

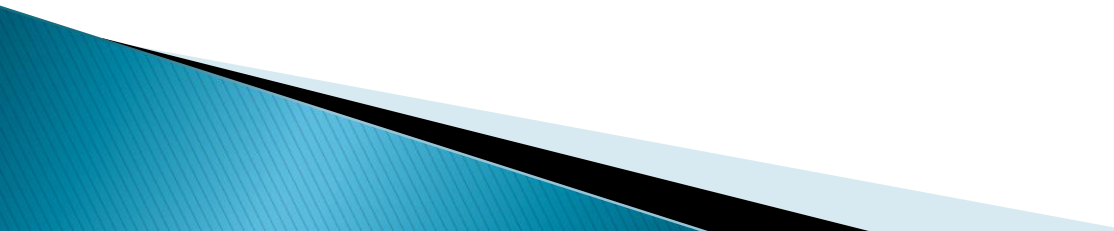
Ethics, Moving Into Uncharted Waters re: End of Life and Physician Assisted Death

Geriatric Refresher Day

The Regional Geriatric Program of Eastern Ontario

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A Word about Words or What are We Talking About?

- ▶ PAD
 - Physician Aid in Dying
 - Physician Assisted Death
 - Physician Assisted Dying
 - ▶ Euthanasia
 - Active
 - Passive
 - ▶ Physician Hastened Death
 - ▶ Mercy Killing
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The Definitions: What are we talking about?

▶ Euthanasia:

- “Knowingly and intentionally performing an act, with or without consent, that is explicitly intended to end another person’s life and that includes the following elements: the subject has an incurable illness; the agent knows about the person’s condition; commits the act with the primary intention of ending the life of that person; and the act is undertaken with empathy and compassion and without personal gain.” (CMA, 2014)
- Active or Passive forms

The Definitions (2)

▶ Physician Assisted Death (suicide):

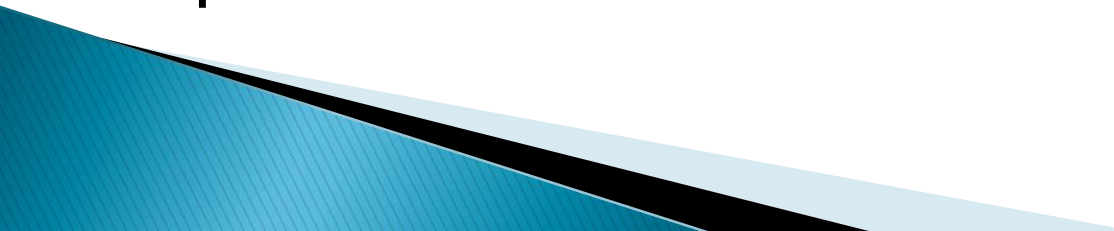
- “When a physician knowingly and intentionally provides a person with the knowledge or means or both required to end their own lives, including counseling about lethal doses or supplying the drugs [needed to end ones life].” (CMA, 2014)

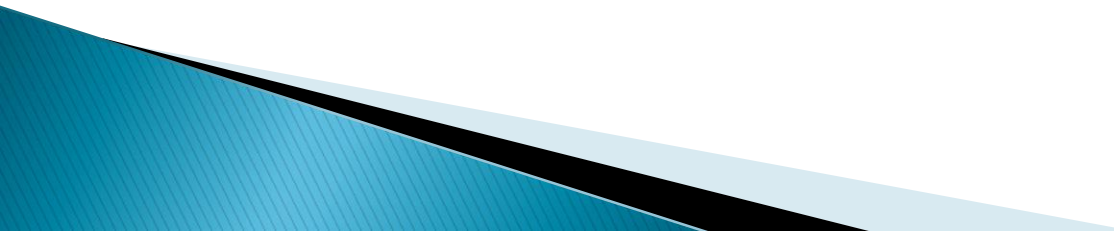
▶ Withdrawing or Withholding life-sustaining intervention

- “Withdrawing or withholding [life-sustaining treatments] that are no longer wanted or indicated, [and] are NOT euthanasia or physician assisted death.”

What the SCC Considered

- ▶ Whether the Criminal Code provision prohibiting physician-assisted dying infringes on individuals' Charter rights to life, liberty and security of the person?

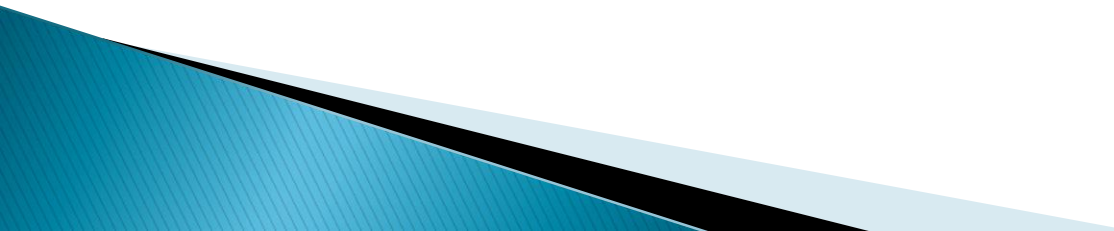
- ▶ Section 241(b) of the Criminal Code states that everyone who aids or abets a person in committing suicide commits an indictable offense.
 - ▶ s. 14 states that no person may consent to death being inflicted on them.
 - ▶ Together, these provisions prohibit the provision of assistance in dying in Canada.
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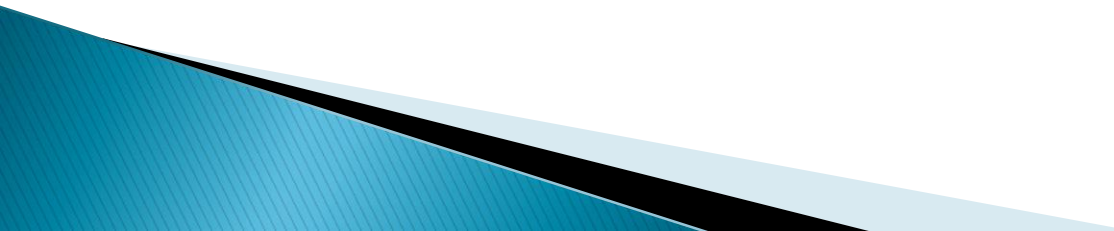
- ▶ Trial judge found that the prohibition against PAD violates the s.7 rights of competent adults who are suffering intolerably as a result of a grievous and irremediable medical condition and concluded that this infringement is not justified under s. 1 of the Charter. She declared the prohibition unconstitutional.
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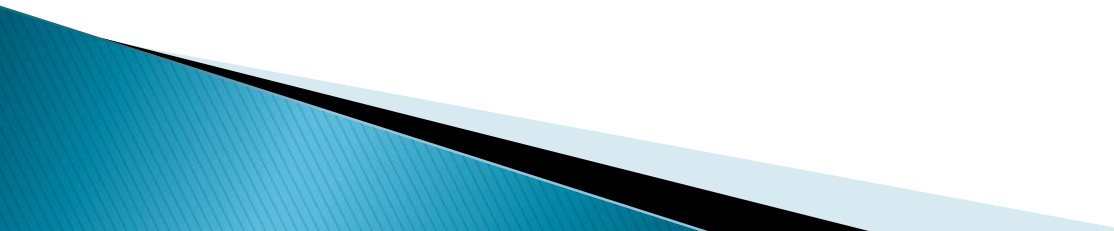
- ▶ SCC upheld the trial judge's decision. Stating that s. 14 of the Criminal Code unjustifiably infringe s. 7 of the Charter and are of no force or effect to the extent that they prohibit PAD for a competent adult person who...

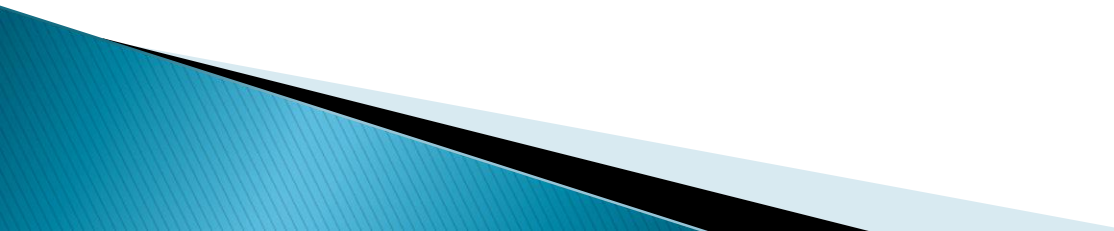
- (1) clearly consents to the termination of life and
- (2) has a grievous and irremediable medical condition (including an illness, disease or disability) that causes enduring suffering that is intolerable to the individual in the circumstances of his or her condition.

SCC Found that a Blanket Ban was...

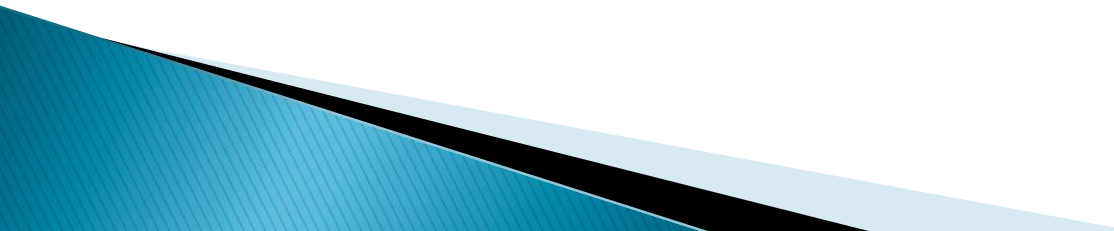
- ▶ Not in accordance with principles of fundamental justice
 - ▶ Prohibition not Proportional
 - ▶ Limitations of (their)rights is in at least some cases not connected to the objective and that the prohibition is thus overbroad.
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- ▶ Permissive regime with properly designed and administered safeguards was capable of protecting vulnerable people from abuse and error.
 - ▶ Vulnerability can be assessed on an individual basis, using procedures that physicians apply in their assessment of informed consent and decision capacity in the context of medical decision-making more generally.
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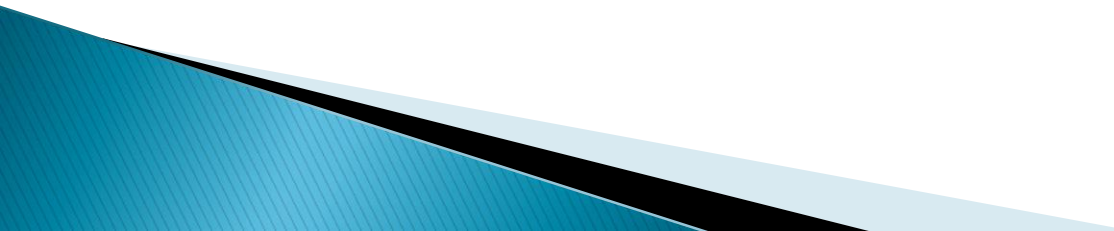
- ▶ An absolute prohibition would have been necessary if the evidence showed that physicians were unable to reliably assess competence, voluntariness, and non-ambivalence in patients;
 - ▶ That physicians fail to understand or apply the informed consent requirement for medical treatment;
 - ▶ Or if the evidence from permissive jurisdictions showed abuse of patients, carelessness, callousness, or a slippery slope, leading to the casual termination of life.
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- ▶ It is 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.
 - ▶ It is possible for physicians to apply the informed consent standard to patients who seek PAD.
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Slippery Slope

- ▶ The Court rejected the argument that adoption of a regulatory regime would initiate a descent down a slippery slope into homicide.
 - ▶ “We should not lightly assume that the regulatory regime will function defectively, nor should we assume that other criminal sanctions against the taking of lives will prove impotent against abuse.”
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Conscientious Objection

- ▶ Nothing in the declaration of invalidity which we propose to issue would compel physicians to provide assistance in dying.
 - ▶ The declaration simply renders the criminal prohibition invalid.
 - ▶ What follows is in the hands of the physicians' colleges, Parliament, and the provincial legislatures.
 - ▶ The Charter rights of patients and physicians will need to be reconciled.
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When

- ▶ When a patient 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.

Considerations for Geriatric Populations

- ▶ Assessments of Capacity
 - ▶ Informed Consent
 - ▶ Advance Care Planning
 - ▶ Substitute Decision Making
 - ▶ Location of Choice for Death
 - ▶ Vulnerable Seniors
 - ▶ System or Institutional Barriers
 - LTC
 - Retirement Communities
 - Rural\Under Resourced Communities
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