



CHRISTIAN LEGAL FELLOWSHIP

— Alliance des chrétiens en droit —

INTEGRATING CHRISTIAN FAITH & LAW SINCE 1978

470 Weber St. N., Suite 202, Waterloo, ON, N2L 6J2 • Ph. 519-208-9200 • Fax 519-208-3600 • www.ChristianLegalFellowship.org

September 24, 2015

**Submission of the Christian Legal Fellowship (CLF) to the
Canadian Provincial/Territorial Expert Advisory Group on Physician-Assisted Dying**

Re: Request for Input: Questionnaire on the Implementation of Physician-Assisted Dying

Attn: Dr. Jennifer Gibson and Ms. Maureen Taylor, Advisory Group Co-Chairs

Sent via e-mail to: PADadvisorygroup@ontario.ca

Dear Dr. Gibson and Ms. Taylor:

Christian Legal Fellowship (CLF) is a national organization of approximately 600 lawyers, law students, professors, and others who support its work, from more than 30 Christian denominations working in association together. The CLF has intervened in numerous legal cases relating to matters of *Charter* rights and freedoms at the appellate and Supreme Court level (including all three levels of court in *Carter v. Canada*). The organization also engages in policy consultations raising issues that impact, among other things, protection for the vulnerable and the appropriate protection to be afforded religious/conscientious beliefs (including those specifically of physicians). CLF is therefore knowledgeable and well-positioned to provide the feedback requested by this Advisory Group.

CLF is grateful for the opportunity to participate in this consultation, although we would prefer that it were not necessary.

CLF was profoundly disappointed with the Supreme Court of Canada's decision in *Carter* and is of the view that the Supreme Court's decision in *Rodriguez* was the correct one. CLF believes that a total ban on physician-assisted suicide is the only reasonable means to effectively advance the valid and desirable objectives of preserving life and protecting the vulnerable. As such, even participating in a consultation on the appropriate parameters to place on "physician-assisted death" is of moral concern to CLF and its members.

Nevertheless, in light of the Supreme Court of Canada's mandate in *Carter*, CLF is making the attached recommendations to ensure that, if PAD must be made available, it is done so in a way that protects the vulnerable and respects the *Charter* rights and freedoms of all Canadians in so far as that may be possible.

NGO in Special Consultative Status with the Economic & Social Council of the United Nations

BOARD OF DIRECTORS

Robert Reynolds, President - Québec
Joshua Tong, Secretary - Ontario
Shayna Beeksmma - Ontario
Philip Fourie - Saskatchewan
John Lockhart - Ontario

Michael Menear, Vice President - Ontario
Tim Sinnott, Treasurer - Ontario
Shannon Davis - Alberta
Jessie Legaree (Student) - British Columbia
Shawn Smith - British Columbia

STAFF & SUPPORT TEAM

Derek B.M. Ross - Executive Director
Calvin (Cal) Beresh - Director, Student Ministries
Tim Stonhouse - Regional Director, West
Rev. Reid Cooke - Chaplaincy
Melissa Mucci Pineda - Office Administration
Ellen Watson - Office Administration
Shawn Knights - Student Ministry Support

It is on this basis that CLF has completed the attached survey. We are also providing, in response to your request for any additional guidance prepared by our organization on this subject, CLF's submissions to:

- 1) The Supreme Court of Canada in *Carter v. Canada*, where CLF participated as an intervenor;
- 2) The College of Physicians of Surgeons of Ontario (CPSO) in relation to its policy dealing with doctors' professional obligations related to procedures that violate their conscience; and,
- 3) The College of Physicians and Surgeons of Saskatchewan in relation to its draft policy dealing with professional obligations that may violate physicians' freedom of conscience and religion.

As indicated in our previous correspondence, we note that the issues raised in this consultation are nuanced and complex and require further consideration and wider consultation beyond what can be submitted here. We reiterate our concern about the short time frame allotted for this consultation and would appreciate the opportunity to make further submission to the Advisory Group in person at a later date.

CLF would be pleased to provide further assistance in any way this Advisory Group believes would be appropriate. Thank you for your consideration of our submissions.

Sincerely,

A handwritten signature in cursive script that reads "Derek Ross".

Derek B.M. Ross, LL.B., LL.M.
CLF Executive Director

**CANADIAN PROVINCIAL/TERRITORIAL
EXPERT ADVISORY GROUP ON PHYSICIAN-ASSISTED DYING**

WRITTEN STAKEHOLDER SUBMISSION FORM

NAME OF ORGANIZATION:	
CORRESPONDING AUTHOR:	
CONTACT INFORMATION:	
DATE:	

BACKGROUND

In February 2015, the Supreme Court of Canada struck down the federal law prohibiting physician-assisted dying (PAD). The ruling applies to a competent adult who:

- Clearly consents to the termination of life; and
- 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 court gave governments one year to consider the development of new laws and practices for physician-assisted dying.

In July 2015, the federal government established an external panel to inform its legislative response to the Supreme Court of Canada’s decision. The primary focus of the Federal Expert Panel’s work is to provide advice to the federal government on possible amendments to the Criminal Code. In August 2015, eleven provinces and territories established the Provincial/Territorial Expert Advisory Group on Physician-Assisted Dying (the “Advisory Group”).

As provinces and territories have the primary responsibility for health care, including regulating physicians and health care institutions, provincial and territorial governments must consider whether regulatory or other changes are needed over the coming months in response to the Supreme Court’s decision. The Advisory Group will provide advice on the development of laws, policies, practices and safeguards for provinces and territories to consider in advance of physician-assisted dying becoming legal in Canada.

Your organization’s input and feedback will be considered as part of the Advisory Group’s deliberations.

INSTRUCTIONS

The Advisory Group is seeking input on the following questions. Your organization's responses will be used by the Advisory Group to inform its advice to the provincial and territorial governments on physician-assisted dying, with a focus on the needs of patients and their families as well as health institutions and regulatory bodies.

Please answer all questions relevant to your organization's interests. **If your organization does not have a position or opinion on a particular issue, please feel free to leave that section blank.** Please limit your response to each question to 1000 characters (or approximately 200 words). If your organization has developed specific guidance (e.g., policy, guidelines) for its staff or members related to the implementation of PAD, you may attach it to your reply email. Please send the completed template and attachment to PADadvisorygroup@ontario.ca by **September 24, 2015**.

Please note that all information collected by the Advisory Group is governed by Ontario's *Freedom of Information and Protection of Privacy Act* and may be subject to disclosure in accordance with that Act. In addition, comments or documents provided to the Advisory Group may be shared with provinces and territories participating in the work of the Advisory Group and will be treated as public information that may be used and disclosed by the Advisory Group without the consent of the author, or the organization on whose behalf the submission is made. As such, please ensure that you do not include any personal information about identifiable individuals in your responses to this template.

The information collected will be considered by the Advisory Group in developing recommendations for provinces and territories to consider as they develop their responses to the Supreme Court's decision on physician-assisted dying. If you have any questions about how the Advisory Group will collect, use and disclose the information that you are providing, please contact Alicia Neufeld at Alicia.Neufeld@ontario.ca.

QUESTIONNAIRE

QUESTIONS	FEEDBACK
GENERAL	
What are your organization's thoughts on the Supreme Court of Canada's decision in <i>Carter v. Canada (Attorney General)</i>?	

<p>In general, should provinces and territories develop new legislation or regulations to govern the provision of physician-assisted dying (PAD) or should the regulation of PAD be left to regulatory bodies (e.g., professional colleges) and/or individual physicians and patients?</p>	
<p>ELIGIBILITY CRITERIA</p>	
<p>In the Supreme Court of Canada’s decision, it was determined that, in certain circumstances, a “competent adult” must not be prohibited from accessing PAD.</p> <ul style="list-style-type: none"> • What should the definition of “adult” be? • Should the competency requirement apply at the time of request for PAD or at the time of provision of the assistance, or both? <p><i>See Appendix 1 for additional information.</i></p>	

<p>The Supreme Court of Canada’s decision limits PAD to those who have a “grievous and irremediable medical condition”.</p> <ul style="list-style-type: none"> • What does “grievous and irremediable medical condition” mean to your organization? • Should the term “grievous and irremediable medical condition” be defined in the provincial/territorial legislation or regulation? • Should specific medical conditions be defined in law or should it be determined in each case by the patient and their physician? If the medical conditions should be defined in law, what medical conditions should be included? <p><i>See Appendix 2 for additional information.</i></p>	
PROCEDURAL SAFEGUARDS TO ENSURE ELIGIBILITY CRITERIA ARE MET	
<p>The Supreme Court of Canada’s decision limits PAD to a competent adult person who “clearly consents to the termination of life”.</p> <ul style="list-style-type: none"> • What processes should be put in place to ensure that the consent to PAD is informed? (e.g., what information should have to be provided to the patient? Who should provide the information?) <p><i>See Appendix 3 for additional information.</i></p>	

<p>What processes should be put in place to ensure that the consent to PAD is voluntary?</p>	
<p>What processes should be put in place to ensure that the person requesting PAD is competent? For example:</p> <ul style="list-style-type: none">• Who should conduct the competency assessment(s)?• Should an assessment by a psychiatrist or psychologist be required in any or all cases? If some, which ones?)	

How many physicians should be required to confirm that the eligibility criteria have been met? Must they be from any particular specialities? Must they be independent of one another? If so, what should be the definition of independent for these purposes?

Should a waiting period (sometimes called a “cooling off period”) be established between the request and the provision of PAD? If so, how long should the waiting period be? Should the waiting period vary based on the medical condition?

<p>What should be the formal requirements for a patient's request for PAD? (e.g., should requests be written or can they be oral? Should witnesses be required?)</p>	
--	--

ROLE OF PHYSICIANS

<p>What is the appropriate role of physicians in physician-assisted dying? For example:</p> <ul style="list-style-type: none"> • Should a physician's role be to actively administer the medication that causes death if requested to do so by a patient who meets the eligibility criteria? • If an eligible patient prefers, and has the ability, should a physician's role be to prescribe the lethal medication which the patient would then administer themselves? • Should physicians always remain with the patient until the time of death? 	
--	--

ROLE OF OTHER HEALTH CARE PROVIDERS

What is the appropriate role of non-physician regulated health care professionals in the provision of PAD?

Should non-physician regulated health care professionals (e.g., Registered Nurse, Nurse Practitioner) acting under directives from a physician be allowed to fulfil a request for PAD?

<p>What is the appropriate role of non-regulated health workers in the provision of PAD?</p>	
---	--

<p align="center">CONSCIENTIOUS REFUSALS BY HEALTHCARE PROVIDERS</p>	
---	--

<p>Should physicians have the right to refuse to provide PAD for reasons of conscience? If yes:</p> <ul style="list-style-type: none"> • What continuing obligations, if any, do they have to the patient? • Does the right to refuse include the right to refuse to provide an effective referral for PAD? <p><i>See Appendix 4 for additional information.</i></p>	
---	--

<p>Should non-physician regulated health care professionals (e.g., Registered Nurse, Nurse Practitioner, Pharmacist, etc.) have the right to refuse to participate in the provision of PAD for reasons of conscience?</p> <ul style="list-style-type: none"> • If so, under what circumstances? 	
<p>ROLE OF INSTITUTIONS</p>	
<p>What is the appropriate role of health care institutions (e.g., hospitals, hospices, long-term care facilities, etc.) in making PAD services available to patients?</p>	

<p>On what issues in particular does your organization feel that health institutions need specific guidance – through legislation, regulation, or guidelines – for the implementation of PAD services?</p>	
<p>Should health care institutions be required to provide PAD at their facility? If yes, please explain why. If no, under what circumstances and what responsibility should the institution have to ensure patients have access to PAD?</p>	

<p>What should be the responsibility of the health care institution to the patient when a physician within the facility refuses to provide PAD for reasons of conscience and/or provide an effective referral for PAD in a case where the requesting patient meets the eligibility criteria?</p>	
---	--

<p>ACCESS</p>	
----------------------	--

<p>What barriers to access do you foresee that will need to be addressed in implementing PAD? In what ways do you think these barriers could or should be reduced?</p> <p>Where access to PAD is limited by these barriers, what steps should be taken to facilitate access for patients seeking the service?</p>	
---	--

What unique implementation issues, if any, do you foresee for PAD in rural or remote settings? How should they be addressed?

How could and should provincial/territorial governments ensure equitable access to PAD?

<p>If it is determined that a patient is ineligible for PAD, should the patient have a right to appeal that decision? If so, what process should be used and to whom should the appeal be directed?</p>	
<p>SETTINGS</p>	
<p>In what health care settings should PAD be provided?</p> <p><i>See Appendix 5 for additional information.</i></p>	

If PAD were provided at home, what implementation issues would this raise? How should they be addressed?

Are there other implementation issues related to the settings in which PAD might be provided that need to be addressed?

CASE REVIEW AND OVERSIGHT

What reporting (including documentation) should be required of the physician following the provision of PAD? How should this reporting be done? Who should receive the reports?

See Appendix 6 for additional information.

Should there be a review of each case of PAD? If yes:

- **Should it be undertaken before or after the assistance is provided?**
- **Who should undertake the review?**
- **What standards (e.g., clinical, professional, legal) should be used in the review?**
- **To whom should the reviewer(s) report any findings of non-compliance with the standards?**

If there should be no review, why not?

<p>Should an oversight body be established? If yes:</p> <ul style="list-style-type: none"> • Should it be national or provincial/territorial? • Should it be administered by government or by regulatory bodies? • What role and responsibilities should it have? • What should its composition be, in terms of the number of members and their backgrounds? • What should be its obligations for public reporting and quality improvement? • What other considerations are relevant to an oversight system, process, or body? 	
<p>ADDITIONAL SUPPORTS</p>	
<p>What, if any, educational materials should be developed for and provided to physicians and other health care providers? Who should be responsible for developing these materials (e.g., provincial/territorial governments, professional bodies, provincial Colleges of Physicians and Surgeons)?</p>	

<p>Should an independent organization be established to support physician practice (e.g., information, training) and/or facilitate patient access to PAD services?</p> <ul style="list-style-type: none">• If so, who should establish it? What should it be tasked to do?• If not, what organization(s) should assume this responsibility?	
<p>What other resources should be developed to support physicians and other health care providers in relation to PAD?</p>	

<p>What resources should be developed to support patients and their families/caregivers in relation to PAD?</p>	
ADDITIONAL INPUT	
<p>Is there anything else, not covered above, that your organization considers relevant to the implementation of PAD? Please use this space or attach additional comments to your e-mail response.</p>	