

# Rights, Conscience Votes And Assisted Dying

The Canadian Supreme Court has ruled that the right to assisted dying is part of the basic human right to life, liberty and security of the person. The reasoning behind this ruling has implications for Australian law: Meg Wallace.

In February this year, the Supreme Court of Canada made a historic ruling on voluntary euthanasia.[1] It held that access to voluntary euthanasia is a basic human right. In doing so it rejected the approach of the UN Human Rights Council that accepts prohibition of assisted suicide by governments wishing to do so. The Court declared that Canadian legislation prohibiting assisted suicide is invalid, as it is a violation of the right to life, liberty and security of the person, under the *Canadian Charter of Rights and Freedoms*. This judgment has important implications for legislators, and its reasoning can be applied to Australia as well.

The Canadian Court pointed to the fact that everyone has the right to make decisions concerning their bodily integrity and medical care. This principle allows a person in a grievous and irremediable medical condition to request palliative sedation, refuse artificial nutrition and hydration, or request the removal of life-sustaining medical equipment (they can also refuse nutrition and fluids). The Court held that prohibition of voluntary euthanasia interferes with this right to make decisions concerning one's bodily integrity and medical care and thus 'trenches on liberty'. [2] It held that forcing people to endure intolerable suffering deprives them of their security of person according to the principles of justice, which are founded on a belief in the dignity and worth of every human person. [3] The alternatives, taking one's own life prematurely when able to (often violently or dangerously) or suffering until death, are 'cruel'. [4] The right to life is no longer seen to require that all human life be preserved at all costs. [5]

## The existing law is inconsistent.

The Court pointed out that as the right to liberty and security of the person allows mentally competent individuals to refuse medical treatment, even where it is life-saving or life-preserving, prohibition of assisted dying is 'overbreadth'. This is because **(1) It denies some individuals of the right to liberty and security of the person**, including autonomy in medical decision-making. **(2) this denial is otherwise contrary to the general objective of the Charter**, which is to ensure *universal* enjoyment of that right; and **(3) this denial has no relation to the Charter's objective** – it is concerned instead with protection of specific societal interests.

Societal interests are cited in advocating the prohibition of assisted dying – such as religiously-inspired opposition, the need to protect the vulnerable from exploitation, mistake or duress, or the reluctance of some physicians to be

involved. They are consequential, but should play no part in influencing government in denying a right intended to be universal.

## **Societal interests are properly the consideration of safeguards**

The Court accepted there are legitimate concerns to protect the vulnerable. It examined arguments of over 40 submissions from groups that both supported and opposed the prohibition of assisted dying. It also considered the administration of legislation in countries that permit it. It found that none of those jurisdictions showed that physicians are unable to reliably assess competence, voluntariness, and non-ambivalence in patients, ensure informed consent, and prevent abuse. Indeed, the Court also found that comprehensive consideration of options, outcomes and safeguards involved where assistance in dying is available has meant that palliative care actually improved in those jurisdictions.

## **Implications for ‘conscience votes’**

This judgment has important implications for legislators in Canada. It indicates that they have no business denying people their right to liberty and security under the *Canadian Charter*. They should vote in favour of assisted dying, with no room for a ‘conscience vote’ based on religious or other personal life-stance. The right to life is no longer seen to require that all human life be preserved at all costs” “is no longer seen to require that all human life be preserved at all costs” Legislators should ensure the right to liberty and security for everyone, exercising their judgement to provide appropriately for the protection of societal interests such as prevention of abuse.

This approach clarifies the meaning of ‘conscience vote’, at least in relation to voluntary euthanasia. Conscience votes are used as a cop-out when political parties are too timid to take a stand in fear of losing votes. MPs have no business voting in accordance with their personal benefit, or even to further their particular view of how one should live. They are in Parliament to support human rights in accordance with what is in the public good. Only if they can argue that a particular measure will deny some their universal human rights, or will cause harm generally within society should they vote it down. They can develop, with their fellow party members, appropriate safeguards for preventing abuse.

In Australia, we do not have a federal Charter or Bill of rights to appeal to in considering assisted dying. However, the reasoning of the Canadian Court is not irrelevant to the Australian justice system. The right to life, liberty and security of the person is also guaranteed by the *Universal Declaration of Human Rights* (UDHR) and *International Covenant on Civil and Political Rights*(ICCPR) both of which Australia has ratified. By signing the ICCPR, Australia has undertaken to apply its provisions in our law (which it has not done). Based on the reasoning of the Canadian Supreme Court, one can argue that there is a *right* to assisted dying in Australia. However, given that international human rights bodies have not adopted this approach to the right to liberty and security, it would be a

bold step for the courts here to establish voluntary euthanasia as a right, despite overwhelming community support for voluntary euthanasia.

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[1] *Carter v. Canada (Attorney General)*, 2015 SCC 5

[2] *Ibid*, [66]

[3] *Ibid*, [81].

[4] *Ibid*, [1].

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[5] *Ibid*, [63].