

**IN THE SUPREME COURT OF CANADA  
(ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA)**

BETWEEN:

**LEE CARTER, HOLLIS JOHNSON, DR. WILLIAM SHOICHET, THE BRITISH  
COLUMBIA CIVIL LIBERTIES ASSOCIATION and GLORIA TAYLOR**

Appellants

- and -

**ATTORNEY GENERAL OF CANADA and  
ATTORNEY GENERAL OF BRITISH COLUMBIA**

Respondents

- and -

**ATTORNEY GENERAL OF ONTARIO, ATTORNEY GENERAL OF BRITISH  
COLUMBIA, ATTORNEY GENERAL OF QUEBEC, COUNCIL OF CANADIANS  
WITH DISABILITIES and THE CANADIAN ASSOCIATION FOR COMMUNITY  
LIVING, CHRISTIAN LEGAL FELLOWSHIP, CANADIAN HIV/AIDS LEGAL  
NETWORK and THE HIV & AIDS LEGAL CLINIC ONTARIO, ASSOCIATION FOR  
REFORMED POLITICAL ACTION CANADA, PHYSICIANS' ALLIANCE AGAINST  
EUTHANASIA, EVANGELICAL FELLOWSHIP OF CANADA, CHRISTIAN  
MEDICAL AND DENTAL SOCIETY OF CANADA and CANADIAN FEDERATION OF  
CATHOLIC PHYSICIANS' SOCIETIES, DYING WITH DIGNITY, CANADIAN  
MEDICAL ASSOCIATION, CATHOLIC HEALTH ALLIANCE OF CANADA,  
CRIMINAL LAWYERS' ASSOCIATION (ONTARIO), FAREWELL FOUNDATION  
FOR THE RIGHT TO DIE and ASSOCIATION QUÉBÉCOISE POUR LE DROIT DE  
MOURIR DANS LA DIGNITÉ, CANADIAN CIVIL LIBERTIES ASSOCIATION,  
CATHOLIC CIVIL RIGHTS LEAGUE and FAITH AND FREEDOM ALLIANCE and  
PROTECTION OF CONSCIENCE PROJECT, ALLIANCE OF PEOPLE WITH  
DISABILITIES WHO ARE SUPPORTIVE OF LEGAL ASSISTED DYING SOCIETY,  
EUTHANASIA PREVENTION COALITION and EUTHANASIA PREVENTION  
COALITION BRITISH COLUMBIA and, CANADIAN UNITARIAN COUNCIL**

Interveners

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**INTERVENER FACTUM OF THE INTERVENERS,  
THE CHRISTIAN MEDICAL AND DENTAL SOCIETY OF  
CANADA AND THE CANADIAN FEDERATION OF  
CATHOLIC PHYSICIANS' SOCIETIES**

(Pursuant to Rule 42 of the *Rules of the Supreme Court of Canada*)

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## **PART I: STATEMENT OF FACTS**

1. The Christian Medical and Dental Society of Canada (“CMDS<sup>1</sup>”) and the Canadian Federation of Catholic Physicians’ Societies (“CFCPS<sup>2</sup>”) (collectively, “These Interveners”), were granted leave to intervene in this appeal by the Order of the Honourable Lebel J. on July 4, 2014.
2. These Interveners accept the facts as set out by the Respondents. These Interveners will make submissions on the following issues.

## **PART II: ISSUES**

3. The practical question before this Court is whether assisted suicide constitutes medical care.
4. The public policy question These Interveners wish to address is the effect of striking the impugned *Criminal Code* provisions upon the medical understanding of the value of human life and on the freedom of religion and freedom of conscience of health-care practitioners.

## **PART III: ARGUMENT**

### **A. Would striking the impugned sections affect the medical understanding of the value of human life?**

5. If the impugned sections of the *Criminal Code* are struck, the understanding of the intrinsic value of human life within the Canadian health-care system, and in society in general, would be greatly diminished. The CMDS and CFCPS support the Evangelical Fellowship of Canada’s comments on the intrinsic value of human life.
6. Such a diminished appreciation of the value of human life would be reflected in physicians taking greater liberties and less care with patients and an increased risk for wrongful death, as has been demonstrated abroad and as is set out in the facts of other interveners.

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<sup>1</sup> The Christian Medical and Dental Society is a national and interdenominational organization of Christian physicians, dentists and students, each holding an individual membership, who seek to honour God by integrating faith with professional practice. Its membership includes approximately 1,500 physicians and medical students from across Canada, 90% of which identify as Protestant Evangelical Christians.

<sup>2</sup> The Canadian Federation of Catholic Physician’s Societies is a national organization of Catholic Physicians Associations, Guilds and Societies across Canada. It is comprised of guilds, associations and societies in at least 9 cities across Canada and represents the voice of the approximately 28,500 Roman Catholic physicians in Canada.

## B. Is assisted suicide medical care?

7. Ending a patient's life is not medical care.
8. The central core of medicine has been, since the time of Hippocrates, and continues to be today, healing.<sup>3</sup> In reciting the *Hippocratic Oath*, a physician swears that in his or her practice of medicine, he “will apply dietetic measures for the benefit of the sick according to [his] ability and judgment; [he] will keep them from harm and injustice”.
9. Along these lines, renowned bioethicist and first Chairman of the President's Council on Bioethics Leon Kass defines medicine as follows:

Healing is thus the central core of medicine: to heal, to make whole, is the doctor's primary business. The sick, the ill, the unwell present themselves to the physician in the hope that he can help them become well—or, rather, as well as they can become, some degree of well-ness being possible always, this side of death. The physician shares that goal; his training has been devoted to making it possible for him to serve it. Despite enormous changes in medical technique and institutional practice, despite enormous changes in nosology and therapeutics, the center of medicine has not changed: it is as true today as it was in the day of Hippocrates that the ill desire to be whole; that wholeness means a certain well-working of the enlivened body and its unimpaired powers to sense, think, feel, desire, move, and maintain itself; and that the relationship between the healer and the ill is constituted, essentially even if only tacitly, around the desire of both to promote the wholeness of the one who is ailing [Emphasis added].<sup>4</sup>

10. The practice of western medicine has, for the last 2,400 years, been guided by the *Hippocratic Oath* which clearly prohibits assisted suicide. Indeed, physicians swearing the *Hippocratic Oath* swear that: “I will neither give a deadly drug to anybody if asked for it, nor will I make a suggestion to this effect”.
11. To end a patient's life is not only contrary to the *Hippocratic Oath*, which has historically guided medical ethics, but is also contrary to the central core of medicine which is to heal and to make whole<sup>5</sup>.
12. Many medical ethicists have argued that the *Hippocratic Oath* should be abandoned, however,

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<sup>3</sup> Leon R. Kass, “Neither for love nor money: why doctor must not kill”, *The Public Interest*, 94 (1989: Winter), at p. 39 [“Kass”] **Book of Authorities of the Christian Medical and Dental Society and The Canadian Federation of Catholic Physicians' Societies [“CMDS BOA”]**, Tab 7..

<sup>4</sup> Kass, *supra* note 3, at p. 39, **CMDS BOA, Tab 7.**

<sup>5</sup> Kass, *supra* note 3, at p. 39, **CMDS BOA, Tab 7.**

even those who argue against the *Hippocratic Oath* recognize the danger in having health-care practitioners end a patient's life.<sup>6</sup>

13. For example, the late Edmund D. Pellegrino, bioethicist, former director of Georgetown University's Kennedy Institute of Ethics and past Chairman of the President's Council on Bioethics, has argued against maintaining the *Hippocratic Oath* and has proposed an alternate approach to medical morality. In his *Precepts as a Suggested Replacement for the Hippocratic Oath*, Pellegrino recognized that medical ethics must forbid the notion of ending a patient's life. He concluded physicians should vow: "Never to participate in direct, active, conscious killing of a patient, even for the reasons of mercy, of at the request of the state, or for any other reason."<sup>7</sup>
14. More recently, the World Medical Association adopted the *Declaration of Geneva*,<sup>8</sup> a modern alternative to the *Hippocratic Oath*, which specifically provides that physicians "will maintain the utmost respect for human life."<sup>9</sup>
15. In its *Code of Medical Ethics*, the World Medical Association sets out a physician's duties towards his or her patient, including that "a physician shall always bear in mind the obligation to respect human life."<sup>10</sup>
16. The CMDS and the CFCPS submit that the overwhelming global consensus in the field of medicine and medical ethics is that ending a patient's life is not medical care. As such, this Court should not conclude that physician-assisted suicide constitutes medical care.

**C. What effect would striking the impugned *Criminal Code* provisions have on the freedom of religion and freedom of conscience of physicians?**

17. At present, physicians in Canada are not compelled to perform procedures or provide

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<sup>6</sup> Emily Woodbury, "The Fall of the Hippocratic Oath: Why the Hippocratic Oath should be Discarded in Favor of a Modified Version of Pellegrino's Precepts", Georgetown University Journal of Health Sciences, 2012 July; Vol. 6, No. 2: 9-17, <https://blogs.commonsgororgetown.edu/journal-of-health-sciences/issues-2/vol-6-no-2-july-2012/the-fall-of-the-hippocratic-oath-why-the-hippocratic-oath-should-be-discarded-in-favor-of-a-modified-version-of-pellegrino%E2%80%99s-precepts/> ["Woodbury"], CMDS BOA, Tab 8.

<sup>7</sup> Woodbury, *supra* note 6, CMDS BOA, Tab 8.  
<sup>8</sup> *Declaration of Geneva*, World Medical Association, Adopted by the 2<sup>nd</sup> General Assembly of the World Medical Association, Geneva, Switzerland, September 1948: <http://www.wma.net/en/30publications/10policies/g1/index.html> ["Geneva"], CMDS BOA, Tab 9.

<sup>9</sup> *Geneva*, *supra* note 7, CMDS BOA, Tab 9.  
<sup>10</sup> *WMA International Code of Medical Ethics*, World Medical Association, Adopted by the 3<sup>rd</sup> General Assembly of the World Medical Association, London, England, October 1949: [www.wma.net/en/30publications/10policies/c8/index.html](http://www.wma.net/en/30publications/10policies/c8/index.html), CMDS BOA, Tab 10.

treatment which they deem to be controversial, morally reprehensible or medically unnecessary. Should the *Criminal Code* provisions prohibiting assisted suicide be struck on the basis that they violate the *Canadian Charter of Rights and Freedoms*<sup>11</sup> (the “*Charter*”) however, this may change.

18. The CMDS and the CFCPS fear that should the impugned provisions of the *Criminal Code* be struck, physicians may be compelled or required to participate in assisted suicide.
19. As Christians, the CMDS and CFCPS’ members would be precluded from participating in assisted suicide as their religious beliefs prohibit the taking of life. In other words, compelling a Christian physician would be compelling him or her to commit an act which they believe to be sinful and against God’s Moral Law.

Physicians’ benefit from freedom of conscience and freedom of religion

20. The *Charter* protects freedom of conscience and religion, including the freedom of conscience and religion of physicians as healthcare is legislated by government and regulated by quasi-governmental bodies.

**Freedom of Religion**

21. *R. v. Big M Drug Mart*<sup>12</sup> (“*Big M*”) is arguably the most influential case with respect to freedom of religion in Canada. As such, it provides us with the framework from which a court should address questions of religious freedom. In this Court’s decision, Justice Dickson described freedom of religion as guaranteed by the *Charter*. He stated:

The essence of the concept of freedom of religion is the right to entertain such religious beliefs as a person chooses, the right to declare religious beliefs openly and without fear of hindrance or reprisal, and the right to manifest religious belief by worship and practice or by teaching and dissemination.<sup>13</sup>

22. In *R. v. Edwards Books*<sup>14</sup>, Chief Justice Dickson defined the purpose of section 2(a) of the *Charter*, and freedom of religion as follows:

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<sup>11</sup> *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11 [“*Charter*”], **CMDS BOA, Tab 11**.

<sup>12</sup> *R. v. Big M Drug Mart*, [1985] 1 S.C.R. 295 [*Big M*], **CMDS BOA, Tab 1**.

<sup>13</sup> *Big M*, *supra* note 12, at para. 94, **CMDS BOA, Tab 1**.

<sup>14</sup> *R. v. Edwards Books* [1986] 2 S.C.R. 713 [*Edwards Books*], **CMDS BOA, Tab 2**.

The purpose of s. 2(a) is to ensure that society does not interfere with profoundly personal beliefs that govern one's perception of oneself, human nature, and in some cases, a higher or different order of being. These beliefs, in turn, govern one's conduct and practices. [Emphasis added]<sup>15</sup>

23. Additionally, this Court has also found freedom of religion to include, among other elements:

- a) the right to entertain such religious beliefs as a person chooses,<sup>16</sup>
- b) the right to declare religious beliefs openly,<sup>17</sup>
- c) the right not to have society interfere with profoundly personal beliefs,<sup>18</sup>
- d) the right to engage in conduct that may not be recognized by religious experts as being obligatory tenets or precepts of a particular religion,<sup>19</sup> and,
- e) the freedom to undertake practices and harbour beliefs, having a nexus with religion in order to connect with the divine or as a function of spiritual faith.<sup>20</sup>

24. Physicians then, in practicing medicine, which is provincially regulated, benefit from *Charter* protection of their freedom of religion and cannot be compelled to violate their religious beliefs.

### Freedom of Conscience

25. Few cases have fully explored the contours of freedom of conscience (as a standalone freedom not coupled with freedom of religion) and future litigation is needed to more fully develop this area of the law. What is clear however is that non-religious individuals are included in the freedoms under section 2(a) of the *Charter*. Indeed, in her concurring reasons in *R. v. Morgentaler*,<sup>21</sup> Justice Wilson clearly stated that freedom of conscience and religion, while often related, do not need to be. She stated:

It seems to me, therefore, that in a free and democratic society "freedom of conscience and religion" should be broadly construed to extend to

<sup>15</sup> *Edwards Books*, *supra* note 14, at para. 97, **CMDS BOA, Tab 2.**

<sup>16</sup> *Big M.*, *supra* note 12, at para. 94, **CMDS BOA, Tab 1.**

<sup>17</sup> *Big M.*, *supra* note 12, at para. 94, **CMDS BOA, Tab 1.**

<sup>18</sup> *Edwards Books*, *supra* note 14, at para. 97, **CMDS BOA, Tab 2.**

<sup>19</sup> *Syndicat Northcrest v. Amselem*, [2004] 2 S.C.R. 551, at para. 43 [*Amselem*], **CMDS BOA, Tab 3.**

<sup>20</sup> *Amselem*, *supra* note 19, at para. 46, **CMDS BOA, Tab 3.**

<sup>21</sup> *R. v. Morgentaler*, [1988] 1 S.C.R. 30 [*Morgentaler*], **Book of Authorities of the Appellants ["Appellants' BOA"], Vol. II, Tab 52.**

conscientiously-held beliefs, whether grounded in religion or in a secular morality. Indeed, as a matter of statutory interpretation, "conscience" and "religion" should not be treated as tautologous if capable of independent, although related, meaning.<sup>22</sup>

26. Indeed, the Federal Court of Appeal has stated that:

It seems, therefore, that freedom of conscience is broader than freedom of religion. The latter relates more to religious views derived from established religious institutions, whereas the former is aimed at protecting views based on strongly held moral ideas of right and wrong, not necessarily founded on any organized religious principles. These are serious matters of conscience. Consequently the appellant is not limited to challenging the oath or affirmation on the basis of a belief grounded in religion in order to rely on freedom of conscience under paragraph 2(a) of the *Charter*. For example, a secular conscientious objection to service in the military might well fall within the ambit of freedom of conscience, though not religion. However, as Madam Justice Wilson indicated, 'conscience' and 'religion' have related meanings in that they both describe the location of profound moral and ethical beliefs, as distinguished from political or other beliefs which are protected by paragraph 2(b).<sup>23</sup>

27. Though the jurisprudence on freedom of conscience is sparse, what is clear is that freedom of conscience exists and it exists to protect moral and ethical beliefs which are not necessarily grounded in religious tradition or belief; as well as religious beliefs.

#### Non-Charter examples

28. The notion of physicians having conscience rights is not unique to Canada and the *Charter*. Indeed, the World Medical Association's *Declaration of Geneva* specifically provides for physicians' conscience rights where it states: "I will practice my profession with conscience and dignity."<sup>24</sup>

29. The World Medical Association's decision to specifically include physicians' conscience rights in the *Declaration of Geneva* was in response to the Nuremberg doctors' trials involving Nazi doctors and Nazi medical war crimes<sup>25</sup> where it was revealed that many

<sup>22</sup> *Morgentaler*, *supra* note 21, at para. 313, **Appellants' BOA, Vol. II, Tab 52.**

<sup>23</sup> *Roach v. Canada (Minister of State for Multiculturalism and Citizenship)*, [1994] 2 FC 406, at para. 25, **CMDS BOA, Tab 4.**

<sup>24</sup> *Geneva*, *supra* note 8, **CMDS BOA, Tab 9.**

<sup>25</sup> Thomas Alured Faunce, *Pilgrims in Medicine: Conscience, Legalism and Human Rights* (Leiden, The Netherlands: Brill Academic Publishers, 2005) at pp. 164-165 [*"Faunce"*], **CMDS BOA, Tab 5.**

German physicians had engaged in eugenics, euthanasia and other medical crimes.<sup>26</sup> The *Declaration of Geneva* sought to ensure that physicians practiced medicine according to their conscience and not according to societal norms or political ideology.

30. In Belgium, the *Euthanasia Act* clearly states that no physician or other person can be compelled to participate in euthanasia.<sup>27</sup> In the United States, 46 states protect health-care practitioners from being compelled to perform abortions; 13 states protect health-care practitioners from being compelled to participate in services related to contraception; and 18 states protect health-care practitioners from being compelled to provide sterilizations.<sup>28</sup>
31. In short, the recognition of physicians' conscience rights is not a novel or uniquely Canadian concept.

If assisted suicide is permitted, people will turn to physicians for it

32. There can be no question that if the *Criminal Code* provisions prohibiting assisted suicide are struck, the task of providing assistance in suicide will fall on health-care providers.
33. Indeed, the proposed "safeguards" almost always include a requirement that assisted suicide only be permitted if carried out by one or more physicians.
34. The CMDS and the CFCPS are concerned that if the *Criminal Code* provisions prohibiting assisted suicide are struck, physicians and other health-care practitioners will be required, or at the very least pressured, to participate in it.
35. The common response to this concern is that since 1988, abortion has been unregulated and permissible for any reason throughout all nine months of pregnancy yet physicians have not been required to provide or participate in abortions. The CMDS and CFCPS submit that the issue of abortion is distinguishable from physician-assisted suicide.
36. While this Court's decision in *Morgentaler* struck down the *Criminal Code* provisions

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<sup>26</sup> *Faunce*, *supra* note 25, at pp. 156-159, **CMDS BOA, Tab 5**.

<sup>27</sup> *The Belgian Act on Euthanasia* of May, 28th 2002:  
<http://www.ethical-perspectives.be/viewpic.php?TABLE=EP&ID=59>, at section 14, **CMDS BOA, Tab 12**.

<sup>28</sup> Guttmacher Institute, "State Policies in Brief: Refusing to Provide Health Services", August 1, 2014, at p. 3: [http://www.guttmacher.org/statecenter/spibs/spib\\_RPHS.pdf](http://www.guttmacher.org/statecenter/spibs/spib_RPHS.pdf), **CMDS BOA, Tab 6**.

prohibiting abortion, it did so on the basis that the provisions, in their then-current form, resulted in differential application and treatment to individuals on the basis of residence and access to hospitals.<sup>29</sup> This Court also recognized Parliament's interest in legislating abortion and invited Parliament to replace the *Criminal Code* provisions prohibiting abortion with *Charter*-compliant ones.<sup>30</sup>

37. The significance of the decision in *Morgentaler*, insofar as it relates to the appeal at hand, is that it did not find a *Charter* right to abortion. Since there was and is no *Charter* right to abortion, physicians cannot and have not been compelled to perform them. Indeed, in his concurring reasons, Beetz J. specifically stated that no law could require a physician to perform an abortion. He stated:

Given that the decision to appoint a committee is, in part, one of conscience and, in some cases, one which affects religious beliefs, a law cannot force a board to appoint a committee any more than it could force a physician to perform an abortion. The defect in the law is not that it does not force boards to appoint committees, but that it grants exclusive authority to those boards to make such appointments [Emphasis added].<sup>31</sup>

38. At present, there is no recognized right to commit suicide and certainly no recognized right to assisted suicide. Indeed, the *Charter* appears to provide the opposite. Section 7 of the *Charter* is, on its face, a life-affirming, not a life-condemning, section.<sup>32</sup>

39. The CMDS and the CFCPS recognize that in Canadian law, individuals have the right to self-determination, particularly with regards to medical care;<sup>33</sup> however the decision to withdraw from or refuse medical care is not the same as requesting or demanding that direct action be taken to end one's life.

40. But if this Court finds that the *Charter* provides for a right to die or a right to determine when one's own life should end, as is suggested by the Appellants,<sup>34</sup> then a physician's decision

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<sup>29</sup> *Morgentaler*, *supra* note 21, at pp. 74-75, **Appellants' BOA, Vol. II, Tab 52**.

<sup>30</sup> *Morgentaler*, *supra* note 21, at pp. 74, 75, 110 and 113, **Appellants' BOA, Vol. II, Tab 52**.

<sup>31</sup> *Morgentaler*, *supra* note 21, at pp. 95-96, **Appellants' BOA, Vol. II, Tab 52**.

<sup>32</sup> Section 7 of the *Charter* reads:

"Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.", **CMDS BOA, Tab 11**.

<sup>33</sup> See for example, *Manitoba (Director of Child & Family Services) v. C. (A.)*, [2009] 2 S.C.R. 181, at para. 44, **Appellants' BOA, Vol. I, Tab 1**.

<sup>34</sup> See Appellants' factum, at para. 123.



not to participate in or provide physician-assisted suicide would effectively be violating the *Charter* right of his or her patient.

41. Logically, practically and legally, it flows that if individuals have a *Charter* right to assisted suicide, there is a corresponding obligation on the part of another to assist that person in committing suicide. In other words, if patients have the right to assisted suicide, someone has the obligation to help them end their lives.
42. There is an important distinction to be made between a patient requesting an abortion post-*Morgentaler* and a patient requesting physician-assisted suicide post-this appeal (if the Appellants' contention that the *Charter* provides a right to die is accepted by this Court). While patients are, post-*Morgentaler*, free to obtain an abortion, they do not have *the right to* an abortion. On the other hand, the Appellants propose that the *Charter* provides them with the right to die and determine when their life should end.
43. On the one hand, a patient is *free* to obtain a specific "procedure". On the other, the patient argues that they have a *right* to the "procedure" they desire.
44. Finding a *Charter* right to assisted suicide would leave the conscience rights and religious rights of physicians and other health-care practitioners vulnerable and would put them in competition with patients' newly recognized *Charter* right to die.
45. The CMDS and the CFCPS submit that if this Court is inclined to strike the *Criminal Code* provisions prohibiting assisted suicide, that it must make a clear statement, as it did in *Morgentaler*, that the mere permissibility of an act cannot compel physicians or health-care practitioners to participate in it.
46. This Court followed such reasoning in *Reference Re: Same-Sex Marriage*<sup>35</sup> when addressing questions related to the freedom of religion and conscience of religious officials.
47. In *Reference Re: Same-Sex Marriage*, this Court found that while same-sex marriage was consistent with the *Charter*, religious officials who objected to same-sex marriage on the basis of their religious beliefs could not be compelled to perform same-sex marriage without

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<sup>35</sup> *Reference re Same-Sex Marriage*, [2004] 3 SCR 698 ["*Same-Sex Marriage*"], **Book of Authorities of the Attorney General of Quebec, Tab 23** ["AG Quebec BOA"].

violating their section 2(a) *Charter* right to freedom of religion and that any such requirement would fail the justification test under section 1 of the *Charter*:

52 The right to same-sex marriage conferred by the *Proposed Act* may conflict with the right to freedom of religion if the Act becomes law, as suggested by the hypothetical scenarios presented by several interveners. However, the jurisprudence confirms that many if not all such conflicts will be resolved within the *Charter*, by the delineation of rights prescribed by the cases relating to s. 2(a). Conflicts of rights do not imply conflict with the *Charter*; rather the resolution of such conflicts generally occurs within the ambit of the *Charter* itself by way of internal balancing and delineation.

53 The protection of freedom of religion afforded by s. 2(a) of the *Charter* is broad and jealously guarded in our *Charter* jurisprudence. We note that should impermissible conflicts occur, the provision at issue will by definition fail the justification test under s. 1 of the *Charter* and will be of no force or effect under s. 52 of the *Constitution Act, 1982*. In this case the conflict will cease to exist.<sup>36</sup>

48. The CMDS and CFCPS submit that should this Court be inclined to strike the impugned provisions of the *Criminal Code*, that it must make clear, as in *Reference re: Same-Sex Marriage*, that compulsion to perform any act one finds to be morally reprehensible cannot be justified by section 1 of the *Charter*.

#### **PART IV: COSTS**

49. The CMDS and the CFCPS do not seek costs, and asks that no costs be awarded against them.

#### **PART V: ORDER SOUGHT**

50. The CMDS and the CFCPS request permission to present oral arguments at the hearing of this matter.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**, this 26<sup>th</sup> day of August, 2014.




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Albertos Polizogopoulos  
Counsel to the Christian Medical and Dental Society of Canada and  
The Canadian Federation of Catholic Physicians' Societies

<sup>36</sup> *Same-Sex Marriage, supra* note 35, at paras. 52-53, **AG Quebec BOA, Tab 23**.

**PART VI: TABLE OF AUTHORITIES**

<b><u>CASES</u></b>	<b><u>PARAGRAPH(S)</u></b>
<i>Manitoba (Director of Child &amp; Family Services) v. C. (A.)</i> , [2009] 2 S.C.R. 181	44
<i>R. v. Big M Drug Mart</i> , [1985] 1 S.C.R. 295	94
<i>R. v. Edwards Books</i> [1986] 2 S.C.R. 713	97
<i>R. v. Morgentaler</i> , [1988] 1 S.C.R. 30	74, 75, 95, 96, 110, 113, 313
<i>Reference re Same-Sex Marriage</i> , [2004] 3 SCR 698	52, 53
<i>Roach v. Canada (Minister of State for Multiculturalism and Citizenship)</i> , [1994] 2 FC 406	25
<i>Syndicat Northcrest v. Amselem</i> , [2004] 2 S.C.R. 551	43, 46
 <b><u>Other References</u></b>	
Thomas Alured Faunce, <i>Pilgrims in Medicine: Conscience, Legalism and Human Rights</i> (Leiden, The Netherlands: Brill Academic Publishers, 2005)	pp. 156, 157, 158, 159, 164, 165
Guttmacher Institute, “State Policies in Brief: Refusing to Provide Health Services”, August 1, 2014	p. 3
Leon R. Kass, “Neither for love nor money: why doctor must not kill”, <i>The Public Interest</i> , 94 (1989: Winter)	p. 39
World Medical Association, <i>Declaration of Geneva</i> , Adopted by the 2 <sup>nd</sup> General Assembly of the World Medical Association, Geneva, Switzerland, September 1948	N/A
World Medical Association, <i>WMA International Code of Medical Ethics</i> , Adopted by the 3 <sup>rd</sup> General Assembly of the World Medical Association, London, England, October 1949	N/A
Emily Woodbury, “The Fall of the Hippocratic Oath: Why the Hippocratic Oath should be Discarded in Favor of a Modified Version of Pellegrino’s Precepts”, <i>Georgetown University Journal of Health Sciences</i> , 2012 July; Vol. 6, No. 2: 9-17	N/A

**PART VII: LEGISLATIVE PROVISIONS**

*The Belgian Act on Euthanasia* of May, 28th 2002

s. 14

*Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*,  
being Schedule B to the *Canada Act 1982* (UK), 1982, c 11

ss. 2(a), 7

*Canadian Charter of Rights and Freedoms, Part I of The Constitution Act,  
1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11*

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**Fundamental freedoms**

2. Everyone has the following fundamental freedoms:  
(a) freedom of conscience and religion;

**Libertés fondamentales**

2. Chacun a les libertés fondamentales suivantes :  
a) liberté de conscience et de religion;

**Life, liberty and security of person**

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

**Vie, liberté et sécurité**

7. Chacun a droit à la vie, à la liberté et à la sécurité de sa personne; il ne peut être porté atteinte à ce droit qu'en conformité avec les principes de justice fondamentale.

*The Belgian Act on Euthanasia of May, 28th 2002*

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**Section 14**

The request and the advance directive referred to in sections 3 and 4 of this Act are not compulsory in nature.

No physician may be compelled to perform euthanasia.

No other person may be compelled to assist in performing euthanasia.

Should the physician consulted refuse to perform euthanasia, then he/she must inform the patient and the persons taken in confidence, if any, of this fact in a timely manner, and explain his/her reasons for such refusal. If the refusal is based on medical reasons, then these reasons are noted in the patient's medical record.

At the request of the patient or the person taken in confidence, the physician who refuses to perform euthanasia must communicate the patient's medical record to the physician designated by the patient or person taken in confidence.

**LEE CARTER et al.**

**and**

**ATTORNEY GENERAL OF CANADA et al.**

Appellants

Respondents

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**IN THE SUPREME COURT OF  
CANADA (ON APPEAL FROM THE  
QUEBEC COURT OF APPEAL)**

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**FACTUM OF THE INTERVENERS,  
THE CHRISTIAN MEDICAL AND  
DENTAL SOCIETY OF CANADA AND  
THE CANADIAN FEDERATION OF  
CATHOLIC PHYSICIANS' SOCIETIES**

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