

Now that's a Good Argument!

A look at the 3 main arguments in the current BCCLA court challenge

The BC Civil Liberties Association (BCCLA) has launched a challenge to the laws that criminalize medically-assisted dying. The BC Supreme Court was set to hear the lawsuit, brought on behalf of Gloria Taylor and three other individual plaintiffs, in November 2011.

The following analysis simplifies existing laws and the BC claim. The full claim filed by BC Civil Liberties, with all facts and complete arguments, can be found in the Resource Library of our website under recommended reading.

The statement of claim makes three separate arguments. If the Supreme Court accepts even one of them, laws that criminalize medically assisted dying must be rewritten.

The first argument is made under the Constitution Act of 1867 which states that regulation and delivery of health services, the practice of medicine and regulation of patient-physician relationships are provincial matters. BCCLA argues that end-of-life treatment for individuals who are grievously or irremediably ill falls under these categories and should be regulated provincially (as a health matter) rather than federally (as a criminal matter).

The second argument is under Section 15 of the Canadian Charter of Rights and Freedoms. This section prohibits discrimination on factors including sex, age, ethnicity and physical disability.

Gloria Taylor notes that all Canadians have had the right since 1972 to end their own lives. She is deprived of this right, she notes, because she will not be able bodied when she wants to end her life. Consequently, she is suffering discrimination on the basis of her disability.

The third argument is under Section 7 of The Charter. This Section promises Canadians the right to life, liberty and security of the person. Here BC Civil Liberties makes three arguments:

1. Death is a part of life, so to deny an individual medically-assisted dying denies their right to life;
2. As a condition of liberty, citizens must have autonomy over their own decisions, especially regarding their own life and death. To deprive someone of the right to medically assisted dying is to deny them autonomy, and hence liberty.
3. If an individual does not have the right to make decisions regarding their own body, to exercise control over matters fundamental to their physical, psychological and social wellbeing, then not only has their human dignity been impaired but their right to security of person has been violated.

After the hearing judge of the BC Supreme Court renders her judgment, the losing party will have an automatic right of appeal to a panel of judges before the BC Court of Appeal. After a Court of Appeal judgment, the losing party would have the right to seek leave to appeal before the Supreme Court of Canada. If the Supreme Court of Canada grants leave, a panel of judges will decide the outcome of the case not only for BC but for all of Canada. If the matter is heard by the Supreme Court of Canada, a final decision in the case could come in approximately two years.