



NOVA SCOTIA
PUBLIC PROSECUTION SERVICE

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PHYSICIAN-ASSISTED DEATH

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DPP DIRECTIVE

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NOTE:

THIS POLICY DOCUMENT IS TO BE READ IN THE CONTEXT PROVIDED BY THE **PREFACE** TO THIS PART OF THE MANUAL. CERTAIN WORDS AND PHRASES HAVE THE MEANINGS ESTABLISHED IN THE “**WORDS & PHRASES**” SECTION OF THIS PART OF THE MANUAL.

PHYSICIAN-ASSISTED DEATH

BACKGROUND:

Since June 6, 2016, the criminal law with respect to physician-assisted death (PAD) in Canada is based upon the judgement of the Supreme Court of Canada in *Carter v Canada (Attorney General)* **2015 SCC 5**. Parliament has yet to enact new legislation on this subject.

The Supreme Court of Canada in its *Carter* decision declared sections 241(b) and 14 of the *Criminal Code* to be unconstitutional to the extent that they prohibit physician-assisted death in defined circumstances. These provisions read:

Consent to death

s.14 No person is entitled to consent to have death inflicted on him, and such consent does not affect the criminal responsibility of any person by whom death may be inflicted on the person by whom consent is given.

Counselling or aiding suicide

s. 241 Every one who
(a) counsels a person to commit suicide, or
(b) aids or abets a person to commit suicide,
whether suicide ensues or not, is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.

These provisions of the *Criminal Code* are no longer of force and effect, to the extent that they prohibit physician-assisted death for competent adult persons suffering from grievous and irremediable medical conditions that cause enduring suffering, and who consent to the termination of their life.

While physician-assisted death (PAD) that falls within the parameters described in the *Carter* decision is no longer a crime under section 241 of the *Criminal Code*, it requires the skills and collaboration of an interdisciplinary team of health care providers that may include physicians, nurse practitioners, registered nurses, registered psychiatric nurses, licensed practical nurses, respiratory therapists, paramedics, occupational therapists, speech language pathologists, psychologists, pharmacists, pharmacy technicians, health care administrators, social workers, and other health care team members acting in aid of PAD.

The work of the health care team (that provides information to patients, assists the physician, or dispenses the drug that will bring about death) is necessary to give effect to the constitutionally protected right as described in the *Carter* decision.

DIRECTIVE:

Therefore, in order to provide greater certainty to members of the health care community who may become involved in cases which fall within the legally permissible boundaries of the *Carter* decision, I hereby direct that:

- if a Crown Attorney receives a request for pre-charge advice in relation to an investigation of a health care provider who aids or assists in a physician-assisted death, the request for advice is to be referred to the Director of Public Prosecutions.
- if a charge is laid by the police, or by any other informant, under s.241 of the *Criminal Code* in relation to a health care provider who participates, aids or assists in a physician-assisted death, the matter will be referred to the Director of Public Prosecutions.

The charge will not be prosecuted by the Nova Scotia Public Prosecution Service if:

- the person is the primary or secondary physician, or a health care provider assisting a physician, or their respective employer, and
- the person conducts themselves in accordance with the assisted dying standards established by the governing College of their regulated health profession, and/or their employer, and
- the person provides PAD counselling, dispenses a drug, provides physician-assisted death, or otherwise participates, under the direction of a physician, in a physician-assisted death that falls within the parameters described by the Supreme Court of Canada in its *Carter* decision **(2015 SCC 5)**.

This Directive is effective immediately and continues in effect until revoked.