Physician Assisted Dying

June 20, 2015

Bryan Salte
Associate Registrar

Overview of the Presentation

1) Regimes with physician assisted death or euthanasia
2) The Current Canadian Legislation
3) The *Carter* decision in the Supreme Court of Canada
4) Current Activity

Current Status – Assisted Death

Belgium – allows both physician assisted death and euthanasia

Columbia – courts have struck down the law against physician-assisted death

Germany – has no law against assisted suicide

Luxembourg – legalized euthanasia and assisted suicide

Netherlands – allows both physician assisted death and euthanasia

Switzerland – assisted dying is legal in some circumstances

Oregon, Washington, Vermont – physician assisted dying is legal

Montana – by court decision physicians cannot be prosecuted for assisting a terminally ill patient to die

Quebec – Bill 52 passed and will come into effect in 2015 legalizing physician assisted death

The Criminal Code

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.

The *Carter* decision Supreme Court of Canada

The court granted a declaration that "*s. 241(b) and s. 14 of the Criminal Code are void insofar as they prohibit physician-assisted death 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 *Carter* decision Supreme Court of Canada

"Irremediable," it should be added, does not require the patient to undertake treatments that are not acceptable to the individual.

The *Carter* decision Supreme Court of Canada

In February, 2016, unless a new law is passed by the Government of Canada:

It will not be illegal for a physician to assist a patient to die if:

1) The patient clearly consents;
2) The patient has a grievous medical condition;
3) The condition is not remediable using treatments that the patient is willing to accept; and,
4) The suffering is intolerable to the patient.

The *Carter* decision Supreme Court of Canada

The decision:

1) Has no effect until February, 2016
2) Does not allow for a proxy to consent to death on a patient's behalf
3) Does not deal with withdrawal of life-sustaining treatment

The *Carter* decision Supreme Court of Canada

The court accepted the trial court decision that risks associated with physician assisted death could be minimized:

My review of the evidence in this section, and in the preceding section on the experience in permissive jurisdictions, leads me to conclude that the risks inherent in permitting physician-assisted death can be identified and very substantially minimized through a carefully-designed system imposing stringent limits that are scrupulously monitored and enforced

The *Carter* decision Supreme Court of Canada

The court accepted the trial court decision that physicians can deal with potential lack of voluntariness or coercion:

> *The trial judge found that it was feasible for properly qualified and experienced physicians to reliably assess patient competence and voluntariness, and that coercion, undue influence, and ambivalence could all be reliably assessed as part of that process … physicians should ensure that patients are properly informed of their diagnosis and prognosis and the range of available options for medical care, including palliative care interventions aimed at reducing pain and avoiding the loss of personal dignity.*

The *Carter* decision Supreme Court of Canada

The court accepted the trial court decision that rejected that physician-assisted death would disadvantage vulnerable patients:

The trial judge found that there was no evidence from permissive jurisdictions that people with disabilities are at heightened risk of accessing physician-assisted dying. She thus rejected the contention that unconscious bias by physicians would undermine the assessment process. The trial judge found there was no evidence of inordinate impact on socially vulnerable populations in the permissive jurisdictions, and that in some cases palliative care actually improved post-legalization. She also found that while the evidence suggested that the law had both negative and positive impacts on physicians, it did support the conclusion that physicians were better able to provide overall end-of-life treatment once assisted death was legalized. Finally, she found no compelling evidence that a permissive regime in Canada would result in a "practical slippery slope"

The *Carter* decision Supreme Court of Canada

Unanswered questions:

1) Will there be “a carefully designed and monitored system of safeguards”. If so, who will establish that?
2) Will the Government of Canada pass new legislation?
3) Will the Government of Saskatchewan pass new legislation?
4) Will it fall to the College of Physicians and Surgeons to establish new standards?

The *Carter* decision Supreme Court of Canada

Unanswered questions:

5) Will there be detailed requirements for forms, standards, etc.? If so, who will establish them?
6) What is suffering that is intolerable to the individual? Is that a purely subjective standard?
7) What will be the requirements to establish consent? Two physicians? A consistent wish to die over a period?
8) Will there be requirements for a “cooling off period” or counseling as a precondition for physician-assisted death?

The *Carter* decision Supreme Court of Canada

Unanswered questions:

9) What is the impact of depression or other mental illness on a patient's ability to consent to physician-assisted death?
10) Will a psychological or psychiatric evaluation be required? If so, for some patients? For all patients?
11) How will the "system" identify patients deciding to undergo physician-assisted death under duress?

The *Carter* decision Supreme Court of Canada

Unanswered questions:

12) Will there be a requirement to advise patients of alternatives, including palliative care, hospice and pain management options?
13) What mechanism will be used for physician-assisted death? Will it be only passive or also active?
14) Will physician assisted death only be available to patients who can self-administer the medications?

The *Carter* decision Supreme Court of Canada

Unanswered questions:

15) What will be available for patients who are not sufficiently mobile to obtain a lethal prescription?
16) Will there be a waiting period before a patient can pick up a prescription?
17) Will the availability of supportive palliative care have an effect on patient choice?

The *Carter* decision Supreme Court of Canada

Unanswered questions:

18) Will there be reporting or oversight requirements?
19) Will there be a board or other authority that will review and approve or reject requests?
20) Must the patient have a long-term relationship with the physician who authorizes the death?

The *Carter* decision Supreme Court of Canada

Unanswered questions:

21) What will be the expectation of physicians or others in the health system to advise the patient contemplating physician assisted suicide of options?
22) Must the physician be present at death?
23) What will be the implications of different regimes with different requirements in the provinces and territories?
24) Will a patient's choice of physician assisted death void their life insurance?

Current Activity

1) Most commentators conclude that the Government of Canada will not introduce legislation before February, 2016
2) There appears to be some activity at the ministry of health level in several provinces
3) The Federation of Medical Regulatory Authorities of Canada has established a committee to provide recommendations

Current Activity

4) CPSS has decided to establish a broadly-based committee to provide recommendations
5) The CMA has announced that it will be doing a detailed analysis of all implications of the Carter decision to provide advice to members

QUESTIONS OR COMMENTS?