



CRIMINAL JUSTICE BRANCH, MINISTRY OF ATTORNEY GENERAL
CROWN COUNSEL POLICY MANUAL

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SUBJECT: Euthanasia and Assisted Suicide		CROSS-REFERENCE: CHA 1

POLICY

These guidelines apply in cases where a Report to Crown Counsel reveals that a person, motivated by compassion for another person, participated in causing that person's death.

Given the complex nature of the legal issues and the evolution of palliative care, charging decisions will be made on a case-by-case basis following an examination of the facts and circumstances of each case.

Crown Counsel should consider the factors outlined below. They are consistent with the policy on Charge Assessment Guidelines (CHA 1) which provides that a prosecution will proceed only where there is a substantial likelihood of conviction and where prosecution is required in the public interest.

The charge assessment decision should be made by Regional Crown Counsel in consultation with the Director, Policy and Legislation.

DISCUSSION

Substantial Likelihood of Conviction

In considering whether there is a substantial likelihood of conviction, Crown Counsel must assess the conduct of the person involved in a death. For the purposes of this policy, this conduct, and the resulting legal consequences, are divided into four categories.

"Active euthanasia" means intentionally terminating early, for compassionate reasons, the life of a person who is terminally ill or whose suffering is unbearable. This conduct is culpable homicide under section 222 of the *Criminal Code* and may constitute the offences of murder, manslaughter or criminal negligence causing death.

"Assisted suicide" means advising, encouraging or assisting another person to perform an act that intentionally brings about his or her own death. This conduct is an offence of either counselling or aiding suicide under section 241 of the *Criminal Code*.

"Palliative care" means a qualified medical practitioner, or a person acting under the general supervision of a qualified medical practitioner, administering medication or other treatment to a terminally ill patient with the intention of relieving pain or suffering even though this may hasten death. This conduct, when provided or administered according to accepted ethical medical standards, is not subject to criminal prosecution.

"Withholding or withdrawing treatment" means a qualified medical practitioner, with consent by or on behalf of the patient, discontinuing or not intervening with medical procedures to prolong life beyond its natural length. This conduct, when provided or administered according to accepted ethical medical standards, is not subject to criminal prosecution.

The factors to be considered by Crown Counsel in characterizing the conduct of the person involved in a death include:

1. The provable intention of the person who caused, accelerated, counselled or assisted the death, recognizing the criminal intents necessary for murder and counselling or aiding suicide.
2. Where the conduct involves a physician and a patient, the position of the Canadian Medical Association and expert medical opinions as to generally recognized and accepted ethical medical practices:

*...there are conditions of ill health and impending inevitable death where an order...by the attending doctor of "no resuscitation" is appropriate and ethically acceptable.*¹

*...an ethical physician "will allow death to occur with dignity and comfort when death of the body appears to be inevitable [and] may support the body when clinical death of the brain has occurred, but need not prolong life by unusual or heroic means".*²

*The withholding or withdrawal of inappropriate, futile or unwanted medical treatment and the provision of compassionate palliative care, even when that shortens life, is considered good and ethical medical practice.*³

1 Canadian Medical Association publication, "Canadian Physicians and Euthanasia", 1993, p.5.

2 Canadian Medical Association publication, "Canadian Physicians and Euthanasia", 1993, at p. 19 quoting from the Canadian Medical Association: Code of Ethics, CMA, Ottawa, 1990: Items 18 and 19

3 Canadian Medical Association publication, "Canadian Physicians and Euthanasia", 1993, p. 20

3. Whether, with reference to the following considerations, the acts of a qualified medical practitioner, or a person acting under the general supervision of a qualified medical practitioner, constitute "palliative care":
- a) as stated by Mr. Justice Sopinka, in Rodriguez v. British Columbia (Attorney-General), 1994 85 CCC(3rd) 15 at page 78:
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 the case of palliative care the intention is to ease pain, which has the effect of hastening death, while in the case of assisted suicide, the intention is undeniably to cause death. The Law Reform Commission, although it recommended the continued criminal prohibition of both euthanasia and assisted suicide, stated, at p. 70 of the Working paper, that a doctor should never refuse palliative care to a terminally ill person only because it may hasten 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...
 - b) whether the patient was terminally ill and near death with no hope of recovery;
 - c) whether the patient's condition was associated with severe and unrelenting suffering;
 - d) whether accepted ethical medical practices were followed; and
 - e) whether the patient was participating in a palliative care program or palliative care treatment plan.
4. Whether, with reference to the following consideration, the acts of a qualified medical practitioner constitute "withholding or withdrawing treatment":
- a) under the common law, a physician must accept the patient's instructions to refuse or discontinue medical treatment although such treatment may well prolong life. Canadian courts have recognized this right, see Malette v. Shulman, (1990) 72 O.R.(2nd) 417 (Ont. C.A.). As stated by Sopinka, J. in Rodriguez, supra:
To continue to treat the patient when the patient has withdrawn consent to that treatment constitutes battery (Ciarlariello and Nancy B., supra.) The doctor is therefore not required to make a choice which will result in the patient's death as he would be if he chose to assist a suicide or to perform active euthanasia. (at page 34)
 - b) where the deceased refused treatment or revoked consent to the treatment, whether such refusal or revocation was fully informed and freely done. This will include consideration of whether:
 - i) the patient clearly understood his or her medical condition and that it may result in death if treatment was discontinued or not engaged;

- ii) the patient was mentally incompetent, depressed, or otherwise vulnerable;
 - iii) the patient's refusal of treatment or revocation of consent and the act of withholding or withdrawing treatment occurred contemporaneously;
 - iv) the patient was informed and understood his or her ongoing right to reconsider the refusal or revocation of consent;
 - v) there is any evidence the patient reconsidered his or her initial refusal or revocation of consent;
 - vi) anyone pressured the patient to refuse treatment or revoke consent to the treatment, and
 - vii) accepted ethical medical practices were followed.
- c) where the deceased was unable to refuse treatment or revoke consent to treatment, consideration of whether:
- i) there were instructions given to the qualified medical practitioner by another person or entity authorized to refuse treatment or revoke consent to treatment on behalf of the patient, for example, the existence of a court order or power of attorney for health care;
 - ii) there was evidence that withholding or withdrawal of treatment was what the patient would have requested had he or she been able to refuse treatment or revoke consent to treatment; and
 - iii) accepted ethical medical practices were followed.

Public Interest

If Crown Counsel has determined that there is a substantial likelihood of conviction, then Crown Counsel must determine whether the public interest requires a prosecution. In determining the public interest, the specific factors to be considered include, but are not restricted to, the various public interest factors outlined in the general charge assessment policy (CHA 1) and the following:

1. the importance of supporting proper professional and ethical standards within the health care professions;
2. society's interest in the protection of vulnerable persons; and
3. society's interest in protecting the sanctity of human life, recognizing this does not require life to be preserved at all costs.