

Knowledge Mobilization & and Evidence - Based Practice

We all have a general idea of what an "expert" is, but what does it really mean to be an expert?

Does that designation bestow decision-making power? And how do we decide who is an expert over any given issue that is within the realm of public debate?



<https://greghaubrich.files.wordpress.com/2014/01/leo-cullum-expert-witness-new-yorker-cartoon1.jpg>.



<https://www.flickr.com/photos/collingwood3419/5708547185/>

The Supreme Court of Canada's unanimous decision on February 6, 2015 to strike down the prohibition on assisted suicide offers us a chance to reflect on "expertise".

This decision will bring welcome relief to those Canadians facing difficult and painful end-of-life realities. In accordance with the ruling, a competent adult Canadian who "clearly consents" to the termination of life and has a "grievous and irremediable medical condition (including an illness, disease or disability) that causes enduring

suffering that is intolerable to the individual" now cannot be denied the right to an assisted death.

The highest court noted at paragraph 67 of the *Carter v. Attorney General of Canada* decision that "the law has long protected patient autonomy in medical decision-making", and that the right to "decide one's own fate" is a central component of individual liberty. Thus, our Charter of Rights and Freedoms not only recognizes the value of life, but so too does it honour "the role that autonomy and dignity play at the end of that life".

This important decision is a reflection of the growing importance of personal liberty within our modern society. Just as the recognition of a woman's right to choose in the *Morgentaler* ruling of the late 1980s represented an important milestone for the recognition of the rights of women in Canada, last week's decision shows that this country has changed since 1993, when the high court rejected Sue Rodriguez's challenge to the assisted suicide ban. A link to the Supreme Court of Canada decision is provided below.

<http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14637/index.do> (Carter v. Canada (Attorney General) DOCKET: 35591).

An interesting question to ponder, however, is how it came to be that this highly contentious moral issue was decided by nine judges whom most citizens probably could not name. After all, we supposedly live in a democracy, so why don't we decide issues like right-to-die and abortion based on the will of the majority as expressed through a vote in our duly elected House of Commons? Do judges have expertise in the area of complex medical decisions? Probably not, as those nine men and women went to law school and not medical school. So why do nine lawyers get to decide the right-to-die issue, as opposed to nine doctors or nine palliative-care social workers?

It is thus the case that legal "experts" (i.e., the Supreme Court judges) decide issues that seemingly require expertise of a different nature, such as medical expertise or scientific expertise. Or indeed experts of public opinion, and who could have a better claim to that designation than an elected politician whose job is to represent the views of his or her community?

We can thus ponder the points raised by National Post commentator Andrew Coyne, as he recently wrote that the right-to-die decision may mark the end of "judicial restraint" within Canada, and by this he essentially meant that the highest court in the land will no longer be reluctant to enter into issues that should be left to Parliament to decide.

<http://news.nationalpost.com/2015/02/13/andrew-coyne-supreme-court-euthanasia-ruling-marks-the-death-of-judicial-restraint>.

So who are the experts on an ethical subject such as the circumstances under which a medical professional can participate in the termination of a human life? Citizens need to be aware of their rights, and knowledge mobilizers play a valuable role in educating the public as to their legal rights and responsibilities, and engaging in a dialogue pertaining to needed reforms. Medical doctors, lawyers, social workers and others must be aware of the changed legal landscape, and assist patients to make informed decisions. Further, informed knowledge mobilizers must engage in a dialogue with political decision-makers, given that the court ruling suspends the declaration of invalidity for twelve months. The court thus acknowledged that

In-The-Right-To Die With Dignity The Supreme Court of Canada's Unanimous Decision, February 6, 2015

3

there is still scope for Parliament to legislate on this subject, albeit within the parameters of the court's ruling.

Social workers engaged in palliative care need a special set of skills to assist patients at this most difficult time, and hence they probably have a claim to a certain level of expertise with respect to this subject. A good source of information about training and resources available to social workers can be found at the website of the Canadian Hospice Palliative Care Association. It is said in a paper by Bosma et al. located on that association's website that "the social work profession's expertise in the psycho-social and spiritual dimensions of human experience throughout the life course addresses a key component of the Canadian Hospice Palliative Care Principles and Norms of Practice".

<http://www.chpca.net/professionals/social-workers-and-counselors.aspx>



<http://www.chpca.net/professionals/social-workers-and-counselors.aspx>

Social workers thus need to take the lead and engage both government decision-makers and the general public in a discussion about the needs of patients suffering from incurable ailments, and to explain why the Supreme Court decision represents a positive breakthrough for those patients. Social workers involved in palliative care see the needs of the patients every day at work, and they thus need to perform the role of advocate on behalf of palliative care patients within the on-going right-to-die debate within Canada.

In-The-Right-To Die With Dignity The Supreme Court of Canada's Unanimous Decision, February 6, 2015

4

Doctors also have a obvious claim to be experts in this area, and the recent column in the Globe and Mail by Dr. Jean Marmoreo provides a doctor's perspective on how the Supreme Court ruling will change her practice. <http://www.theglobeandmail.com/globe-debate/the-supreme-court-has-changed-the-way-i-talk-to-my-patients-about-death/article22889921>

Organizations such as Dying With Dignity Canada also have expertise that arises from, if nothing else, its longstanding commitment to the issue. The group's website has a large volume of useful information for those seeking to be educated, including suggestions on how to create an advanced care planning kits including draft power of attorney for personal care and advanced care directives. The website also offers blog posts written by various authors considered to be knowledgeable in the field: http://www.dyingwithdignity.ca/resources/blog_news.php



The day I talked with Dying With Dignity was one of the happiest days of my recent life. I now know that when the time comes and my life is no longer bearable to me, I have the resources and the support to die with dignity.

http://www.dyingwithdignity.ca/resources/resource_library.php

A leading proponent of the right-to-die position is Conservative Member of Parliament Steven Fletcher. He is a paraplegic himself as a result of an automobile accident, and he has taken on a leadership role on this issue. Fletcher has released a statement in support of the ruling and it can be accessed at his website.



It thus can be seen that there are various group and people who have made and will continue to make significant contributions to the public awareness and dialogue on the right-to-die issue. Advocates with relevant expertise may well have contributed to a changing in public opinion on this issue in the twenty years between the *Rodrigues* and *Carter* decisions. Dying With Dignity Canada notes a 2014 survey that found 84% of respondents in Canada agree with the following statement: "A doctor should be able to help someone end their life if the person is a competent adult who is terminally ill, suffering unbearably and repeatedly asks for assistance to die". http://www.dyingwithdignity.ca/resources/first-release-poll-results/inner_articles/720.php

In the final analysis, however, the decision as to whether the fundamental freedoms of Canadian citizens include a decision to end one's life, in certain circumstances, was decided not in public, but within the closed walls of the Supreme Court of Canada building by nine Supreme Court of Canada justices.

References

- Bosma, H., Johnston, M., Cadell, S., Wainwright, W., Abernathy, N., Feron, A., Kelley, ML & Nelson, F. (2008). Canadian Social Work Competencies for Hospice Palliative Care: A Frame work to Guide Education and Practice at the Generalist and Specialist Levels. Retrieved from: http://www.chpca.net/interest_groups/social_workers-counselors/social-work_counsellors_competencies.html
- Carter v. Attorney General of Canada, 2015 S.C.C. 5. Decision found at Supreme Court of Canada website, situated at <http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14637/index.do>
- Cartoon found at: <https://greghaubrich.files.wordpress.com/2014/01/leo-cullum-expert-witness-new-yorker-cartoon1.jpg>
- Coyne, A. (2015, February 13). Supreme Court euthanasia ruling marks the death of judicial restraint. *National Post*: retrieved from: <http://news.nationalpost.com/2015/02/13/andrew-coyne-supreme-court-euthanasia-ruling-marks-the-death-of-judicial-restraint>
- Dying With Dignity Canada website, found at www.dyingwithdignity.ca
- Fletcher, Steven website, found at www.stevenfletcher.com.
- Marmoreo, J. (2015, February 10). The Supreme Court has changed the way I talk to my patients about death. *The Globe and Mail*: Retrieved from: <http://www.theglobeandmail.com/globe-debate/the-supreme-court-has-changed-the-way-i-talk-to-my-patients-about-death/article22889921>

Pictures

- <http://www.chpca.net/professionals/social-workers-and-counselors.aspx>
- http://www.dyingwithdignity.ca/resources/resource_library.php
- <https://www.flickr.com/photos/collingwood3419/5708547185>
- <https://greghaubrich.files.wordpress.com/2014/01/leo-cullum-expert-witness-new-yorker-cartoon1.jpg>
- http://www.stevenfletcher.com/main.asp?cat_ID=15