



GARDINER ROBERTS LLP



Ontario Justice Education Network Summer Law Institute

The Medico- Legal Society of Toronto presents: EUTHANASIA AND ASSISTED SUICIDE

August 29, 2007

**Gordon Slemko
Gardiner Roberts LLP**

**Dr. Akbar Khan
Medicor Cancer Centres**

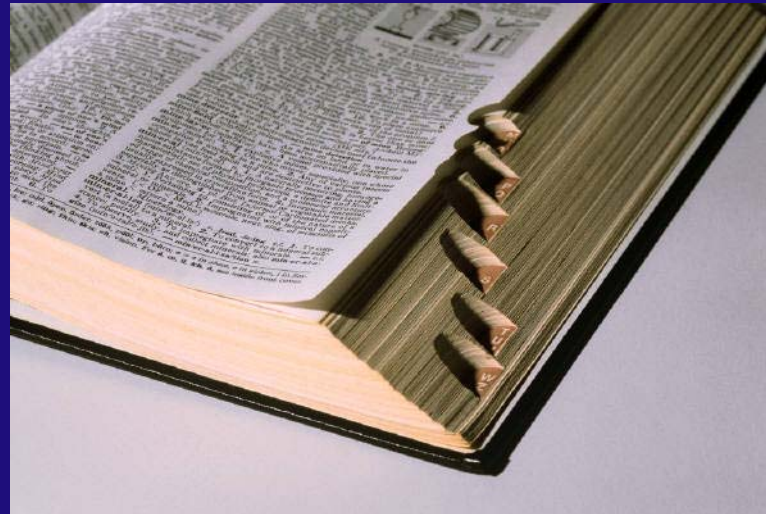


Overview

1. Definition of Euthanasia and Assisted Suicide
2. Criminal Code and Euthanasia
3. Criminal Code and Assisted Suicide
4. The Right to Refuse Medical Treatment
5. Palliative Care
6. Conclusion



1. Definitions





Definition of Euthanasia

- The deliberate act undertaken by a person with the intention of ending the life of another person in order to relieve that person's suffering where that act is the cause of death
 - e.g. Robert Latimer case



Active and Passive Euthanasia

- Passive – treatments are withheld or withdrawn permitting the natural death of a patient (e.g. Do Not Resuscitate order)
- Active – death is intended and hastened by the treatment given to a patient (e.g. injecting a lethal substance)



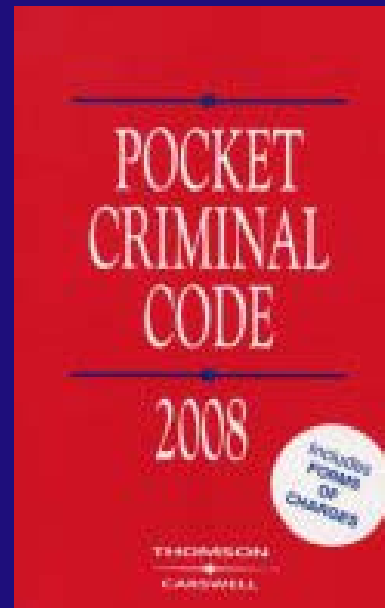


Definition of Assisted Suicide

- The act of intentionally killing oneself with the assistance of another who provides the knowledge, means, or both
 - e.g. Sue Rodriguez case



2. Criminal Code and Euthanasia





The Criminal Code and Euthanasia

- Section 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*
- Person cannot consent to euthanasia



The Criminal Code and Euthanasia

- Although euthanasia often contains the constituent elements of first degree murder (intent to cause death), individuals who have performed euthanasia are often charged with less serious criminal acts
- Leniency is particularly common in a medical context
 - e.g. cases of Dr. de la Rocha and Dr. Morrison



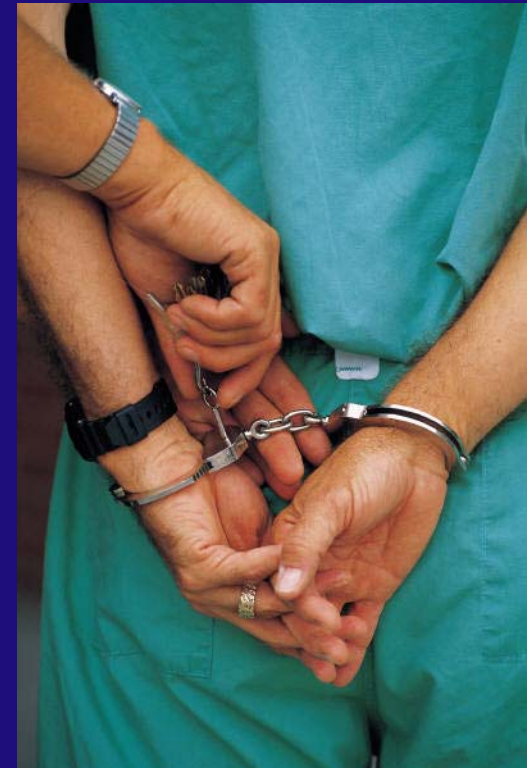
Dr. Claudio de la Rocha

- Patient had advanced lung cancer and required mechanical respiration to stay alive
- Patient informed family and Dr. Rocha she wished breathing tube removed even though this would cause her to die
- Dr. Rocha removed the breathing tube but also gave her an injection which caused her heart to stop



Dr. Claudio de la Rocha

- Convicted in criminal court of administering a noxious substance
- 3 years probation





Dr. Nancy Morrison

- Patient had advanced cancer of the esophagus
- Family requested life support be withdrawn
- When patient was taken off ventilation, he was in substantial distress and pain, gasping for air for approximately 2 hours
- Dr. Morrison administered potassium chloride which caused patient to die within seconds



Dr. Nancy Morrison

- Charge of first degree murder reduced to manslaughter
- However, case did not advance beyond preliminary hearing because there was insufficient evidence for a jury to convict Dr. Morrison of any offence



3. Criminal Code and Assisted Suicide





The Criminal Code and Assisted Suicide

- Although the act of suicide is no longer a criminal act, assisting suicide is
- Section 241- *Everyone who counsels a person to commit suicide or 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*



Sue Rodriguez v. B.C. (Attorney General) [1993] 3 S.C.R. 519

- In 1993, Ms. Rodriguez, a 42-year old woman suffering from ALS, sought a declaration that the prohibition against aiding suicide was unconstitutional
- She argued that the prohibition violated her rights under the Charter to liberty and security of the person, the freedom from cruel and unusual treatment and to freedom from discrimination (as the option of attempting suicide is legally available to non-disabled people)
- The Supreme Court of Canada dismissed her application





4. Right to Refuse Medical Treatment





The Right to Refuse Medical Treatment

- Competent adults have the right to refuse medical treatment (including life-saving treatment) for any reason (including moral or religious reasons)
- Right protected by both caselaw and legislation



Malette v. Shulman [1990] 67 DLR (4th) (Ont CA)

- Emergency doctor gave a blood transfusion to a severely injured unconscious woman who was a Jehovah's Witness despite being aware of a card that she was carrying which stated that she did not want a blood transfusion in the event of an accident
- Although patient's life was saved by transfusion, Court felt doctor committed battery and awarded damages



Malette v. Shulman

- *The doctrine of an informed consent is plainly intended to ensure the freedom of individuals to make choices concerning their medical care. For this freedom to be meaningful, people must have the right to make choices that accord with their own values, regardless of how unwise or foolish those choices may appear to others*

Ontario Court of Appeal



Health Care Consent Act, 1996

- Section 10 – *No treatment without consent*
- If the person is incapable of giving consent, person's substitute decision-maker must give consent





Right to Refuse Treatment and the Prohibition Against Euthanasia

- A competent person has the right to refuse treatment
- Withholding or withdrawing life sustaining treatment is passive euthanasia
- Is withholding or withdrawing life-sustaining treatment legal?



Rodriguez v. B.C. (Attorney General)

- *Canadian courts have recognized a common law right of patients right to refuse consent to medical treatment, or to demand a treatment, once commenced, be withdrawn or discontinued. This right has been specifically recognized to exist even if the withdrawal from or refusal of treatment may result in death*

Supreme Court of Canada



4. Palliative Care





Palliative Care

- World Health Organization definition of palliative care:

Palliative care is an approach that improves the quality of life of patients and their families facing the problem associated with life threatening illness, through the prevention and relief of suffering by means of early identification and impeccable assessment and treatment of pain and other problems, physical, psychosocial and spiritual



Palliative Care May Shorten Life

- While goal of palliative care rendered by healthcare professionals is neither to hasten or postpone death, ancillary effect may be to shorten life



Palliative Care and Prohibition Against Euthanasia

- People are entitled to pain relief
- Injecting a lethal substance is active euthanasia
- Is potentially life shortening palliative care legal?





Legality of Life Shortening Palliative Care

- *The administration of drugs designed for pain control in dosages which the physician knows will hasten death constitutes active contribution to death by any standard. However, the distinction drawn here is one based upon intention... In any case of palliative care the intention is to ease pain, which has the effect of hastening death... In my view, distinctions based upon intent are important, and in fact, form the basis of our criminal law... While factually the distinction may, at times, be difficult to draw, legally it is clear*

Supreme Court of Canada



Palliative Care

Common reasons for requesting euthanasia/assisted suicide:

- Uncontrolled pain
- Fear of pain, choking to death, other severe symptoms
- Fear of loss of control / dependency
- Loss of hope (for treatment, quality of life etc.)
- Burden on family
- Depression



Case 1

- 55 year old female with pharyngeal carcinoma
- all standard treatments completed (surgery, chemo, radiation) and have now failed, pain and symptom control only
- swallowing and breathing becoming obstructed
- patient refuses i.v. hydration, g-tube, tracheostomy
- requests euthanasia, family supportive



What would he do?





Case 2

- 65 year old female with lung cancer spread to bones
- receiving palliative care at home
- sudden severe leg pain after turning in bed (femur fracture)
- triple the usual dose of morphine – no effect at all
- changed to hydromorphone (5 times stronger than morphine) by infusion – no reduction in pain
- family cannot stand the suffering, try to overdose the pain medication, but patient does not die, remains in pain



Case 3

- 70 year old physician with bowel cancer spread to liver and lungs
- progressive weakness, now bedridden
- alert, fully competent, quality of life very poor, prognosis 2-3 months with standard palliative care
- requests euthanasia, after review of laws, decides to have terminal sedation instead (with no artificial hydration)
- patient expected to die in 3-5 days with this treatment
- is this legal?



6. Conclusion





Conclusion

- A competent person may refuse potentially life sustaining treatment or request the withdrawal of life sustaining treatment (e.g. mechanical ventilation)
- Person is entitled to palliative care which may have the unintended effect of potentially shortening life
- Euthanasia and assisted suicide, however, are both illegal



The Medico-Legal Society of Toronto
344 Lakeshore Rd. E. - Suite B
Oakville, ON L6J 1J6

Tel: 905-849-0822 Email: mlst@mlst.ca