19. CMA President Bette Stephenson stated that the CMA was concerned about the abortion rate and "most disturbed . . . that even more abortions are being performed . . .than are indicated in the alarming figures released by Statistics Canada." Stephenson B. "Abortion: an open letter." *CMAJ*, 22 February, 1975, Vol. 112, 492 (http://pubmedcentralcanada.ca/pmcc/articles/PMC1956171/?page=1) Accessed 2016-07-22.

20. In 1976 there were about 54,500 abortions (14.9/100 live births). E.M.R., "1976 advance report on abortion compares statistics with 1975." *CMAJ*, January 7, 1978 Vol. 118, 76 (http://pubmedcentralcanada.ca/pmcc/articles/PMC1880452/?page=1)
Accessed 2016-07-22.

21. The chairman of the BCMA hospital committee believed most of his colleagues would support forcing hospitals to comply "B.C. M.A. Annual Meeting." *CMAJ* November 21, 1970,

Vol. 103, 1223 (http://pubmedcentralcanada.ca/pmcc/articles/PMC1930622/?page=6) Accessed 2016-07-22)

22. The *Globe and Mail* (that erstwhile champion of freedom of conscience) stated, "[H]ospital boards should never have been allowed a choice in the matter. The Government should . . . require hospitals which receive public grants to establish abortion committees.""The Law Denies Equality." *Globe and Mail*, 18 January 1974. Quoted in de Valk, *supra*, p. 137.

23. "Forty per cent of hospital employees who objected to assisting at abortions were denied the right to do so." De Valk A. "The Worst Law Ever." Edmonton: Life Ethics Centre, 1979, p. 15, citing Badgley R.F. *Report of the Committee on the Operation of the Abortion Law*. Ottawa, Supply and Services, 1977, p. 287.

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25. "Quebec City is a lively place, CMA annual meeting delegates discover." *CMAJ* July 9, 1977, Vol. 117, 63. (http://pubmedcentralcanada.ca/pmcc/articles/PMC1879626/) Accessed 2016-07-22.

26. Wilson R.G. "Code of Ethics: abortion referral (letter)." *CMAJ*, April 22, 1978, Vol. 118, 896 (http://pubmedcentralcanada.ca/pmcc/articles/PMC1818232/) Accessed 2016-07-22.

27. Firth S.T. "Code of Ethics: abortion referral (letter)." *CMAJ*, April 22, 1978, Vol. 118, 895 (http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1818224/?page=1) Accessed 2016-07-22.

28. Cameron P, Cohen M, Rapson L, Watters WW. "Code of Ethics: abortion referral (letter)." *CMAJ*, April 22, 1978, Vol. 118, 890, 895 (http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1818248/?page=1) Accessed 2016-07-22.

29. Forster J.M. "Code of Ethics: abortion referral." *CMAJ*, April 22, 1978, Vol. 118, 888 (http://pubmedcentralcanada.ca/pmcc/articles/PMC1818235/?page=1) Accessed 2016-07-22.

30. Shea J.B. "Code of Ethics: abortion referral." *CMAJ*, April 22, 1978, Vol. 118, 890 (http://pubmedcentralcanada.ca/pmcc/articles/PMC1818242/) Accessed 2016-07-22.

31. "Ethics problem reappears." *CMAJ*, July 8, 1978, Vol. 119, 61-62 (http://pubmedcentralcanada.ca/pmcc/articles/PMC1818280/) Accessed 2016-07-22.

32. Canadian Medical Association *Code of Ethics* (1978). Transcribed from the original by A. Keith W. Brownell MD, FRCPC and Elizabeth "Libby" Brownell RN, BA (April 2001) (http://www.royalcollege.ca/portal/page/portal/rc/common/documents/bioethics/primers/medical_ethics/CMACodeofEthics1978.pdf) Accessed 2016-07-22.

33. Assuming the procedure was performed in accordance with medical standards. Dunphy C. *Morgentaler: A Difficult Hero - A Biography*. Canada: Random House, 1996, p.175

34. In 1978, a Liberal cabinet minister resigned when it became known that he had forged a document to help get an abortion for a married woman with whom he had had an affair. The incident occurred in Ontario prior to 1976. *House of Commons Debates (Hansard)* Vol. III, 1978, p. 2350 (30 January, 1978) (http://parl.canadiana.ca/view/oop.debates_HOC3003_03/104?r=0&s=1) Accessed 2016-06-26.

35. *R. v. Morgentaler* (1988) 1 S.C.R. 30 (http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/288/index.do) Accessed 2016-07-22

36. Canadian Medical Association, Policy: *Induced abortion*. Approved by the CMA Board of Directors, December 15, 1988. (https://www.cma.ca/Assets/assets-library/document/en/advocacy/CMA_induced_abortion_PD88-06-e.pdf) Accessed 2016-07-22.

37. Otis M. "Nurses Fight for Freedom: 21 out of 30 paediatric nurses resign." *The Interim*, March, 1988 (http://www.consciencelaws.org/repression/repression005.aspx).

38. Kennedy FM. "Sweeney Defends Firings: Transition house workers fired, denied benefits for 'misconduct.'" *The Interim*, March, 1989 (http://www.consciencelaws.org/repression/repression004.aspx).

39. P Johnston W. "Med-School Admission Committees: Tainted by Pro-Choice Bias?" *Vital Signs*, Summer, 1995. (http://www.consciencelaws.org/repression/repression020.aspx).

40. Dooley D. "Hospital Restricts Nurses' Freedom of Conscience." *The Interim*, June, 1993 (http://www.consciencelaws.org/repression/repression006.aspx).

41. Ko M. "Personal Qualms Don't Count: Foothills Hospital Now Forces Nurses To Participate In Genetic Terminations." *Alberta Report Newsmagazine*, April 12, 1999 (http://www.consciencelaws.org/repression/repression001.aspx).

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44. From 1976, different provinces have had varying policies about paying for abortions provided outside hospitals. Evangelical Fellowship of Canada, *Provincial Decisions: Abortion Funding in Canada - A Brief Examination of the Provincial and Territorial Government's Roles in Determining Abortion Funding in Canada*. (October, 2013) (http://files.efc-canada.net/si/Abortion/AbortionFunding,Final,Nov2012.pdf) Accessed. 2016-07-

22.

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46. Rodgers S. Downie J. "Abortion: Ensuring Access." *CMAJ* July 4, 2006 vol. 175 no. 1 doi: 10.1503/cmaj.060548 (http://www.cmaj.ca/content/175/1/9.full) Accessed 2016-07-22.

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52. *Rodriguez v. British Columbia (Attorney General)*, 3 S.C.R. 519 (1993), 107 D.L.R. (4th) 342, 85 C.C.C. (3d) 15 (http://scc.lexum.org/en/1993/1993scr3-519/1993scr3-519.html) Accessed 2016-07-22.

53. Jocelyn Downie, curriculum vitae (https://www.dal.ca/content/dam/dalhousie/pdf/sites/noveltechethics/nte_downie.cv.pdf) Accessed 2016-07-22.

54. By 2003 she was arguing for the decriminalization of assisted suicide and euthanasia. Downie J. *Dying Justice: A Case for Decriminalizing Euthanasia and Assisted Suicide in Canada.* Toronto: University of Toronto Press, 2004.

55. In 2007 and 2008 she developed a legal strategy designed to reverse the *Rodriguez* decision, and began to look for a test case. A two day conference titled "Ethical, Legal, and Social

Perspectives on Physician Assisted Suicide" was held at Carelton University in 2007. Professor Downie presented "Rodriguez Revisited: Canadian Assisted Suicide Law and Policy in 2007." *Conference on Physician Assisted Suicide at Carleton*. Carleton University Newsroom, 12 March, 2007. (http://newsroom.carleton.ca/2007/03/12/conference-on-physician-assisted-suicide-at-carleton/) Accessed 2016-07-22. It does not appear that Prof. Downie's presentation was published. A detailed account of it was written by Alex Schadenberg of the Euthanasia Prevention Coalition, who was present when it was delivered. Schadenberg A. *Dalhousie law professor seeks to re-visit Rodriguez court decision.* Euthanasia Prevention Coalition.

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57. *Let their conscience be their guide? Conscientious refusals in reproductive health care.* (http://conscience.carolynmcleod.com/) Accessed 2016-07-22.

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61. Only two of the panel members were physicians: Dr. Ross Upshur and Johannes J.M. van Delden.

62. Downie J. *Dying Justice: A Case for Decriminalizing Euthanasia and Assisted Suicide in Canada.* Toronto: University of Toronto Press, 2004.

63. Schüklenk U. "Human Self-Determination, Biomedical Progress, and God." In *50 Voices of Disbelief: Why We Are Atheists*. Blackwell On Line, 11 November, 2009. (https://www.academia.edu/164435/Human_Self-Determination_Biomedical_Progress_and_God) Accessed 2016-07-22.

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65. van Delden JJM, Battin MP. *Euthanasia: Not Just for Rich Countries*. (Draft version, December 20, 2005) (http://www.eutanasia.ws/hemeroteca/eutanasia_rich_countries.pdf)

Accessed 2016-07-22.

66. Schuklenk U, van Delden J.J.M, Downie J, McLean S, Upshur R, Weinstock D. *Report of the Royal Society of Canada Expert Panel on End-of-Life Decision Making* (November, 2011) (http://rsc-src.ca/sites/default/files/pdf/RSCEndofLifeReport2011_EN_Formatted_FINAL.pdf) Accessed 2014-02-23. (Hereinafter “Royal Society”), p. 96.

67. Or at least provincial guarantees of immunity from prosecution for those providing the procedures, as Quebec had done with respect to abortion. *Royal Society*, p. 97.

68. *Royal Society*, p. 69, 101.

69. *Royal Society*, p. 62.

70. In the Supreme Court of British Columbia, *Notice of Civil Claim between Lee Carter, Hollis Johnson, Dr. William Shoichet and the British Columbia Civil Liberties Association (Plaintiffs) and the Attorney General of Canada (Defendant)* dated 26 April, 2011 (http://www.consciencelaws.org/archive/documents/carter/2011-04-26-noticeofclaim01.pdf) Accessed 2011-05-01.

71. *Carter v. Canada (Attorney General)* 2012 BCSC 886 (Hereinafter “Carter v. Canada (BCSC)”), para. 124 (http://www.courts.gov.bc.ca/jdb-txt/SC/12/08/2012BCSC0886cor1.htm) Accessed 2016-06-24.

72. *Carter v. Canada (BCSC),*para. 1393

73. Canadian Medical Association, *Euthanasia and Assisted Suicide* (Updated May 29, 2007).

74. “The Canadian Medical Association supports the right of any physician to exercise conscientious objection when faced with a request for medical aid in dying. (DM 5-22)” Canadian Medical Association, *Resolutions Adopted,146th Annual Meeting of the Canadian Medical Association* (19-21 August 2013 - Calgary, AB) (DM 5-22) (https://www.cma.ca/En/Pages/2013-resolutions.aspx) Accessed 2016-07-22.

75. Downie J. McLeod C. Shaw J.,"Moving Forward with a Clear Conscience: A Model Conscientious Objection Policy for Canadian Colleges of Physicians and Surgeons." *Health Law Review*, 21:3, 2013. (http://carolynmcleod.com/wp-content/uploads/2014/05/04_Downie-McLeod-Shaw.pdf) Accessed 2016-07-22.

76. Quebec, Nova Scotia, Ontario, and Saskatchewan. Letter from Bryan Salte to the Registrars of Colleges of Physicians and Surgeons in Canada. Redacted in Document 200/14, College of Physicians and Surgeons of Saskatchewan, *Report to Council from the Registrar*, 31 July, 2014, p. 8. (http://consciencelaws.org/archive/documents/cpss/2014-07-31-Report.pdf)

77. Murphy S. "NO MORE CHRISTIAN DOCTORS." *Protection of Conscience Project*, March, 2014 (http://www.consciencelaws.org/background/procedures/birth002.aspx)

78. Payne E. “Some Ottawa doctors refuse to prescribe birth control pills.” *Ottawa Citizen*, 30 January, 2014 (http://ottawacitizen.com/news/local-news/some-ottawa-doctors-refuse-to-prescribe-birth-control-pills) Accessed 2016-07-22.

79. Glauser W. “Ottawa clinic doctors’ refusal to offer contraception shameful, says embarrassed patient.” *Medical Post*, 5 February, 2014

80. CBC Radio, “Should doctors have the right to say no to prescribing birth control?” *Ontario Today*, 25 February, 2014 (http://www.cbc.ca/ontariotoday/2014/02/25/tuesday-should-doctors-have-the-right-to-say-no-to-prescribing-birth-control/) Accessed 2016-07-22.

81. Saskatchewan’s Associate Registrar had the legalization of assisted suicide and euthanasia in mind when he urged other colleges to adopt the policy. “Physician-assisted suicide, in particular, has the potential to challenge Colleges of Physicians and Surgeons to provide guidance to its members.” Letter from Bryan Salte to the Registrars of Colleges of Physicians and Surgeons in Canada. Redacted in Document 200/14, College of Physicians and Surgeons of Saskatchewan, *Report to Council from the Registrar*, 31 July, 2014, p. 8. (http://www.consciencelaws.org/archive/documents/cpss/2014-07-31-Report.pdf)

82. Saskatchewan’s Associate Registrar said that the policy was intended to apply “broadly,”not only to “birth control and abortion,” but “all other areas,” not excluding physician assisted suicide and euthanasia. He publicly confirmed that doctors who disagree with assisted suicide could “end up being disciplined,” and “could . . . lose their jobs.”“Saskatchewan doctors could face discipline over assisted suicide.” *Global News*, 13 February, 2015 (http://globalnews.ca/news/1829394/saskatchewan-doctors-could-face-discipline-over-assisted-suicide/) Accessed 2015-05-30. Annotated transcription at Protection of Conscience Project, *Submission to the College of Physicians and Surgeons of Saskatchewan, Re: Conscientious Refusal*, Appendix "C": Interview of Associate Registrar, College of Physicians and Surgeons of Saskatchewan Re: CPSS Draft Policy *Conscientious Refusal*, CI.2, CI.3; CIII.2 to CIII.4, CIV.1, CV.1 (http://www.consciencelaws.org/publications/submissions/submissions-014-004-cpss.aspx)

83. For a detailed discussion of the Quebec law, see Murphy S., “Redefining the Practice of Medicine: Euthanasia in Quebec.” *Protection of Conscience Project*, 2015-10-28. (http://consciencelaws.org/law/commentary/legal068-001.aspx)

84. *Act Respecting End of Life Care* (Hereinafter “ARELC”) section 13. (http://consciencelaws.org/background/procedures/assist009-041.aspx)

85. *ARELC*, section 31.

86. *ARELC*, section 50.

87. The Collège des médecins *Code of Ethics* requires that physicians who are unwilling to provide a service for reasons of conscience "offer to help the patient find another physician." Collège des médecins du Québec, *Code of Ethics of Physicians*, para. 24 (http://www.cmq.org/publications-pdf/p-6-2015-01-07-en-code-de-deontologie-des-medecins.pdf) Accessed 2016-07-22.

88. The gloss provided by the Collège mentions abortion and contraception and emphasizes an expectation of active assistance by the objecting physician to locate, not just another physician, but the services themselves. "For example, a physician who is opposed to abortion or contraception is free to limit these interventions in a manner that takes into account his or her religious or moral convictions. However, the physician must inform patients of such when they consult for these kinds of professional services and assist them in finding the services requested." Collège des médecins du Québec*, Legal, Ethical and Organizational Aspects of Medical Practice in Québec*. ALDO-Québec, 2010 Edition, p. 156. (http://aldo.cmq.org/en/GrandsThemes/ConvictionsPerso/ObjectConsc.aspx) Accessed 2016-07-22.

89. During 2014, CMA officials quietly studied the provision of physician assisted suicide and euthanasia in Oregon, Washington, Montana, Vermont and New Mexico, Netherlands, Belgium and Switzerland. Kirkey S. "Canadian doctors preparing for 'all eventualities' in case top court strikes down ban on assisted suicide." National Post, 21 December, 2014 (http://news.nationalpost.com/2014/12/21/canadian-doctors-preparing-for-all-eventualities-in-case-top-court-strikes-down-ban-on-assisted-suicide/) Accessed 2014-12-22

90. The CMA held town hall meetings across Canada in the first half of the year, finding diametrically opposed views among the public. Among the points noted in the report concerning the meetings: Canadian Medical Association, *End-of-Life Care: A National Dialogue* (June, 2014) (https://www.cma.ca/Assets/assets-library/document/en/advocacy/end-of-life-care-report-e.pdf) Accessed 2016-07-22.

91. Six meetings and other consultations held with physicians across the country found the same division. A majority favoured maintaining the ban against physician participation. A "significant minority" believed the policy should be at least reviewed. Canadian Medical Association, *End-of-Life Care: A National Dialogue. CMA Member Consultation Report* (July, 2014) (https://www.cma.ca/Assets/assets-library/document/en/advocacy/Englishreportfinal.pdf) Accessed 2016-07-22.

92. The month before the town hall meetings ended, CMA President Dr. Louis Hugo Francescutti and Dr. Jeff Blackmer announced that the CMA would intervene in the Supreme

Court of Canada in the *Carter* case but would not argue for or against legalization. Blackmer J, Francescutti LH, "Canadian Medical Association Perspectives on End-of-Life in Canada." *HealthcarePapers*, 14(1) April 2014: 17-20.doi:10.12927/hcpap.2014.23966

93. In June, 2014, when the CMA applied for leave to intervene at the Supreme Court of Canada in *Carter v. Canada*, the application was supported by an affidavit implying that, should the court legalize the procedures, the Association would likely change its policy precisely because physicians would be "key players" whose cooperation would be needed to make assisted suicide and euthanasia available. In the Supreme Court of Canada (On Appeal from the Court of Appeal of British Columbia) Affidavit of Dr. Chris Simpson, Motion for Leave to Intervene by the Canadian Medical Association (5 June, 2014) p. 10 (https://www.cma.ca/Assets/assets-library/document/en/advocacy/EOL/Supreme-Court-Affidavit-Carter-Case.pdf) Accessed 2016-07-22.

94. During 2014 there was continual discussion of physician assisted suicide and euthanasia by the CMA Board of Directors. CMA Board member Dr. Ewan Affleck proposed that the Board sponsor a resolution at the August Annual General Council. Anselmi E. "Yk doc key in assisted suicide ruling: Dr. Ewan Affleck instrumental in penning resolution considered by Supreme Court." *Northern News Service*, 13 February, 2015 (http://www.nnsl.com/frames/newspapers/2015-02/feb13_15dr.html) Accessed 2016-07-22.

95. The resolution had to be accompanied by a supporting rationale. The rules state that the rationale is the means through which the General Council gives policy guidance and direction to the Association and the Board. Thus, as the sponsor of the resolution, the Board wrote - or at least approved in advance - the kind of policy guidance it wanted to use to resolve the apparent conflict between the resolution and existing policy against participation. Canadian Medical Association, *General Council Motions - 2014 Procedures and Guidelines: Motion Development*, p. 2, point 6. (https://www.cma.ca/Assets/assets-library/document/en/about-us/procedures-guidelines-2014-e.pdf) Accessed 2016-07-22.

96. While the wording of the motion seemed to suggest that the Association should limit itself to taking a laissez-faire position concerning participation by individual physicians, the rationale went much further. Citing the CMA *Code of Ethics*, it asserted that the current prohibition "may adversely impact patients with terminal conditions and unremitting suffering from obtaining compassionate care," and asked, rhetorically, how Canadian physicians could justify "withholding a service against the will of a patient?" Rhetorical questions are meant to elicit expected answers. The answer obviously expected by the Board of Directors in this case was that the CMA could not justify refusing assisted suicide and euthanasia to competent patients who are terminally ill and want to kill themselves or have a physician kill them. It would seem to follow from this that the Board of Directors believed that CMA should formally approve physician participation in assisted suicide and euthanasia.
Canadian Medical Association, *147th General Council Delegates' Motions: End-of-Life Care:*

Motion DM 5-6. (https://www.cma.ca/Assets/assets-library/document/en/GC/Delegate-Motions-end-of-life.pdf) Accessed 2016-07-22.

97. The presentation of statistics at the AGC appears to reflect the pro-euthanasia bias in the resolution. It was argued on the floor that "current policy on euthanasia and physician-assisted suicide does not sufficiently reflect the broad spectrum of opinions on the matter held by Canadian physicians," since it prohibited physician participation in euthanasia and assisted suicide. In contrast, the most recent survey of Canadian physicians found almost 45% of physicians supported legalizing assisted suicide, about 36% favoured legalization of euthanasia, and almost 27% were willing to be involved with providing assisted suicide if the acts were legalized. Of course, the survey results also revealed that 55% of physicians surveyed were against legalizing assisted suicide, 64% against legalizing euthanasia, and 73% were unwilling to be involved with assisted suicide, but it appears that those citing the statistics preferred to accentuate the positive rather than the negative. It also appears that the numbers of those willing or unwilling to provide euthanasia, if available, were not reported. Rich, P. *Physician perspective on end-of-life issues fully aired*. 19 August, 2014 (https://www.cma.ca/En/Pages/Physician-perspective-on-end-of-life-issues-fully-aired.aspx) Accessed 2016-07-22.

98. In the SCC on appeal from the BCCA, *Factum of the Intervener, The Canadian Medical Association* (27 August, 2014) para. 27-28 (http://www.consciencelaws.org/archive/documents/carter/2014-08-27-cma-factum.pdf)

99. Canadian Medical Association Policy: *Euthanasia and Assisted Death* (Update 2014) (https://www.cma.ca/Assets/assets-library/document/en/advocacy/EOL/CMA_Policy_Euthanasia_Assisted%20Death_PD15-02-e.pdf) Accessed 2016-07-22.

100. The earlier policy required access to palliative care be ensured for all Canadians *before* any consideration was given to legalizing euthanasia and assisted suicide. The later policy dropped this requirement. Other concerns expressed in the earlier policy that remained valid when they were deleted included the possibility that litigation would expand the scope of euthanasia and assisted suicide, concerns about a 'slippery slope,' with reference to neurologically impaired and infants, and the possibility of "rational suicide" by people who are not sick. After the ruling, the CMA's Dr. Jeff Blackmer voiced concerns about developments in the Netherlands and Belgium, including the Groningen Protocol, which were explicitly stated in the previous CMA policy *against* euthanasia and assisted suicide, but deleted from the new CMA policy *approving* euthanasia and assisted suicide. His concern that a constitutional challenge might expand the *Carter* criteria was also explicitly stated in the previous CMA policy, but that, too, was deleted in the new policy. His reference to controversial European cases and concern that many cases could qualify under the *Carter* criteria brings to mind the statement in the previous CMA policy, "Such extension is the 'slippery slope' that many fear" - a concern also deleted from the new policy. Santi N. "From Courtroom to Bedside - A Discussion with Dr. Jeff Blackmer on the

Implications of *Carter v. Canada* and Physician-Assisted Death." *UOJM* Volume 5, Issue 1, May 2015 (https://uottawa.scholarsportal.info/ojs/index.php/uojm-jmuo/article/view/1276/1270) Accessed 2016-07-22.

101. The affidavit supporting the intervention made note of numerous cases in which courts had taken notice of CMA policy. In the Supreme Court of Canada (On Appeal from the Court of Appeal of British Columbia) *Affidavit of Dr. Chris Simpson, Motion for Leave to Intervene by the Canadian Medical Association* (5 June, 2014) para. 19-20 (https://www.cma.ca/Assets/assets-library/document/en/advocacy/EOL/Supreme-Court-Affidavit-Carter-Case.pdf) Accessed 2016-07-22.

102. *Carter v. Canada (Attorney General)*, 2015 SCC 5 (Hereinafter "Carter v. Canada"), para. 131-132. (https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14637/index.do) Accessed 2016-07-22.

103. Submission of the Ontario Human Rights Commission to the College of Physicians and Surgeons of Ontario Regarding the draft policy, "Physicians and the Ontario Human Rights Code" (15 August, 2008). (http://www.ohrc.on.ca/en/resources/submissions/physur) Accessed 2016-07-22.

104. College of Physicians and Surgeons of Ontario, *Physicians and the Ontario Human Rights Code* (Draft) (Hereinafter "POHRC") p. 4. (http://www.consciencelaws.org/archive/documents/cpso/2008-cpso-ohrc-app-a-consultation%20draft.pdf)

105. E-mail from the College of Physicians and Surgeons of Ontario to College Members re: Draft Policy- *Physicians and the Ontario Human Rights Code*, 20 August 2008

106. *POHRC,* p. 6-7.

107. Murphy S. "Physicians and the Ontario Human Rights Code: Ontario Human Rights Commission attempts to suppress freedom of conscience. (August-September, 2008)" *Protection of Conscience Project* (http://www.consciencelaws.org/ethics/ethics078-000.aspx)

108. "OMA Urges CPSO to Abandon Draft Policy on Physicians and the Ontario Human Rights Code." *OMA President's Update*, Volume 13, No. 23 September 12, 2008.

109. "OMA Response to CPSO Draft Policy 'Physicians and the Ontario Human Rights Code.'" Statement of the Ontario Medical Association, 11 September, 2008.

110. Letter from Bryan Salte to the Registrars of Colleges of Physicians and Surgeons in Canada. Redacted in Document 200/14, College of Physicians and Surgeons of Saskatchewan, *Report to Council from the Registrar*, 31 July, 2014, p. 8. (http://consciencelaws.org/archive/documents/cpss/2014-07-31-Report.pdf)

111. The "draft policy statement developed by the Conscientious Objections Working Group" was discussed during a meeting of the Registrars of the Colleges of BC, Alberta, Saskatchewan, Manitoba and Ontario. Saskatchwan's Associate Registrar Bryan Salte of seems to have taken the lead. He later reported that the other Colleges agreed to consider the policy and consider implementing it. Document 200/14, College of Physicians and Surgeons of Saskatchewan, *Report to Council from the Registrar*, 31 July, 2014, p. 3. (http://consciencelaws.org/archive/documents/cpss/2014-07-31-Report.pdf)

112. Murphy S. "Tunnel Vision at the College of Physicians." *National Post*, 13 April, 2015. (http://news.nationalpost.com/full-comment/sean-murphy-tunnel-vision-at-the-college-of-physicians) Accessed 2016-07-22.

113. College of Physicians and Surgeons of Ontario, *Professional Obligations and Human Rights* (http://www.cpso.on.ca/Policies-Publications/Policy/Professional-Obligations-and-Human-Rights) Accessed 2016-07-22.

114. Ontario Superior Court of Justice, Between the Christian Medical and Dental Society of Canada *et al* and College of Physicians and Surgeons of Ontario, *Notice of Application*, 20 March, 2015. Court File 15-63717 (http://consciencelaws.org/archive/documents/cpss/2015-03-20-cmds-notice.pdf)

115. College of Physicians and Surgeons of Ontario, *Meeting of Council 6 March, 2015*, p. 61. (http://www.cpso.on.ca/CPSO/media/documents/Council/Council-Materials_Mar2015.pdf) Accessed 2016-07-22.

116. The College Council was likely unaware that the policy had been co-authored by one of Canada's leading euthanasia advocates. The Associate Registrar was less than candid about its origins. Protection of Conscience Project, *Submission to the College of Physicians and Surgeons of Saskatchewan Re: Conscientious Refusal (5 March, 2015) Appendix "B": Development of the CPSS Draft Policy Conscientious Refusal* (http://consciencelaws.org/publications/submissions/submissions-014-003-cpss.aspx)

117. "Physician-assisted suicide, in particular, has the potential to challenge Colleges of Physicians and Surgeons to provide guidance to its members. I think that it will be much better for the Colleges and the physician members if the Colleges are prepared for the issue. If no policy is in place, and either the legislation in Quebec dealing with assisted suicide comes into effect, or the Supreme Court of Canada strikes down the prohibition against assisted suicide in the Taylor [sic] case, there will be an expectation that Colleges provide guidance to their members. The situation could have to be addressed on an urgent basis if there is no policy in place at the time." Letter from Bryan Salte to the Registrars of Colleges of Physicians and Surgeons in Canada. Redacted in Document 200/14, College of Physicians and Surgeons of Saskatchewan, Report to Council from the Registrar, 31 July, 2014, p. 8. The *Carter* case is probably misidentified here as "Taylor" because Gloria Taylor became the most prominent plaintiff.

(http://consciencelaws.org/archive/documents/cpss/2014-07-31-Report.pdf)

118. "Saskatchewan doctors could face discipline over assisted suicide." *Global News*, 13 February, 2015 (http://globalnews.ca/news/1829394/saskatchewan-doctors-could-face-discipline-over-assisted-suicide/) Accessed 2015-05-30. Annotated transcription at Protection of Conscience Project, *Submission to the College of Physicians and Surgeons of Saskatchewan, Re: Conscientious Refusal*, Appendix "C": Interview of Associate Registrar, College of Physicians and Surgeons of Saskatchewan Re: CPSS Draft Policy *Conscientious Refusal*, CI.2, CI.3; CIII.2 to CIII.4, CIV.1, CV.1 (http://www.consciencelaws.org/publications/submissions/submissions-014-004-cpss.aspx)

119. *Carter*, para. 132. (https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14637/index.do) Accessed 2016-07-22.

120. Department of Justice, News release: *Government of Canada Establishes External Panel on options for a legislative response to Carter v. Canada* (17 July, 2016) (http://news.gc.ca/web/article-en.do?nid=1002949) Accessed 2016-06-24.

121. Canadian Medical Association, *Principles-based Recommendations for a Canadian Approach to Physician Assisted Dying.* (January, 2016) (https://www.cma.ca/Assets/assets-library/document/en/advocacy/cma-framework_assisted-dying_final-jan2016.pdf) Accessed 2016-06-26

122. Ontario Ministry of Health and Long Term Care, News Release: *Provinces, Territories Establish Expert Advisory Group On Physician-Assisted Dying. Ontario Leading Provincial-Territorial Co-Ordination to Seek Advice from Experts*. (14 August, 2015) (https://news.ontario.ca/mohltc/en/2015/08/provinces-territories-establish-expert-advisory-group-on-physician-assisted-dying.html) Accessed 2016-07-22.

123. Ontario Ministry of Health and Long Term Care, *Backgrounder: Provincial-Territorial Expert Advisory Group Convened On Physician-Assisted Dying* (14 August, 2015) (https://news.ontario.ca/mohltc/en/2015/8/provincial-territorial-expert-advisory-group-convened-on-physician-assisted-dying.html) Accessed 2016-07-22.

124. Ruth Goba was appointed to the Ontario Human Rights Commission in 2006. In 2008 and 2014 the Commission demanded that objecting physicians be forced to refer for morally contested services. Ontario Human Rights Commission, Meet our Commissioners (http://www.ohrc.on.ca/en/about-commission/meet-our-commissioners) Accessed 2016-06-26.

125. Arthur Schafer, director of the Centre for Professional and Applied Ethics at the University of Manitoba, asserted in 2000 that conscientious objectors who refuse "legal services" (ie., the 'morning after pill') to patients who have nowhere else to go should leave the profession. (Jacobs, Mindelle, "Pharmacists Want Right of Refusal," *Edmonton Sun*, 16 April, 2000) In 2014

he argued that objecting physicians should be forced to provide birth control and implied that they should not be allowed to publicly express opposition to it. (Weeks C. "Ontario authorities take action on doctors who deny birth control." *Globe and Mail*, 11 December, 2014 (http://www.theglobeandmail.com/life/health-and-fitness/health/ontario-doctors-who-deny-abortion-birth-control-must-refer-patients/article22035376/) Accessed 2016-07-22.

126. The Canadian Press, "Gaétan Barrette insists dying patients must get help to ease suffering: Quebec's right-to-die law comes into effect on Dec. 10." *CBC News*, 2 September, 2015 (http://www.cbc.ca/news/canada/montreal/ga%C3%A9tan-barrette-insists-dying-patients-must-get-help-to-ease-suffering-1.3213615) Accessed 2016-06-27.

127. "The College of Physicians and Surgeons of Ontario took the position that physicians who object to physician-assisted dying requests have a positive obligation to make an effective referral. An effective referral, as described by the Ontario College, is a referral made in good faith to a non-objecting available and accessible physician, other health care professional, or agency. The College noted that the medical community has an obligation to ensure access and that conscientious objection should not create barriers." External Panel on Options for a Legislative Response to *Carter v. Canada*, *Consultations on Physician Assisted Dying: Summary of Results and Key Findings - Final Report* (15 December, 2015), p. 100. (http://www.justice.gc.ca/eng/rp-pr/other-autre/pad-amm/pad.pdf) Accessed 2016-06-27.

128. College of Physicians and Surgeons of Ontario, News release: *Physician Assisted Death: College Consults on Interim Guidance* (7 December, 2015) (http://www.cpso.on.ca/Whatsnew/News-Releases/2015/Physician-Assisted-Death-College-Consults-on-Inter) Accessed 2016-06-24.

129. College of Physicians and Surgeons of Ontario, News release: *Physician Assisted Death: College Approves Interim Guidance* (26 January, 2016) (http://www.cpso.on.ca/Whatsnew/News-Releases/2015/Physician-Assisted-Death-College-Consults-on-Inter) Accessed 2016-06-24.

130. *Carter v. Canada (Attorney General)* 2016 SCC 4 (2016-01-15) (http://scc-csc.lexum.com/scc-csc/scc-csc/en/15696/1/document.do) Accessed 2016-06-26.

131. Hamilton, G. "First Quebec euthanasia case confirmed, two others reported." *National Post* (http://news.nationalpost.com/news/canada/first-quebec-euthanasia-case-confirmed-two-others-reported) Accessed 2016-06-26.

132. A woman with ALS was lethally injected by Dr. Ellen Wiebe. Fine S, Church E. "ALS sufferer first Canadian to receive judge's approval for assisted death." *The Globe and Mail*, 1 March, 2016 (http://www.theglobeandmail.com/news/national/calgary-woman-first-to-receive-judge-approved-assisted-death/article28974818/) Accessed 2016-07-28.

133. Dr. Wiebe had opened Hemlock Aid in Dying next to her Willow Women's Clinic. Hemlock Aid in Dying: For people who want to take control of their own deaths. Suite 1017 - 750 West Broadway Vancouver BC (http://hemlockaid.ca/?page_id=13) Accessed 2016-07-22. Willow Women's Clinic, Suite 1013 - 750 West Broadway Vancouver BC (http://www.willowclinic.ca/) Accessed 2016-07-22.

134. Gulli C. "Assisted death is the new pro-choice. When does life - and a doctor's duty - begin and end? Assisted dying is dredging up the big questions of the abortion debate, for better or worse." *Macleans*, 28 May, 2016. (http://www.macleans.ca/society/health/assisted-death-is-the-new-pro-choice/) Accessed 2016-06-28

135. Special Joint Committee on Physician Assisted Dying Parliament of Canada (January-February, 2016). Meeting No. 6, 27 January, 2016: Canadian Medical Association (Dr. Jeff Blackmer, Dr. Cindy Forbes) Edited Video (http://www.consciencelaws.org/background/procedures/assist014-001.aspx#Canadian_Medical_Association); Edited Video Transcript (http://www.consciencelaws.org/background/procedures/assist014-002.aspx#cma-oral)

136. Special Joint Committee on Physician Assisted Dying (PDAM), Meeting No. 10 (2 February, 2016). Webcast: Dr. Douglas Grant (19:30:08 to 19:31:50) (http://parlvu.parl.gc.ca/XRender/en/PowerBrowser/PowerBrowserV2/20160202/-1/24406?useragent=Mozilla/5.0 (Windows NT 6.1; WOW64; Trident/7.0; SLCC2; .NET CLR 2.0.50727; .NET CLR 3.5.30729; .NET CLR 3.0.30729; Media Center PC 6.0; .NET4.0C; .NET4.0E; InfoPath.3; GWX:DOWNLOADED; rv:11.0) like Gecko) Accessed 2016-02-05.

137. Letter from Bryan Salte to the Registrars of Colleges of Physicians and Surgeons in Canada. Redacted in Document 200/14, College of Physicians and Surgeons of Saskatchewan, *Report to Council from the Registrar*, 31 July, 2014, p. 8. (http://consciencelaws.org/archive/documents/cpss/2014-07-31-Report.pdf)

138. *Report of the Special Joint Committee on Physician Assisted Dying - Medical Assistance in Dying: A Patient-Centred Approach*. (February, 2016) Recommendation 10, p. 26; Recommendation 11, p. 27 (http://consciencelaws.org/archive/documents/2016-02-25-PDAM-Rpt01-bookmarked.pdf)

139. Statutes of Canada 2016, Chapter 3. *An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying)* (http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&DocId=8384014) Accessed 2016-06-26

140. *Carter*, para. 127.

141. *ARELC*, Section 26(3) (http://www.consciencelaws.org/background/procedures/assist009-041.aspx#026).

142. *ARELC*, Section 26(5) (http://www.consciencelaws.org/background/procedures/assist009-041.aspx#026).

143. Statutes of Canada 2016, Chapter 3. *An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying)* (http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&DocId=8384014) Accessed 2016-06-26.

144. In the Supreme Court of British Columbia, Julia Lamb and British Columbia Civil Liberties Association, Plaintiffs, and Attorney General of Canada, Defendant: Notice of Civil Claim (27 June, 2016) (https://bccla.org/wp-content/uploads/2016/06/2016-06-27-Notice-of-Civil-Claim-1.pdf) Accessed 2016-06-28.

145. Statutes of Canada 2016, Chapter 3. *An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying)* Section 9.1. (http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&DocId=8384014) Accessed 2016-06-26.

146. Private facilities are generally prohibited from providing health care that is offered by the state.

147. A lawsuit against the first mandatory referral policy was launched by the Christian Medical and Dental Society, the Canadian Federation of Catholic Physicians' Societies and five physicians, including one of the Ottawa physicians who had been the subject of the Facebook crusade. Ontario Superior Court of Justice, Between the Christian Medical and Dental Society of Canada *et al* and College of Physicians and Surgeons of Ontario, *Notice of Application*, 20 March, 2015. Court File 15-63717 (http://consciencelaws.org/archive/documents/cpso/2015-03-20-cmds-notice.pdf).

148. A lawsuit against the mandatory referral policy for euthanasia and assisted suicide was filed by the Coalition for HealthCARE and Conscience, which is comprised of the Catholic Archdiocese of Toronto, the Christian Medical and Dental Society of Canada, the Catholic Organization for Life and Family, the Canadian Federation of Catholic Physicians' Societies, the Canadian Catholic Bioethics Institute, Canadian Physicians for Life, Evangelical Fellowship of Canada, Archdiocese of Vancouver, and the Catholic Health Alliance of Canada. Coalition for HealthCARE and Conscience, News release: *Ontario physicians oppose referrals for assisted suicide, seek judicial review of CPSO requirement* (20 June, 2016) (http://consciencelaws.org/blog/?p=6913).

149. Oral submission of the Canadian Medical Protective Association to the Special Joint Committee on Physician Assisted Dying, Meeting No. 12, 4 February, 2016 (http://consciencelaws.org/background/procedures/assist014-002.aspx#cmpa-oral)

150. *Physicians: Quebec "solution" is collaboration in killing, not an "elegant" compromise*. Protection of Conscience Project, 15 February, 2016. (http://consciencelaws.org/blog/?p=6456)

151. For example, during an on-line internal CMA consultation with physicians, the moderator of the consultation suggested that the resolution at the Annual General Council in 2014 imposed an obligation on physicians opposed to euthanasia and assisted suicide to support colleagues providing the services: "It is our obligation as a collective to support them, no matter what our own individual and personal views on this difficult and complex issue." Principles based approach to assisted dying (ca. 2015-07-01) Blackmer Comment No. 10.

152. A member of the Provincial-Territorial Expert Advisory Group described opposition from supporters of freedom of conscience as a "uniquely Canadian" mountain to be climbed. Meeting No. 5, PDAM Special Joint Committee on Physician Assisted Dying, 26 January, 2016. *Maureen Taylor, speaking for the Provincial-Territorial Expert Advisory Group on Physician Assisted Dying* - 19:07:53 to 19:08:11. (http://parlvu.parl.gc.ca/XRender/en/PowerBrowser/PowerBrowserV2/20160126/-1/24370?useragent=Mozilla/5.0 (Windows NT 6.1; WOW64; Trident/7.0; SLCC2; .NET CLR 2.0.50727; .NET CLR 3.5.30729; .NET CLR 3.0.30729; Media Center PC 6.0; .NET4.0C; .NET4.0E; InfoPath.3; GWX:DOWNLOADED; rv:11.0) like Gecko) Accessed 2016-01-28.

153. Standing Committee on Justice and Human Rights, House of Commons, Parliament of Canada: Meeting No. 10, 2 May, 2016. Philpott, Jane (Minister of Health), Oral Submission. Edited Video Transcript: *Minister of Justice Jody Wilson-Raybould responding to Iqra Khalid and the Chair*. (http://www.consciencelaws.org/background/procedures/assist016-002b.aspx#Philpott)

154. Standing Committee on Justice and Human Rights, House of Commons, Parliament of Canada: Meeting No. 10, 2 May, 2016. Department of Health and Department of Justice, Oral Submission. Edited Video Transcript: *Deputy Minister William F. Pentney, responding to Ted Falk and Mark Warawa.* (http://www.consciencelaws.org/background/procedures/assist016-002a.aspx#Department)

155. Unfortunately, it used the term *medical aid in dying* rather than *homicide* and *suicide*. "No person shall compel an individual or organization to provide or assist in providing medical assistance in dying or to provide a referral for medical in dying." Debates of the Senate (Hansard) 1st Session, 42nd Parliament. Volume 150, Issue 46, 9 June, 2016 (http://www.parl.gc.ca/Content/Sen/Chamber/421/Debates/046db_2016-06-09-e.htm?#35) Accessed 2016-06-29.

156. The Senator cited and briefly paraphrased the policies of Colleges of Physicians and Surgeons across the country, including Ontario's requirement for "effective referral," claiming that none of them had been challenged as being contrary to freedom of conscience - obviously an erroneous assertion. Debates of the Senate (Hansard), 1st Session, 42nd Parliament. Volume 150, Issue 46, 9 June, 2016 (http://www.parl.gc.ca/Content/Sen/Chamber/421/Debates/046db_2016-06-09-e.htm?) Accessed 2016-06-19.

157. College of Physicians and Surgeons of Ontario, *Medical Assistance in Dying* (June, 2016) (http://www.cpso.on.ca/Policies-Publications/Policy/Physician-Assisted-Death) Accessed 2016-06-29.

158. *Medical Assisted Dying: A Patient-Centred Approach. Report of the Special Joint Committee on Physician Assisted Dying* (February, 2016) (Hereinafter "PDAM Report"), Recommendation 10, p. 26 (http://www.consciencelaws.org/archive/documents/2016-02-25-PDAM-Rpt01-bookmarked.pdf)

159. *PDAM Report,* Recommendation 11, p. 27.

160. Arendt H. *The Origins of Totalitarianism*. Orlando: Harcourt Inc., 1985, , p. 310, 311, 323, 326, 336, 339, 371, 392, 404-405, etc.

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