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Live and Let Die

An Explanation of Physician Assisted Suicide in Canada



a place of mind
THE UNIVERSITY OF BRITISH COLUMBIA

Faculty of Medicine



University
of Victoria

let's talk  science

Before we begin

- Go to <https://pollev.com/>
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Disclosures

- We are medical students
- We receive no financial benefit from giving this presentation

Ground Rules

- Due to the sensitive nature of this subject we recognize that emotions may be strong but we ask that you refrain from comment during the presentation. If at any point during the presentation we feel disrespected we will stop.

What we will discuss

- The history of physician assisted suicide in Canada
- The implications of the Supreme Court of Canada 2015 Ruling on Carter vs. Crown
- Bill C-14
- Physician assisted suicide in other countries
- The role of the Canadian Medical Association

What we will not be discussing

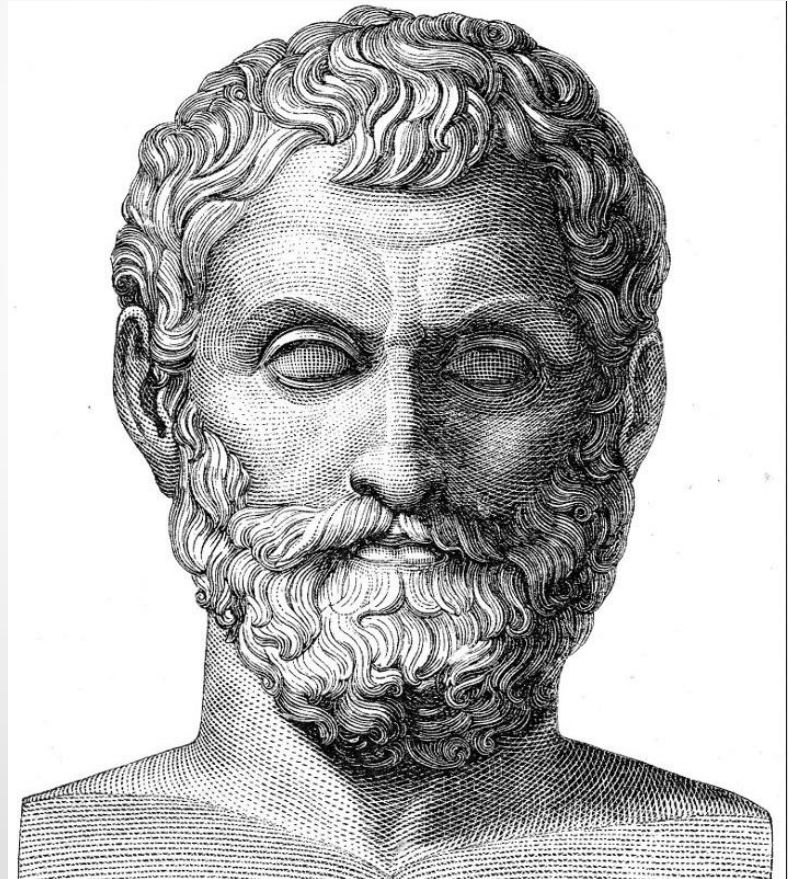
- The arguments for and against physician assisted suicide will not be discussed



History

Ancient Greece

- Suicide is moved into the public realm of discourse
- The acceptance of suicide at the time reflected a concern for a “worthy and good life” as well as the disdain for weakness, illness, and an inability to contribute to society



The Middle Ages

- Christianity viewed suicide as an act in direct defiance of or interference with God's will
- St. Thomas Aquinas claimed that suicide violates the biblical commandment against killing and that it is the most dangerous of sins because the act precludes an opportunity to repent

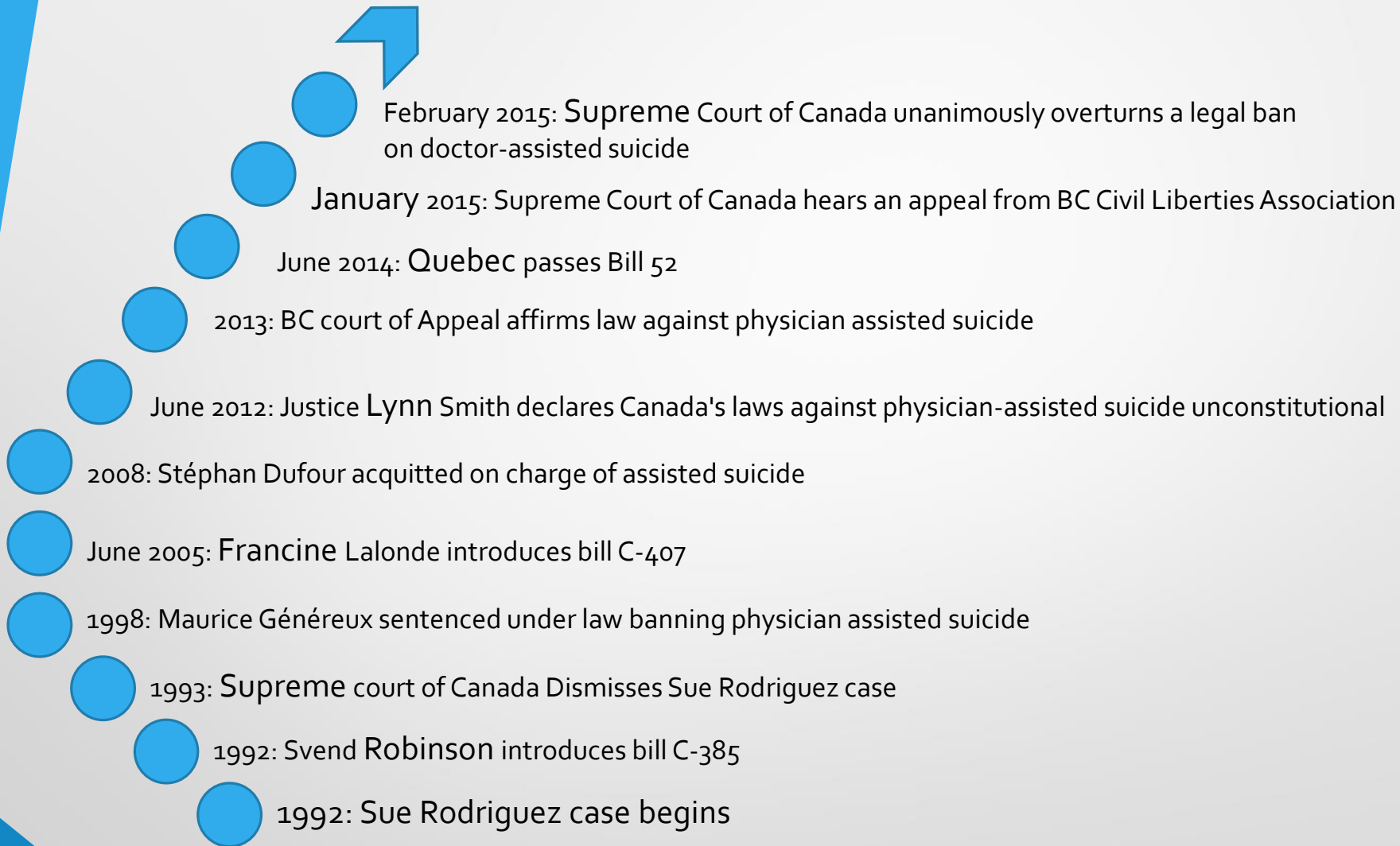


The Modern Era

- Increased scientific and medical knowledge has led to an increased ability to manage illness and prolong life
- The government becomes more involved in questions surrounding end of life
- 19th century medical professionals are discussing quality of life and when it is acceptable to stop living

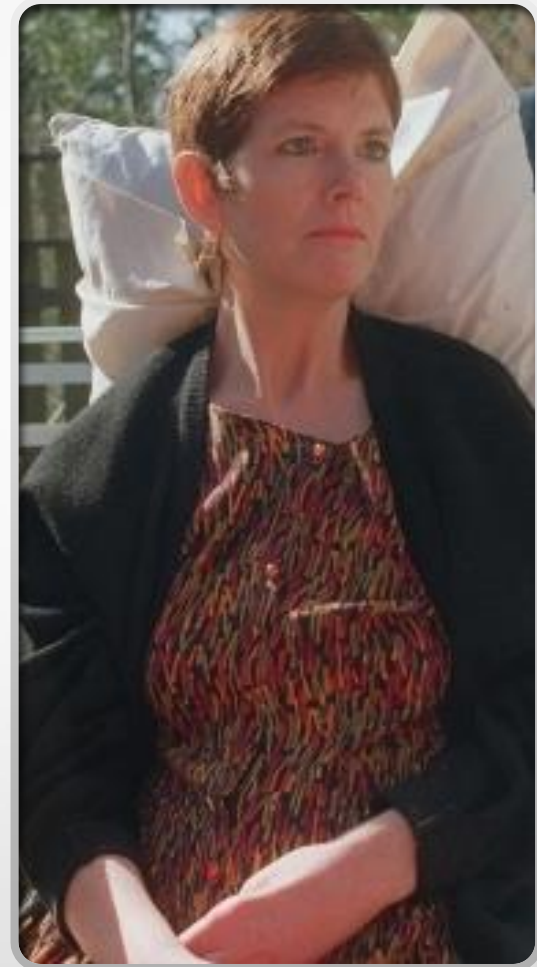


Euthanasia and Assisted Suicide in Canada. Publication No. 2010-68-E
Spiwak, R., et al. (2012). Suicide Policy in Canada: Lessons from History. *Can J Public Health* 2012;103(5):e338-e341.



1992: Sue Rodriguez

- A 42 year old mother with ALS.
- “The appellant does not wish to die so long as she still has the capacity to enjoy life but wishes that a qualified physician be allowed to set up technological means by which she might, when she is not longer able to enjoy life, by her own hand, and at the time of her choosing, end her life.”
 - She challenges section 241(b) of the criminal code arguing that it violates section 7, 12, and 15 of the Canadian Charter of Rights and Freedoms



Rodriguez v. British Columbia (Attorney General), [1993] 3 S.C.R. 519
CBC News. (2015). Timeline: Assisted Suicide in Canada. CBC News. Retrieved
from <http://www.cbc.ca/news/health/timeline-assisted-suicide-in-canada-1.2946485>

Section 241(b)

- Everyone who...

(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 14 years

Section 7 of the Charter provides 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 principle of fundamental justice

The Majority

- The majority contends that Ms. Rodriguez is not choosing the time and manner of her death rather death itself and thus choosing life over death which violates the value of the sanctity of life protected by s. 7

Madam Justice McLachlin

- Concluded, “ It would be contrary to the principle of fundamental justice to deny Ms. Rodriguez the choice available to those who are physically able, merely because of fear that others might suffer abuse.”

Euthanasia and Assisted Suicide in Canada. Publication No. 2010-68-E
Smith, M. (1993). The Rodriguez Case: A review of the Supreme Court of Canada decision on assisted suicide. Retrieved from <http://publications.gc.ca/Collection-R/LoPBdP/BP/bp349-e.htm>

Section 15(1) of the charter provides that every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour religion, sex, age or mental or physical ability

The Majority

- Assumed that Ms. Rodriguez's equality rights under s. 15 had been infringed upon but were saved under s. 1 of the Charter
- Noted that s. 241(b) is in place to protect individuals from others wishing to control their lives
- An exception to the law against assisted suicide for certain groups would create an inequality and support the notion of the 'slippery slope' towards euthanasia

Chief Justice Lamer

- Concluded s. 241(b) creates an inequality even though it is unintended
- This inequality leads to a legal disadvantage in that the person physically unable to commit suicide cannot choose suicide because it is illegal
- S. 241(b) therefore infringes the right to equality guaranteed under s. 15(1)

Euthanasia and Assisted Suicide in Canada. Publication No. 2010-68-E
Smith, M. (1993). The Rodriguez Case: A review of the Supreme Court of Canada decision on assisted suicide. Retrieved from <http://publications.gc.ca/Collection-R/LoPBdP/BP/bp349-e.htm>

The Outcome

- Five to four decision the Supreme Court of Canada Dismisses the appeal and find s. 241(b) to be constitutional
- In 1994 Sue Rodriguez dies with the assistance of an unknown doctor

1992: Nancy B. V. Hôtel-Dieu de Québec

- The Quebec Supreme court rules in favour of Nancy B. a woman suffering from GBS who asks for her ventilator to be removed
- 1993 guidelines for Crown Counsel issued by the BC Ministry of the Attorney General

Dickens, B. (1993). Case Comments: Medical Assisted Death: Nancy B. V. Hôtel-Dieu de Québec. McGill Law Journal. 38. 1053-1070. retrieved from <http://lawjournal.mcgill.ca/userfiles/other/4827919-Dickens.pdf>

1998: Maurice Généreux

- First doctor convicted of physician assisted suicide in Canada
- Pleads guilty to prescribing to men lethal doses of medication
- Sentenced to two years less a day in jail



CBC News. (2015). Timeline: Assisted Suicide in Canada. CBC News. Retrieved from <http://www.cbc.ca/news/health/timeline-assisted-suicide-in-canada-1.2946485>
Kirkey, S. (2016). Twenty-one years ago his doctor prescribed him 50 pills, enough to kill himself. Why he's alive today. National Post. retrieved from <http://news.nationalpost.com/news/canada/twenty-one-years-ago-his-doctor-prescribed-him-50-pills-enough-to-kill-himself-but-hes-alive-today>

2008: Stéphan Dufour

- Acquitted of charges of assisted suicide in the death of his uncle Chantal Maltais



Le Quotidien Steve Tremblay
CBC News. (2008). Quebec Man acquitted on assisted
suicide charges/ (CBC News. retrieved
from <http://www.cbc.ca/news/canada/montreal/quebec-man-acquitted-on-assisted-suicide-charge-1.737601>

June 2012: BC court rules that section 241(b) is unconstitutional

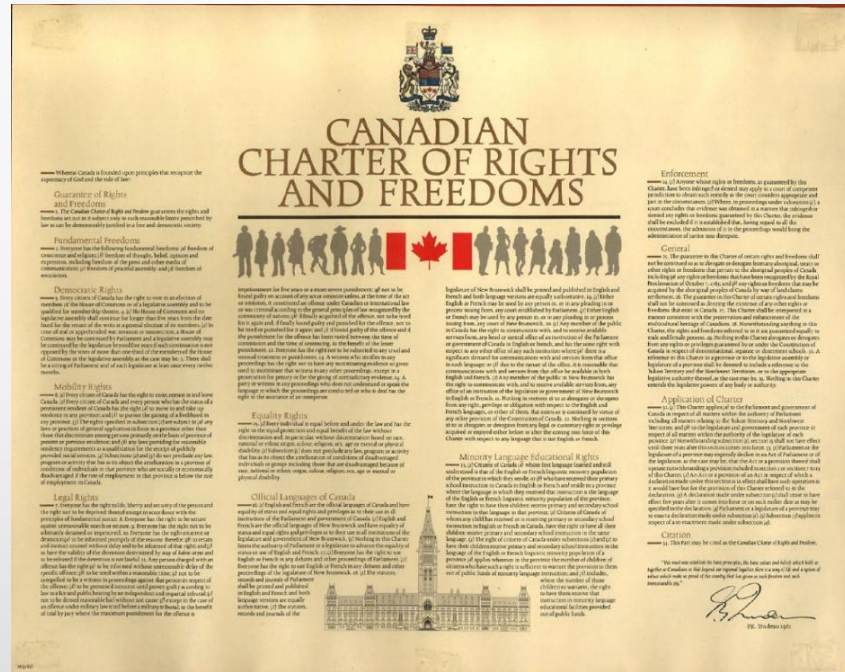
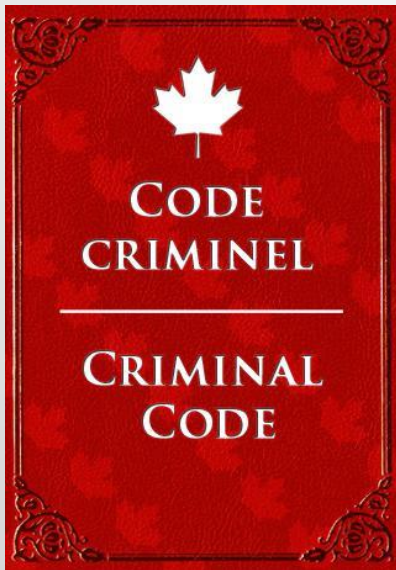
- Plaintiff Gloria Taylor argues that s. 241(b) violates section 7 and 15 of the Charter of Rights and Freedoms
- Justice Lynn Smith rules in favour of Gloria Taylor
- *Withler v. Canada* contains a two part test to assess s. 15
- Two principles of fundamental justice are added to the discussion of s. 7 that were not discussed in *Rodriguez*
- Parliament is given one year to amend legislation
- Gloria Taylor is given a constitutional exemption from s. 241(b) to allow her to seek medical assistance in dying



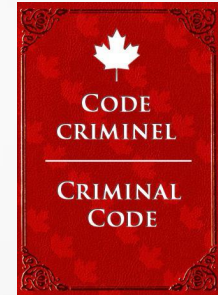
Supreme Court of Canada

Carter v. Canada

Criminal Code vs. Charter of Rights & Freedoms



Criminal Code of Canada



- 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

- 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

Canadian Charter of Rights and Freedoms

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

1. The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such **reasonable limits** prescribed by law as can be **demonstrably justified** in a free and democratic society

Supreme Court Summary

- STEP 1: Individual Right
 - Law (14, 241(b)) conflict with Life, Liberty and Security of Person (s.7)
- STEP 2:
 - Conflict is not in accordance with Fundamental Justice (s.7)
- STEP 3: Societal Rights
 - Beyond Reasonable Limits or Not Demonstrably Justified (s.1)

Right to Life

- **Preservation of Life** vs. **Quality of Life**
 - case law → law/action imposes death or increased risk of death
 - limited to "*the right not to die*"
 - ability to waive one's right?
 - to be preserved at all cost?



Liberty and Security of the Person

- **Liberty** = “the right to make fundamental personal choices free from state interference”
- **Security of Person** = “a notion of personal autonomy involving . . . control over one’s bodily integrity free from state interference”
 - Same principles as right to refuse consent to medical treatment, or to demand treatment to be withdrawn



Supreme Court Summary

- STEP 1:
 - Law (14, 241(b)) conflict with Life, *Liberty and Security of Person* (s.7)
- STEP 2:
 - Conflict is not in accordance with Fundamental Justice (s.7)

Fundamental Justice

- Section 7 does not guarantee that the state will never interfere...
 - *"in accordance with the principles of **fundamental justice**"*
- laws that impinge must not be:
 - arbitrary
 - overbroad
 - have grossly disproportionate consequences



Purpose of 241(b) ?

- Reason for the prohibition
 - **Protect the Vulnerable** vs. **Preservation of Life**
- **Preservation of Life?**
 - too broad?
 - means to further it (overbroad? grossly disproportionate?)
 - attempted suicide = not criminal

Protect the Vulnerable vs. ~~**Preservation of Life**~~

Arbitrariness

- rational connection between object of the law and limits it imposes

OBJECT

Protect the vulnerable
from ending their life in
times of weakness

LAW

Total ban on
physician assisted
suicide



Overbreadth

- goes too far by denying the rights of some individuals in a way that bears no relation to the object
 - not every person who wishes to commit suicide is vulnerable
 - there may be people with disabilities who have a considered, rational and persistent wish to end their own lives

BUT...

- difficult to identify the vulnerable
 - everyone is potentially vulnerable



Supreme Court Summary

- STEP 1:
 - Law (14, 241(b)) conflict with Life, *Liberty and Security of Person* (s.7)
- STEP 2:
 - Conflict is not in accordance with Fundamental Justice (s.7) (*Overbroad*)
- STEP 3:
 - Beyond Reasonable Limits or Not Demonstrably Justified (s.1)

Section 1: Society

- Canada must show:
 - that the law has a pressing and substantial object
 - protecting the vulnerable
 - that the means chosen are **proportional** to that object
 1. means are rationally connected
 2. it is minimally impairing of the right in question



Rational Connection

- “where an activity imposes certain risks, prohibition of the activity is a rational method of curtailing the risks”

Minimal Impairment

- “whether there are less harmful means of achieving the legislative goal”
- “whether Canada was right to say that the risks could not adequately be addressed through the use of safeguards”
 - i. physicians ability to reliably judge competence
 - ii. unconscious bias towards disabled
 - iii. feasibility of safeguards
 - iv. slippery slope
- burden of showing minimal impairment is on the government



Supreme Court Summary

- STEP 1:
 - Law (14, 241(b)) conflict with Life, *Liberty and Security of Person* (s.7)
- STEP 2:
 - Conflict is not in accordance with Fundamental Justice (s.7) (*Overbroad*)
- STEP 3:
 - Beyond Reasonable Limits or **Not Demonstrably Justified** (s.1)
- Result: Section 241(b) to be declared invalid after 1 year
 - deadline later extend by 6 months, due June 6th, 2016

Definitions:

- Physician assisted suicide
- Euthanasia (passive and active)
- Competent patient
 - mental capacity to reason and deliberate, hold appropriate values and goals, appreciate one's circumstances, understand information one is given and communicate a choice. It is specific to the task at hand.

Physician assisted suicide

- Switzerland
- Germany
- Japan
- Albania
- US (Washington, Oregon, Vermont, New Mexico, California)
- Colombia
- England and Wales
- **Canada (coming on June 6, 2016)**

Human euthanasia

- Netherlands
- Belgium
- Ireland
- Colombia
- Luxembourg

Country	What is legal	Since when?	% of deaths	Age restriction	Key differences
Netherlands	Both	1984 (2002)	2.0 %	12+	Allows advanced directive
Belgium	Both	2002	1.7 %	Minors with parents' permission	
U.S. (Oregon)	Assisted dying	1994	0.4 %	18 +	Patient is free of mental condition
Switzerland	Assisted dying	1942	0.5 %	?	Do not have to be a citizen Police present at the time of death

Netherlands

- Termination of life on request and assisted suicide act of 2002 (legal since 1984)

Criteria

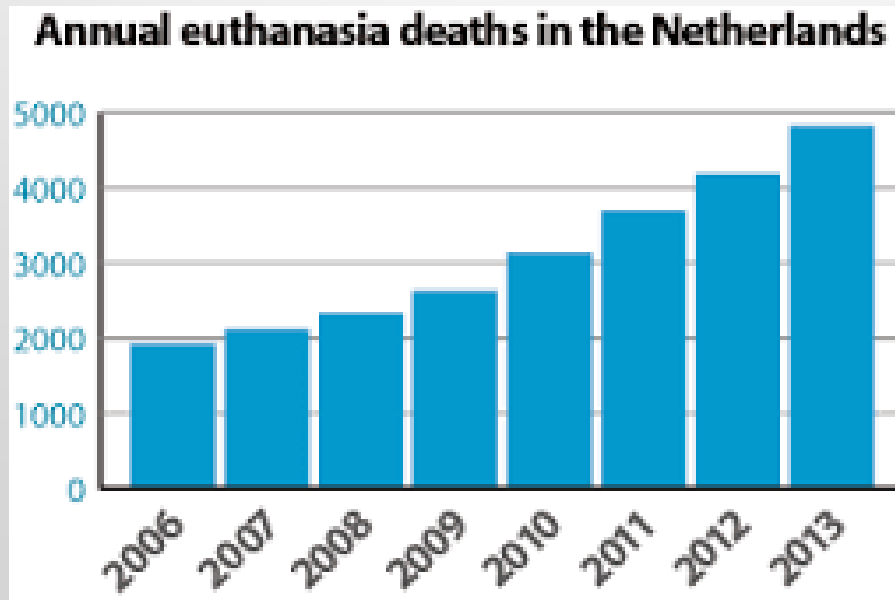
- the patient's suffering is unbearable with no prospect of improvement
- the patient's request for euthanasia must be voluntary and persist over time (the request cannot be granted when under the influence of others, psychological illness or drugs)
- the patient must be fully aware of his/her condition, prospects, and options
- there must be consultation with at least one other independent doctor who needs to confirm the conditions mentioned above
- the death must be carried out in a medically appropriate fashion by the doctor or patient, and the doctor must be present
- **the patient is at least 12 years old (patients between 12 and 16 years of age require the consent of their parents)**
- **Allows for an advanced directive**

Safeguards

- Needs to go through a medical review board and fulfill a set of criteria
 - At the minimum, a medical doctor, an ethicist and a legal expert
- All the cases are reviewed by the coroner

Statistics

- In 2014 there were 5306 cases reported of a physician assisting the death of a patient (56 suffering from mental illness)
- About 2% of all deaths
- 9 cases where the physician had not acted in accordance with the due care criteria (5 of those it was a problem with the way it was preformed)
 - Up to 12 years in prison for euthanasia and up to 3 years for assisting suicide



Belgium

- The Belgian act on euthanasia of May 28, 2002
- As of 2014, legalized euthanasia for children

Criteria

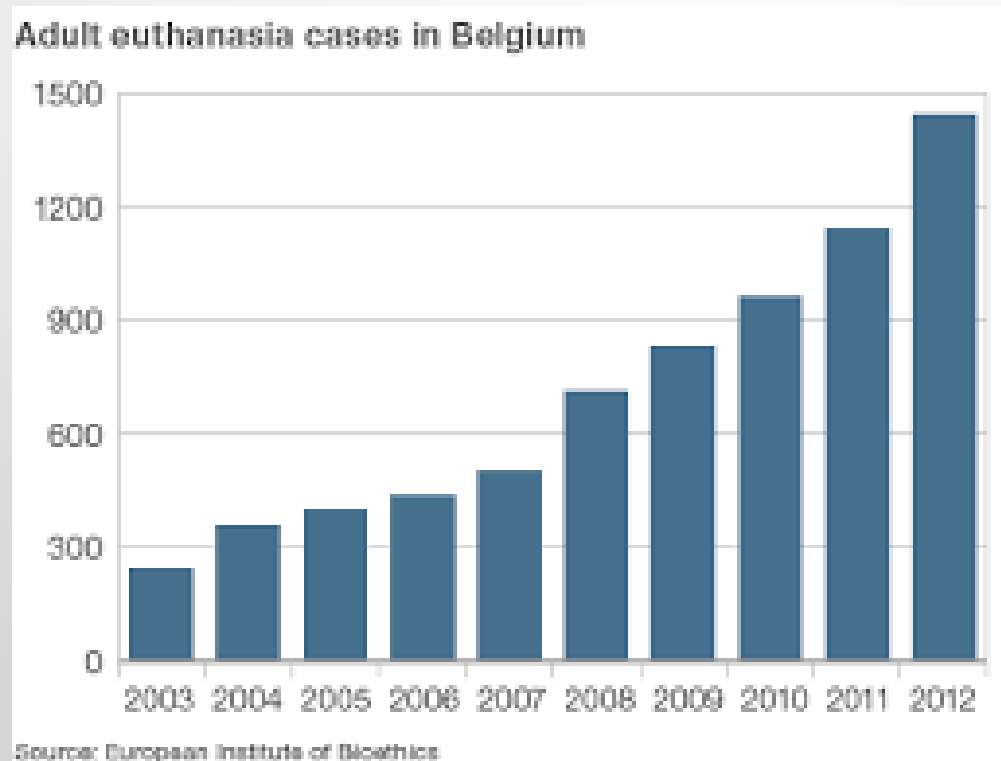
- Patient needs to be conscious and repeatedly request euthanasia
- Be in constant and unbearable physical or psychological pain resulting from an accident or a psychological illness
- The request for euthanasia, the life expectancy, options and their consequences must be discussed
- A second physician (independent from both patient and physician) must review the patient and come to the same conclusion
- Encourages the patient to take the opportunity to discuss the case with the nursing team, relatives and any other persons he/she wishes

Safeguards

- If the physician believes the patient is not terminal, a third physician needs to be contacted (psychiatry or specialist in the field of the specific condition the patient has)
- **1 month between written request and the act of euthanasia**
- All acts of euthanasia performed will be reviewed by a 16 member committee (need a 2/3 majority to agree that euthanasia was carried out according to regulations)

Statistics

- 1.7% of all deaths in Belgium
- No cases were sent to justice



U.S.: Oregon

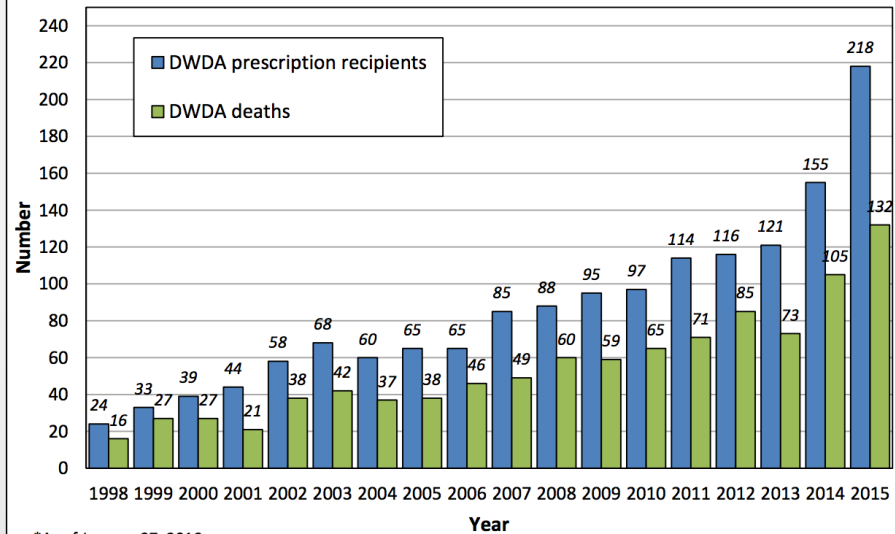
- Death with Dignity Act 1994
- Self administration of lethal medications

Criteria

- **Competent adult (18+)**
- Terminal illness that could kill the patient in **6 months**
- The request for lethal prescription must be initiated by the patient, confirmed by 2 witnesses (one of which is not a relative, not entitled to patient's estate, not employed by the care facility)
- Confirmed by another physician
- **Patient free of mental condition**
- 2 oral and 1 written request over **15 days**
- Patient can refuse at any time

Statistics

Figure 1: DWDA prescription recipients and deaths*, by year, Oregon, 1998-2015



*As of January 27, 2016

- 0.4% of all deaths
- 78% were 65+

Practical aspect

- Netherlands
 - IV sodium thiopental (sedative), once the patient is in a coma, followed by pancuronium to stop the breathing
- Oregon
 - Barbiturate capsules are opened and mixed with water. The patient drinks the mixture and death ensues in about 25 minutes (\$125)
 - Liquid form of barbiturate (\$1000)

Challenges

- How to prevent abuse? What precautions should be in place?
- How to handle patients suffering from mental illness?
- How to gauge whether a patient is competent?
- Should advanced directives be allowed?
- What is intolerable suffering?
- How long is “terminal”?

Questions:

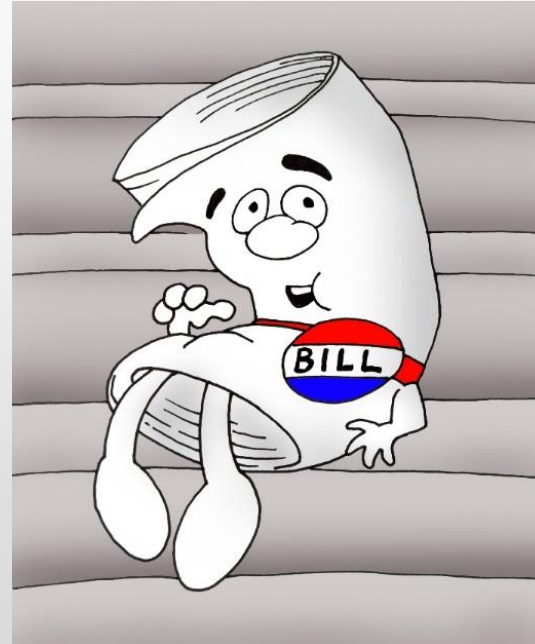
- Why is the rate of euthanasia/ physician assisted suicide rising?
- When is it going to level off?
- Why is the rate for physician assisted suicide so much lower?
- Is it discrimination if a suffering patient is unable to receive aid in dying because he/she is paralyzed or unable to self administer the medication?
- Is it going to be covered?



Bill C-14

Bill C-14 – in the making

- exemptions to 14 & 241(b)
- eligibility for physician-assisted suicide
- safeguards
- definitions
- amendments
- mandate to review



Exemptions

- exemption to section 14 for medical assistance with dying
- section 241 still stands but...
- exemptions to **medical practitioners, nurse practitioners, pharmacists, or aids to practitioners/patients** with medical assistance with dying
 - perform medical assistance
 - provide information about the provision
- reasonable but mistaken belief

Eligibility

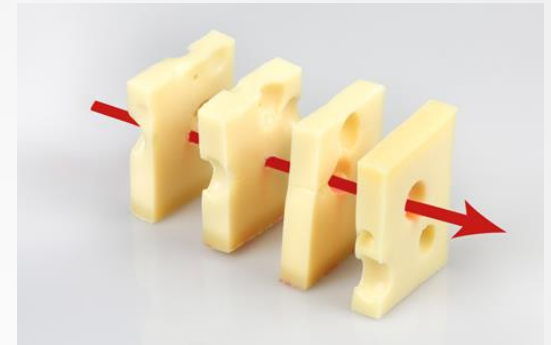
- i. eligible for government funded health services
- ii. at least 18 years old AND capable of making decisions regarding their health
- iii. have a ***grievous and irremediable medical condition***
- iv. voluntary request (not pressured)
- v. they give informed consent



Grievous and Irremediable

- i. serious and incurable illness, disease, or disability
- ii. ***advanced state*** of irreversible decline in capability
- iii. intolerable physical/psychological suffering & no acceptable relief
- iv. natural death has become ***reasonably foreseeable***

Safeguards



- medical/nurse practitioner must
 - i. be of the opinion all criteria are met
 - ii. person's request was made in writing/signed
 - by person (or by someone on their behalf if they are unable to sign)
 - signed and dated after the person was informed of grievous & irremediable illness
 - iii. be satisfied that the request was signed in presence of two witnesses
 - independent witness who also sign request
 - iv. ensure the person was informed they may withdraw the request at any time
 - v. ensure a second (independent) medical/nurse practitioner has provided a written opinion confirming eligibility
 - vi. ensure at least 10 days between signed request and medically assisted death*
 - vii. immediately before providing medically assisted death, provide opportunity to withdraw request and ensure consent
 - viii. take all necessary means to provide a reliable way for the person to understand the information and communicate their decision

Review of Legislation

- no later than 180 days
 - independent reviews on mature minors, mentally ill, and advance requests
- five years later
 - review provisions and *the state of palliative care in Canada*

Many concerns over C-14

- controversy: too restrictive? not restrictive enough?
 - does it adequately address the Supreme Courts ruling
 - role of nurse practitioners
 - grievous and irremediable/foreseeable death
- protection for institutions/individuals not wishing to administer medical assistance with dying
- changes in Senate
- deadline of June 6th

Public Opinion

- 2011-2013 Forum Research Inc showed 65-67% in favour of legalizing physician assisted suicide
- 2014 Forum Research Inc poll showed 74% of Canadian in favour of legalizing physician assisted suicide
- 2016 Angus Reid poll showed 90% of Canadians agree that physician assisted death should be allowed in some form

Forum research INC. (2014). Support for Assisted Suicide Increases. Forum Research Incorporated. retrieved from <http://poll.forumresearch.com/post/120/support-for-assisted-suicide-increases/>
Angus Reid Institute. (2016). Physician-Assisted Suicide: Canadian reject certain Commons committee recommendations. Angus Reid Institute. retrieved from <http://angusreid.org/assisted-suicide-law/>

Canadian Medical Association

- 2014 member consultation
 - Conscientious objection
 - Clinical specifications
 - Palliative care
 - Support for physicians
- 5000 member survey 45% favour legalizing physician-assisted death
- 27% say they would participate if it is legalized

Canadian Medical Association.(2015). A Canadian Approach to Assisted Dying: CMA Member Dialogue: summary Report. Canadian Medical Association. retrieved from <https://www.cma.ca/Assets/assets-library/document/en/advocacy/Canadian-Approach-Assisted-Dying-e.pdf>

Canadian Medical Association

“The CMA supports the right of all physicians, within the bounds of existing legislation, to follow their conscience when deciding whether to provide medical aid in dying as defined in this policy.”

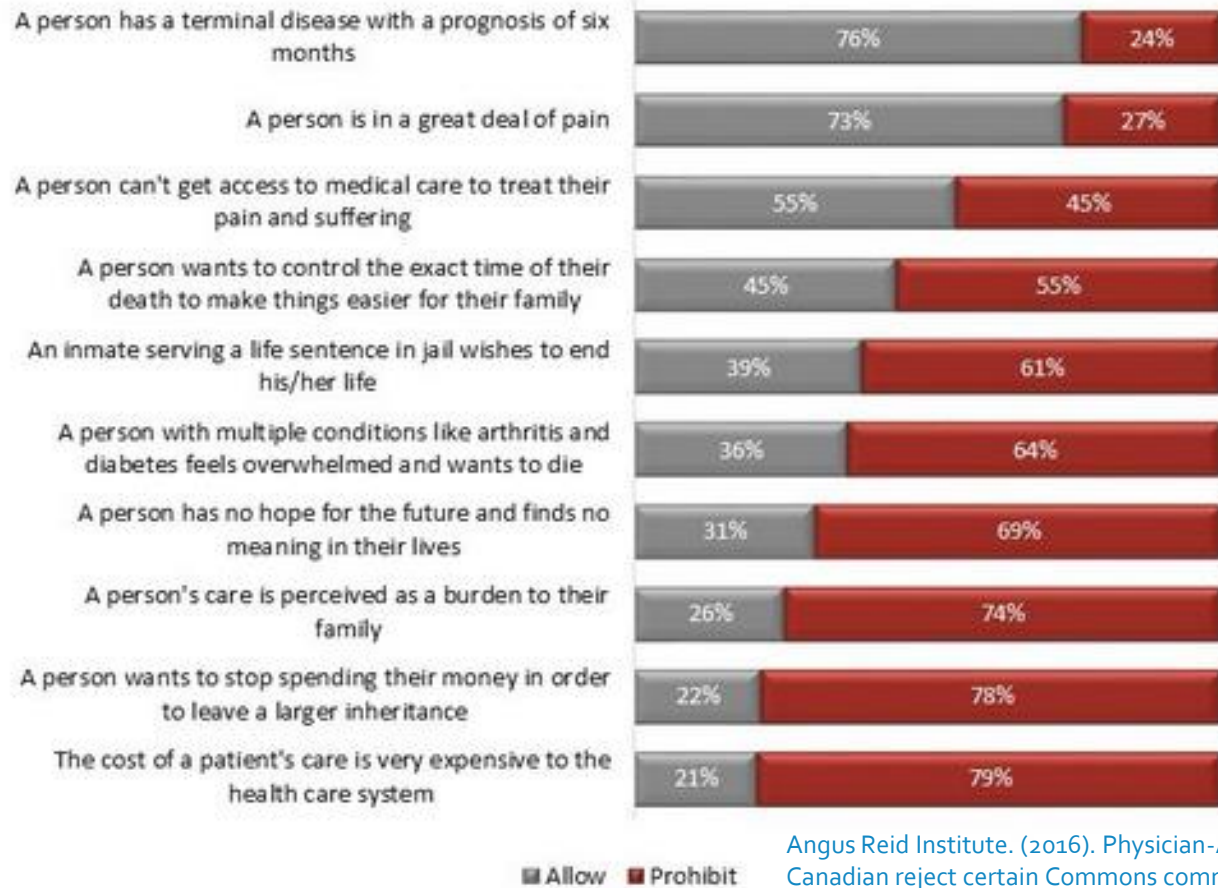
- CMA Euthanasia and Assisted Death (Update 2014)

Canadian Medical Association.(2015). A Canadian Approach to Assisted Dying: CMA Member Dialogue: summary Report. Canadian Medical Association. retrieved from <https://www.cma.ca/Assets/assets-library/document/en/advocacy/Canadian-Approach-Assisted-Dying-e.pdf>


Time for your participation

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Do you feel that these new laws should allow or prohibit doctor-assisted suicide, under the following circumstances?



Angus Reid Institute. (2016). Physician-Assisted Suicide: Canadian reject certain Commons committee recommendations. Angus Reid Institute. retrieved from <http://angusreid.org/assisted-suicide-law/>



Ethics, Law, and Policy



“Legalization of assisted dying is a societal prerogative. It is a done deal. But we still have an opportunity to help shape what it will look like in practice.”

- Dr. Jeff Blackmer, CMA Vice-President, of Medical Professionalism

Canadian Medical Association.(2015). A Canadian Approach to Assisted Dying: CMA Member Dialogue: summary Report. Canadian Medical Association. retrieved from <https://www.cma.ca/Assets/assets-library/document/en/advocacy/Canadian-Approach-Assisted-Dying-e.pdf>

Proposed Legislation

- 1991: Bill C-203, Bill C-261, Bill C-351
- 1992: Bill C-385
- 1994: Bill C-215
- 1996: Bill S-13
- 1997: M-123 to review assisted suicide legislation
- 1998: M-123 is defeated
- 1999: Bill S-29, Bill S-2
- 2005: Bill C-407
- 2008: Bill C-562
- 2009: Bill C-384
- 2014: Quebec passes Bill 52
- 2016: Bill c-14

Section 12 of the Charter provides that everyone has the right not to be subjected to any cruel and unusual treatment or punishment

- To challenge s. 12 it must be illustrated that the person has been subjected to cruel and unusual punishment at the hands of the state.
- The prohibition of an action by the state does not constitute “treatment” as per the meaning of s. 12, which would require some sort of state control over the individual