

PUBLIC PROSECUTIONS DIVISION

INTERIM PRACTICE DIRECTIVE

June 9, 2016

PHYSICIAN-ASSISTED DEATH (PAD)

Issued by: Donovan F. Molloy, Q.C.
Director of Public Prosecutions

This Directive is issued in relation to the investigation and prosecution of offences pursuant to s.241 of the *Criminal Code*. This Directive will remain in effect until further notice. The issuing of a Directive is necessary to assure those that provide information, deliver a physician-assisted death (PAD), or assist in delivering a PAD, that their actions will not be prosecuted, provided the PAD is within the parameters set by the Supreme Court of Canada's decision in *Carter*.

BACKGROUND

On February 6, 2015, the Supreme Court of Canada issued judgement in [*Carter v Canada \(Attorney General\)* 2015 SCC 5](#). The Court declared sections 241(b) and 14 of the *Criminal Code* to be unconstitutional and of no force and effect to the extent that they prohibited PAD for a competent adult person who (1) clearly consents to the termination of life and (2) has a grievous and irremediable medical condition (including an illness, disease or disability) that causes enduring suffering that is intolerable to the individual in the circumstances of his or her condition. The declaration of invalidity was suspended for 12 months, until February 6, 2016, to allow Parliament to enact new, constitutionally permissible, legislation. The suspension of the declaration was extended to June 6, 2016 in [*Carter v Canada \(Attorney General\)* 2016 SCC 4](#).

At the time of drafting this Directive, replacement legislation has not been enacted. This means that as of June 6, 2016, PAD that falls within the parameters described in *Carter 2015*, is no longer a crime under section 241 of the *Criminal Code*.

DIRECTIVE

There is no reasonable likelihood of a conviction for charges under 241 (counselling or aiding suicide) for physicians assessing whether a patient meets the eligibility criteria under *Carter 2015* or in providing specific details to a patient on the options and means of providing PAD.

There is no reasonable likelihood of a conviction for charges pursuant to 241 (counselling or aiding suicide) for any member of a patient's health care team, including physicians, pharmacists, nurses, social workers or other health professionals or their respective employers, in discussing PAD with a patient as long as those discussions do not constitute the deliberate encouragement or active inducement of a patient to pursue PAD.

There is no reasonable likelihood of a conviction for charges pursuant to 241 (counselling or aiding suicide) for physicians providing PAD or any member of the health care team including pharmacists, nurses, other health professionals or their respective employers, in aiding a physician to provide a person with PAD when the provision of PAD is in compliance with the Supreme Court of Canada's decision in *Carter 2015*.

There is no reasonable likelihood of a conviction for charges pursuant to 241 (counselling or aiding suicide) for pharmacists in aiding a physician by dispensing a drug pursuant to prescription from a physician when the physician confirms that the prescription is for the purpose of the provision of PAD is in compliance with the Supreme Court of Canada's decision in *Carter 2015*.

The Royal Newfoundland Constabulary and Royal Canadian Mounted Police (B Division) have agreed to contact the Office of the Director of Public Prosecutions prior to commencing an investigation, should a complaint be made in relation to a physician-assisted death.

No prosecution pursuant to section 241 will be commenced or continued against physicians or any member of the health care team including pharmacists, nurses, other health professionals or their respective employers, who dispense a drug, provide physician-assisted death, or otherwise participate, under the direction of a physician, in a PAD that falls within the parameters described by the Supreme Court of Canada in *Carter 2015*.

Crown Attorneys with questions regarding this directive or its application shall contact the Office of the Director of Public Prosecutions via a Senior Crown Attorney.