

# Implications of the Supreme Court Decision on Physician Assisted Dying (PAD)

Victoria, British Columbia  
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# *Ending Life*

ETHICS AND THE WAY WE DIE

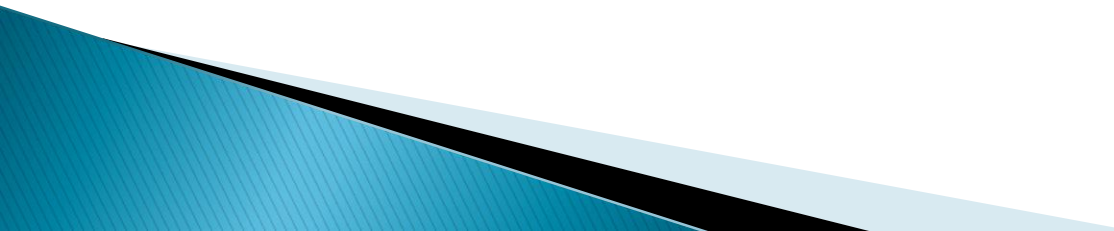


MARGARET PABST BATTIN

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# Lucius Seneca (4BC – 65AD)

The wise man lives as long as he should, not as long as he can. He will always think in terms of quality, not quantity. Dying early or late is of no relevance, dying well or ill is. A prolonged life is not necessarily better, a prolonged death is necessarily worse.





**Dying With Dignity Canada**  
It's your life. It's your choice.



**Ipsos Reid**

# Dying with Dignity Public Perception Survey

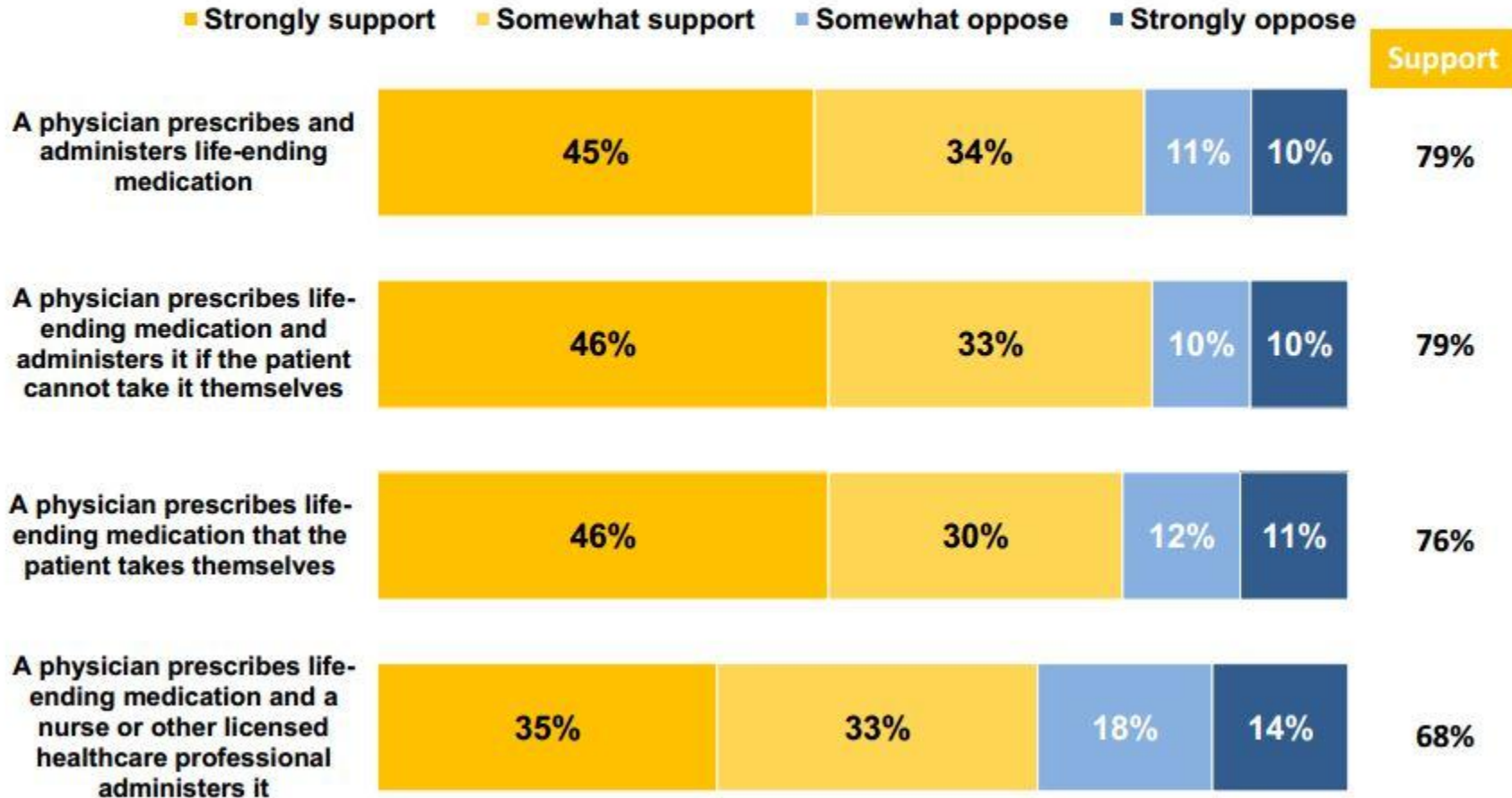
August 21 – 29, 2014





## Support for Law Changes Allowing Different Scenarios

When providing different scenarios, support for assisted dying declines slightly although four in five (79%) would still support scenarios where a physician prescribes and administers the medication. Support is lowest (68%) when a nurse or other licensed professional administers life-ending medication.

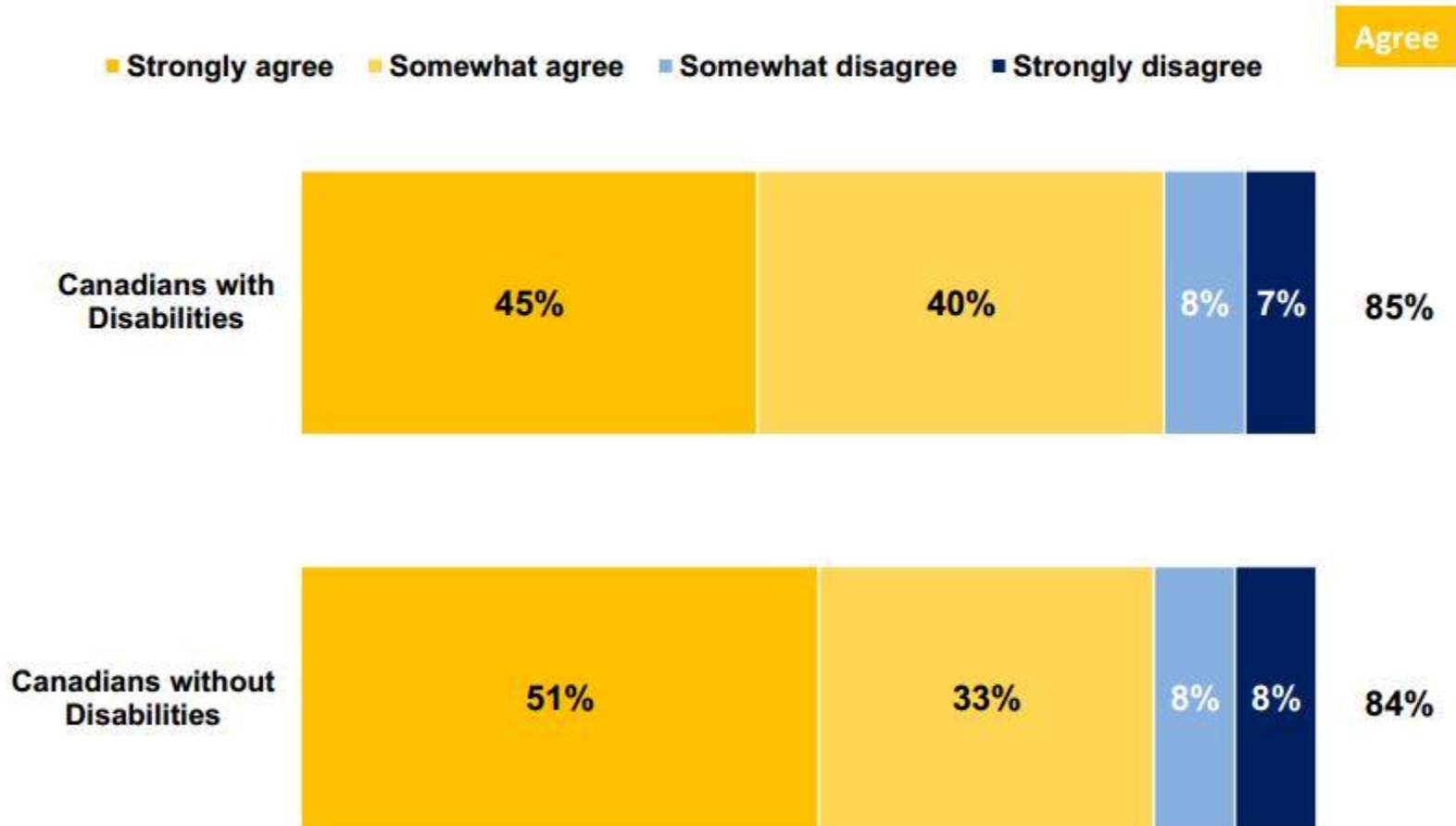


If there were to be a change in the law to allow assisted dying for the terminally ill, how much would you support or oppose the following:

Base: All Respondents: (n=2515)

# Doctors Should be Able to Help Someone End Their Life if Asked – Canadians with Disabilities

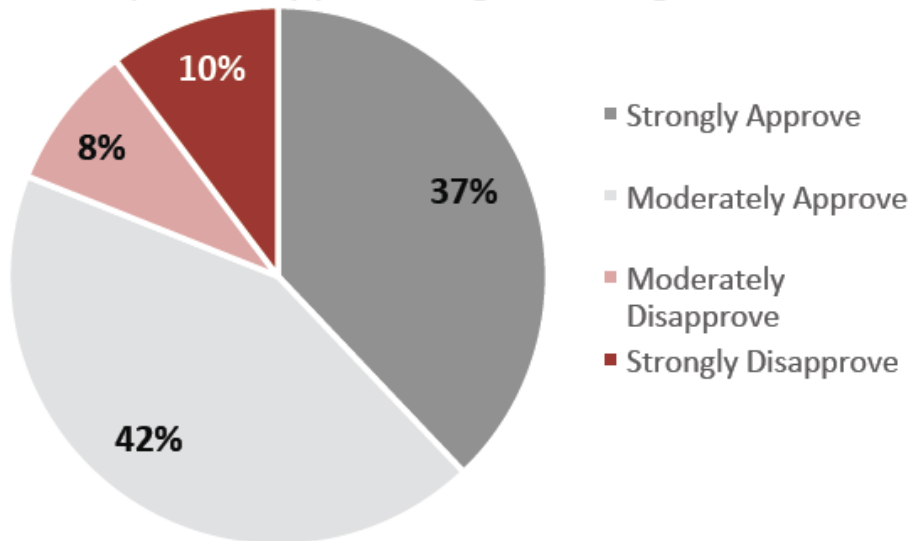
- **Nine in ten (85%) Canadians with disabilities support a physician's ability to assist in dying should someone be terminally ill and suffering unbearably.**



In October, The Supreme Court of Canada is scheduled to hear a case about assisted dying. As long as there are strong safeguards in place, how much do you agree or disagree that 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?

Base: All Respondents: (n=2515)

Do you approve or disapprove of proposals to change the criminal code of Canada to allow physicians to assist with the suicide of their patients by prescribing lethal drugs?

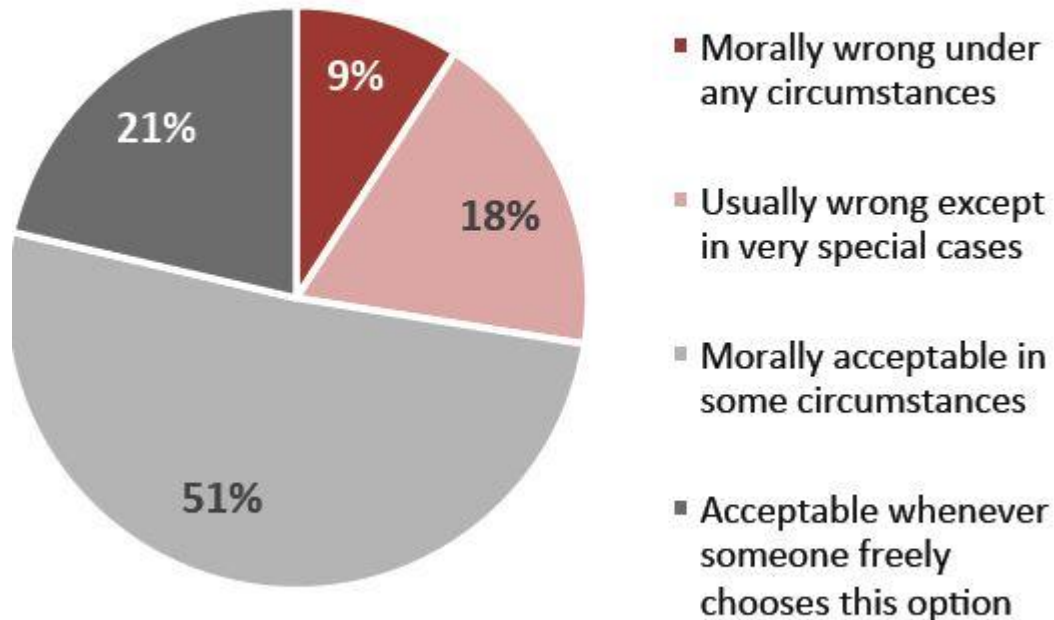


## **METHODOLOGY:**

Online survey among 1504 randomly selected Canadian adults who are Angus Reid Forum panelists from November 25-28, 2014. A probability sample of this size carries a margin of error of +/- 2.5%, 19 times out of 20.

This survey was self-commissioned and paid for by ARI.

Which of the following best describes your overall view of the morality of physician assisted suicide?

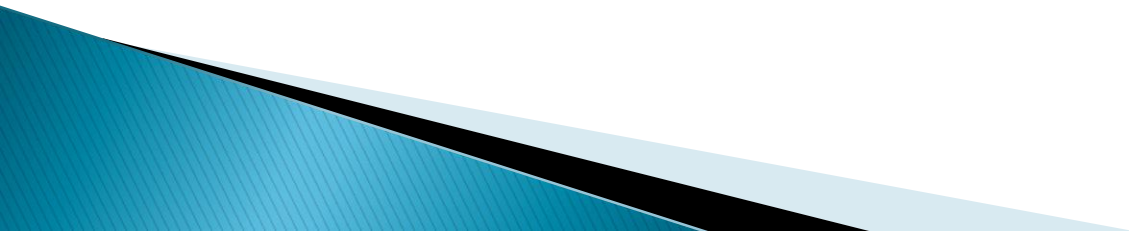




**Do you approve or disapprove of proposals to change the criminal code of Canada to allow physicians to assist with the suicide of their patients by prescribing lethal drugs?**

(unweighted totals)	Total (1504)	Region						
		BC (252)	AB (250)	SK (100)	MB (101)	ON (400)	PQ (301)	ATL (100)
<b>Strongly Approve</b>	<b>37%</b>	<b>42%</b>	<b>32%</b>	<b>38%</b>	<b>33%</b>	<b>34%</b>	<b>39%</b>	<b>38%</b>
<b>Moderately Approve</b>	<b>42%</b>	<b>42%</b>	<b>37%</b>	<b>38%</b>	<b>40%</b>	<b>42%</b>	<b>44%</b>	<b>40%</b>
<b>Moderately/Strongly Disapprove</b>	<b>18%</b>	<b>14%</b>	<b>26%</b>	<b>20%</b>	<b>23%</b>	<b>20%</b>	<b>14%</b>	<b>19%</b>
<b>Don't know/ no opinion</b>	<b>3%</b>	<b>2%</b>	<b>5%</b>	<b>4%</b>	<b>3%</b>	<b>4%</b>	<b>2%</b>	<b>3%</b>

# What Canadian Doctors Want



# Physicians Facing Death Want Medically-Assisted Dying

## Dr. Donald Low's widow to continue end-of-life fight

Video shot in Low's final days is a plea for legalized, doctor-assisted suicide

Video shot in Low's final days is a plea for legalized, doctor-assisted suicide

CBC News | Posted: Sep 25, 2013 11:19 AM ET | Last Updated: Sep 26, 2013 7:10 AM ET



Assisted suicide plea 7:14

"I won't stop this fight. If I can do anything to bring this forward in the political sphere, then I will do that," she said.

# Physicians Facing Death Want Medically-Assisted Dying

November 21, 2013

Dr. Marco Terwiel echoes the plea by Dr. Don Low...it's time for medically assisted dying

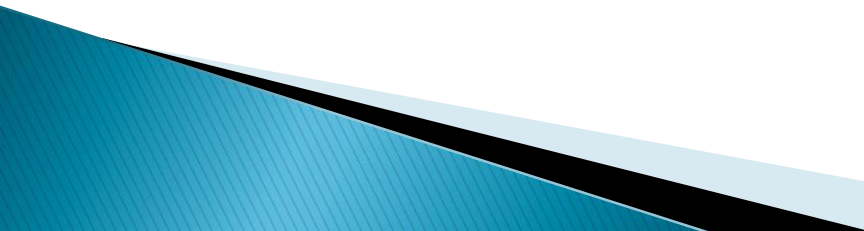


I know that many people are opposed to physician-assisted death on moral or religious grounds, but does that give them the right to impose their views on people who do not subscribe to their beliefs? After all, our constitution guarantees religious freedom and protects all of us from an oppressive and intolerant theocracy. As a practising family physician for 50 years, I have always respected other people's religious convictions. I am extremely fortunate to have a family physician who took extra training in palliative care and who has kept me quite comfortable. He, I and my family hope this will be the case until the very end. But if I am not that fortunate and he can no longer relieve my suffering, my family physician may well go to jail if he acts on my wish to hasten my death with very simple means.

I therefore would like to add my voice to Dr. Donald Low's plea to our legislators to answer the question: Why make people suffer for no reason when there is a humane alternative?



# Review of the Proust Interview

- Prominent medical leaders in British Columbia.
  - One question, “How do you want to die?”
  - Most medical leaders want to die at home surrounded by friends and family.
  - Most recent interview – Dr. Reka Gustafson Jan/Feb 2015 – “*While sleeping in a hammock in Italy*”.
  - The reality – 70% of Canadians die in hospital by themselves.
- 

# Canadian Medical Association Poll

## CMA Poll of 2125 members – Physician Assisted Suicide

	Yes	No	Not Certain	No Response
If euthanasia was legal would you participate	20%	42%	23%	15%
Participation in Physician Assisted Suicide	16%	44%	26%	15%
Should assisted suicide be legal	24%	36%		

59% had withheld life sustaining intervention following a request from a patient.

# Experience from Other Jurisdictions

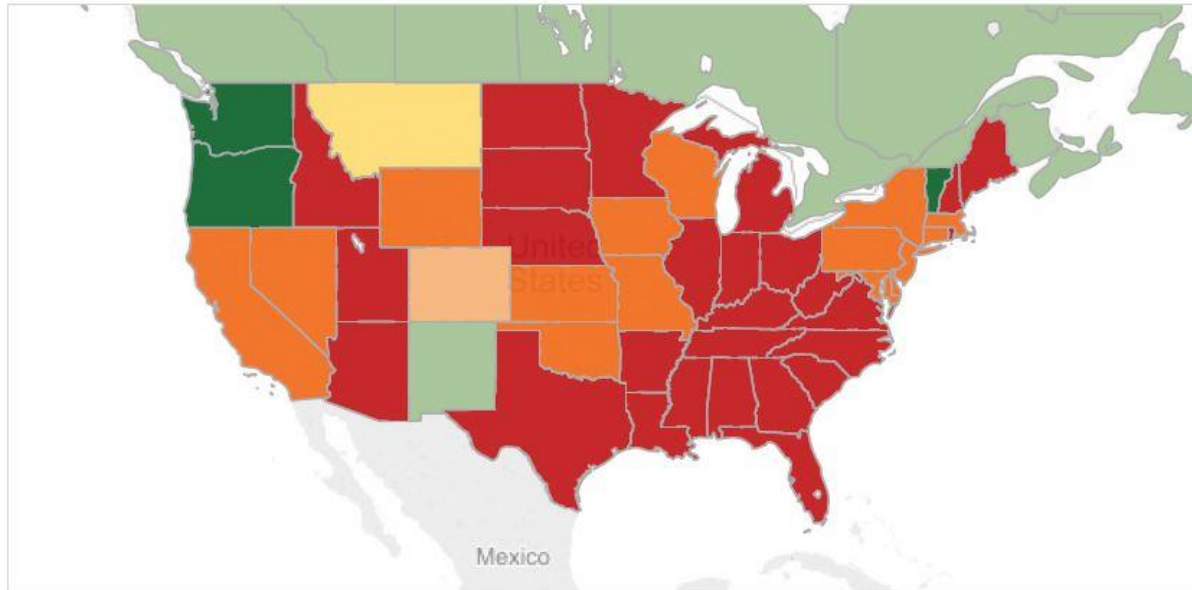
- 11 other jurisdictions in the world have some type of PAD.

## Date of Legislation

1.	Washington	2008
2.	Oregon	1994
3.	Montana	2009
4.	Vermont	2013
	New Jersey	sent for vote Dec 2014
5.	New Mexico	Court decision under appeal
6.	Netherlands	1993, 2002
7.	Belgium	2002
8.	Luxembourg	2008
9.	Switzerland	1947
10.	Germany	
11.	Quebec	2014
12.	Canada	2015

# Death With Dignity Around the U.S.

Death with Dignity Around the U.S.

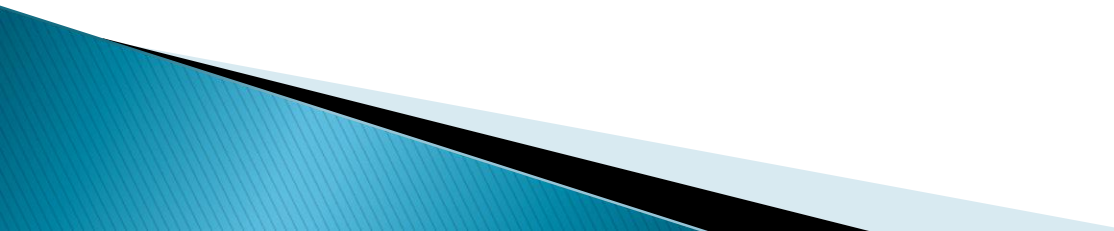


## Death with Dignity law

- Yes
- In Progress
- No
- Considered and voted down in 2015 session.
- Yes - Court Decision / In Progress - Law
- Yes - Court Decision / No - Law



# Oregon Annual Report 2013

- Death with Dignity Act passed 1993
  - 2013 – 71 people “hastened their death”
  - 0.2% of all deaths
  - 87% had been in hospice care (versus 45% in other deaths)
  - 97% died at home
  - Number one reason “wanting control over their final days”
- 

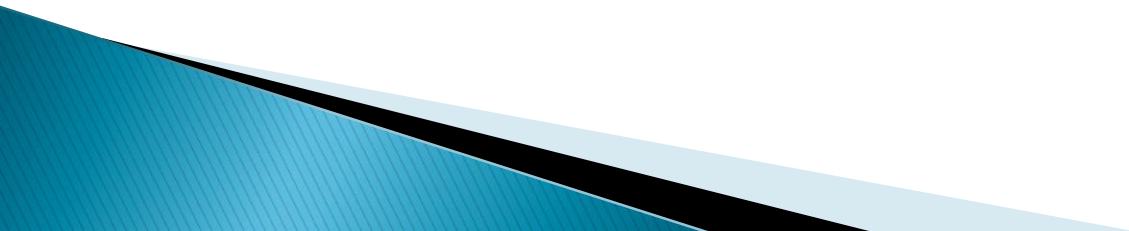
# Summary

1. The majority of Canadians (and many dying physicians) want to be able to decide when to end their lives – PAD is the most reasonable option.
2. There is evidence that in jurisdictions that have PAD:
  - a) Vulnerable citizens are not being killed
  - b) PAD does not undermine PC
  - c) There is no increase in PAD over time

In summary, there is “NO SLIPPERY SLOPE”.

3. Jurisdictions with PAD report general satisfaction from both physicians and patients.

# Legislation in Canada



# Dying With Dignity

REPORT

MARCH 2012

## Select Committee – Assemblée Nationale Quebec March 2012

- ▶ Dying with Dignity – an exhaustive 175 page report on assisted dying
- ▶ “unrealistic to believe that palliative care will be universally available in the near future (p 59)
- ▶ In Europe “the legalization of euthanasia has boosted the development of palliative care”
- ▶ The committee visited Belgium and Holland and were reassured that there was no evidence of abuse or a “slippery slope”



# Quebec's Right-To-Die Bill Adopted In National Assembly

CP | By The Canadian Press

Posted: 06/05/2014 4:28 pm EDT | Updated: 08/05/2014 5:59 am EDT



Person must be “terminally ill”.

# Honorable Steven Fletcher



Conservative Member – Charleswood – St. James –  
Assiniboia –Headingley

March 27, 2014 – Tabled two private members bills  
to amend the criminal code and establish the  
Canadian Commission on Physician Assisted Death.

# **The Canadian Medical Association**

**(“The Parliament of Canadian Medicine”)**



# CMA Policy on Euthanasia and Assisted Suicide

2007

- Euthanasia and assisted suicide are opposed by almost every national medical association and prohibited by law codes in almost all countries.
- Canadian physicians should not participate in euthanasia or assisted suicide.

2014

- The CMA supports the right of all physicians, within the bounds of existing legislation, to follow their conscience when deciding whether to provide medical aid in dying.
- There are rare occasions where patients have such a degree of suffering, even with access to palliative and end of life care, that they request medical aid in dying. In such cases, and within legal constraints medical aid in dying may be appropriate.

# The Legal Issues (mostly a BC story)

# Sue Rodriquez

Ms. Rodriquez was seeking assisted suicide.



Diagnosis: Amyotrophic lateral sclerosis (ALS), also known as Lou Gehrig's disease

Judgment: September 30, 1993 – 5/4 against

Majority Mr. Justice John Sopinka  
“no consensus in support of assisted suicide”

Minority Madam Justice Beverley McLachlin (now Chief Justice)

- Suicide is legal
- Assisted suicide is not
- This prevents Ms. Rodriquez from exercising control of her body and violates Section 7 of the Charter

Famous Quote: “Who owns my life?”





# Margot Bentley



- Nurse on dementia ward
- 1991 wrote a living will – “no nourishment or liquids” if there was no reasonable expectation of recovery
- 1999 – Diagnosed with dementia – placed in Maplewood Care Facility
- Stage 7 Dementia – kept alive by spoon feeding
- Her daughter Katherine Hammond, supported by her mother’s doctor petitioned the court to stop nourishment

Ruling by Mr. Justice Bruce M. Greyell – February 3, 2014

1. Ms. Bentley is capable of deciding to accept oral nutrition.
2. Feeding must continue
3. Oral nutrition is personal care, not healthcare.

Appeal heard by the BC Court of Appeal on February 11, 2015 –  
Judgment reserved.

# Gillian Bennett



- Died on August 18, 2014
- Ms. Bennett, age 85, took her own life surrounded by her children and husband
- Death was by overdose of barbiturates
- Suffering from early onset dementia
- Supportive editorial comment – Globe and Mail and Huffington Post
- Posted her farewell message:

*“Goodbye and Good Luck”*

[www.deadatnoon.com](http://www.deadatnoon.com)

# Gloria Taylor



Diagnosis: Amyotrophic lateral sclerosis (ALS), also known as Lou Gehrig's disease

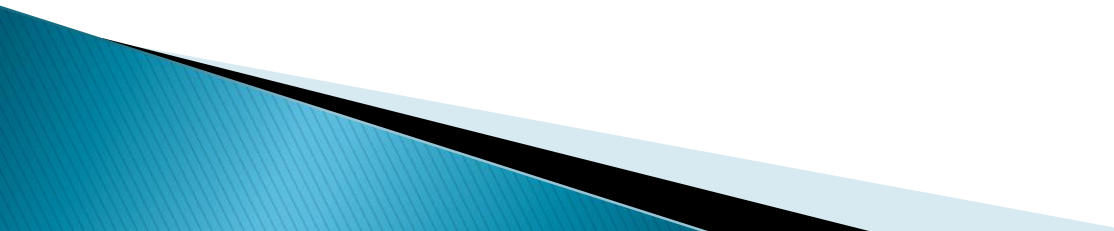
- Was seeking assisted suicide when it became necessary.
- Was represented by Mr. Joe Arvay, Q.C. and supported by the BC Civil Liberties Association.

## Madam Justice Lynn Smith – June 15, 2012

- 323 page Judgment
- Reviewed evidence from other jurisdictions
- Infringes Section 7 and 15 of the Charter
- Ms. Carter was allowed to “avail herself of physician assisted death”.
- The government was given 1 year to amend Criminal Code .
- Ms. Taylor died on October 4, 2012 of natural causes (perforated colon).

# The Appeal

Decision was appealed to BC Court of Appeal

- ▶ In a decision of October 11, 2013 – the appeal was successful.
  - ▶ Justices Newbury and Saunders concluded that Madam Justice Lynn Smith was bound by Rodriguez.
  - ▶ Chief Justice Lance Finch dissented. He concluded that Section 241 of the Criminal Code is an infringement of Section 7 of the Charter.
- 

# What Did the Supreme Court Decide

Decision: February 6, 2015

“The prohibition on physician assisted dying infringes the right to life, liberty and security of the person in a manner that is not in accordance with the principles of fundamental justice”.

# What Did the Supreme Court Decide

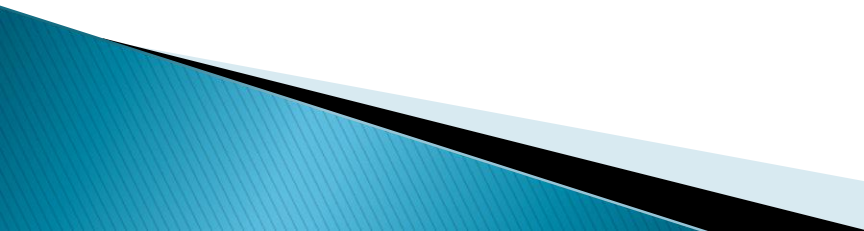
- Section 241, (b) and S7 of the Criminal Code infringes Section 7 of the Charter and are void in regards to physician assisted aid in dying.
- The declaration is suspended for 12 months.
- “We conclude that the prohibition on physician assisted dying is void insofar as it deprives a competent adult of such assistance where:
  1. The person affected clearly consents to the termination of life and
  2. The person 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.

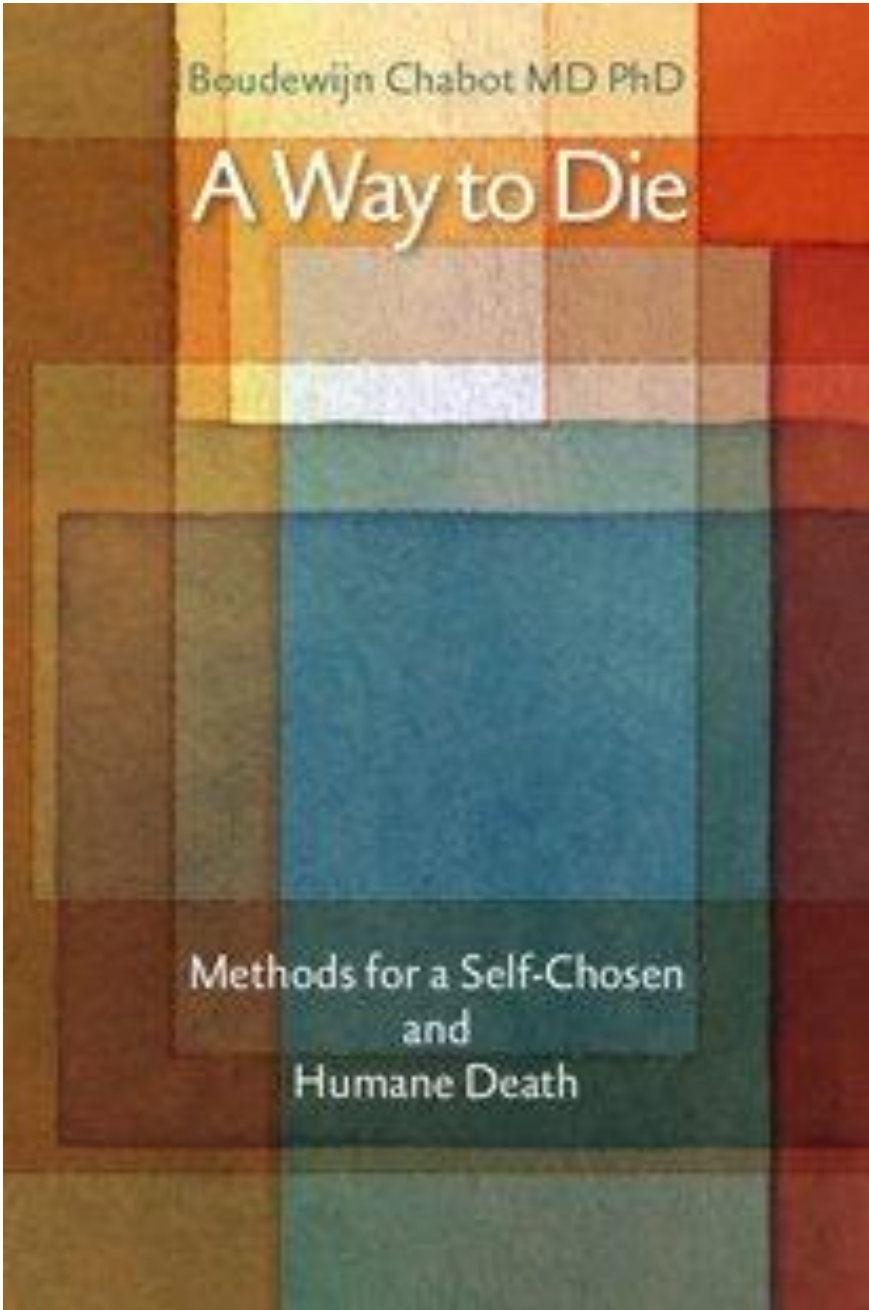


# What Does the Future Hold

1. Bill 52 in Quebec will come into force in December of 2015.
2. The Federal government may:
  - a) Introduce new legislation with 12 months
  - b) Pass Steven Fletcher's bills
  - c) Do nothing (as they did with abortion)
  - d) Amend the criminal code
  - e) Invoke the notwithstanding clause of the Charter
3. If they "do nothing" there are some other players who may regulate:
  - a) The provincial governments may pass legislation ("health" is provincial)
  - b) The CMA may provide guidance for doctors
  - c) The provincial medical regulatory bodies ("Colleges") may regulate the role for doctors.

# What Does the Future Hold

1. Training for doctors on prescribing or administering lethal medications.
  2. Training of physicians around issues of competence.
  3. How to deal with incompetent patients.
    - a) Severe depression/psychosis
    - b) Dementia - ? Advanced directives
- 



Boudewijn Chabot MD PhD

# A Way to Die

Methods for a Self-Chosen  
and  
Humane Death

NEW YORK TIMES BESTSELLING AUTHOR OF  
THE CHECKLIST MANIFESTO

Atul Gawande

Being Mortal

*Medicine and What Matters in the End*

Atul Gawande  
Being Mortal

