

Euthanasia, Assisted Suicide and HIV/AIDS

AIDS Calgary values and affirms the fundamental right of self-determination for people with HIV/AIDS, and all people, especially in matters of health care, including the right to consent to or refuse treatment, the right to die with dignity, and the right to assisted suicide.

AIDS Calgary holds that active, voluntary euthanasia is important because it allows a person with AIDS to maintain control over his or her life including deciding when to end it. If a mentally competent individual with HIV/AIDS requires assistance in order to end that person's life, then AIDS Calgary believes that those providing such assistance should not be subject to criminal prosecution. Since assisted suicides and active voluntary euthanasia already occur in society, AIDS Calgary believes that proper safeguards need to be in place so that these actions are done with compassion and with the consent of the individual. AIDS Calgary believes there must be counselling and support for the individual and for caregiver(s) prior to any act of assisted suicide. We believe a process can be developed to protect the individual from abuse and to protect the care-giver(s), lay and professional, from any legal action.

AIDS Calgary believes that the Supreme Court of Canada decision in *Latimer*, which preserved the option of a constitutional exemption for appropriate cases of voluntary assisted suicide by mentally competent persons, provides a significant basis for amendments to the Criminal Code which would: allow for voluntary individual decision-making, affirm individual autonomy and self-determination, affirm the rights of people with disabilities, be developed with community consultation and input, and include repeated, informed request and consent with appropriate time intervals between requests.

AIDS Calgary recognizes the ethical and moral complexities inherent in amending the law in a manner consistent with these aims, while believing that this must be done.

These considerations are compiled from the following sources:

1. **Canadian HIV/AIDS Legal Network (www.aidslaw.ca)**
 2. **Canadian AIDS Society (CAS) (www.cdnaids.ca)**
 3. **AIDS Committee of Toronto (ACT) (www.actoronto.org)**
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Introduction

Quite a number statements on euthanasia are collected here with the overwhelming conclusion that there is a majority of support for active, voluntary euthanasia for mentally competent adults, as well as support for assisting in voluntary suicide of a mentally competent individual.

CAS: Position statement on Euthanasia

CAS believes a mentally competent adult has the right to end their life with dignity. They hold active, voluntary euthanasia is important because it allows a person with AIDS to maintain control over their life including deciding when to end it.

If assistance is required by a mentally competent individual to end their life, CAS believes such assistance should not be subject to criminal prosecution. CAS was very disappointed that the court voted 5-4 against Sue Rodriguez in 1994 in an active, voluntary euthanasia case. CAS believes that assisted suicides and active, voluntary euthanasia already occur in society. Thus, proper safeguards need to be in place so that these actions would be done with compassion and consent of the individual.

Great social harm currently results from botched "back-alley" suicides. CAS wants assisted suicide to be "out of the closet" and subject to a true public debate.

CAS was pleased the Supreme Court of Canada in the *Latimer* decision preserved the option of a constitutional exemption for appropriate cases of voluntary assisted suicide by mentally competent persons.

While the vast majority of member organizations of CAS favor legalization of assisting in a suicide and active, voluntary euthanasia, opinions were more divided among the five Aboriginal organizations that are members of the Society. Some favored legalization. Others had serious concerns about calling for legalization, due to emotional, spiritual and cultural considerations. It was believed it should be an individual but informed decision.

NOTE: The Canadian AIDS Society arrived at its position following a process of consultations with its 107 member organizations and associates. An article advocating the legalization of assisting in a suicide and active, voluntary euthanasia was circulated along with a questionnaire soliciting the views of the member organizations. The responses were then analyzed and a draft position paper was prepared for discussion by the Society's Board of Directors and the member organizations of the Society.

ACT: Position Statement on Assisted Suicide (1997) (Draft, revised)

ACT values and affirms the right to informed individual choices about health care...(ACT Mission & Values Statement). ACT believes in the fundamental right of self-determination for people with HIV/AIDS, and all people, including the right to consent to or refuse treatment, the right to die with dignity and the right to assisted suicide.

While ACT advocates for access to a choice of assisted suicide, suicide prevention and ensuring support for people to live with HIV/AIDS continue to be ACT priorities.

ACT believes there must be support for the individual and their caregiver(s) to consult, and to receive appropriate counseling before any action of assisted suicide is taken. We believe a process can be developed to protect the individual from abuse and to also protect the care-giver(s), lay and professional, from future legal action.

ACT therefore urges the federal government to amend s.241 of the Criminal Code to permit assisted suicide consistent with the following principles: (1) the availability of assisted suicide, and (2) prevention of systemic, and individual abuse.

ACT further urges the federal government to establish a process that:

- ensures voluntary decision-making by the individual.
- affirms individual autonomy and self-determination.
- affirms the rights of people with disabilities.
- has been developed with community consultation and input.
- includes repeated, informed request and consent with appropriate time intervals between requests.

ACT recognizes the complexity inherent in amending the law in a manner consistent with these aims. However, ACT strongly believes that the time has come to confront these issues and work toward creative solutions. Consequently, ACT is committed to participating in advocacy to achieve these aims.

ACT further acknowledges that there is no clear consensus on when a person would have access to such a process. There is no simple dividing line but we agree on the following: (1) individuals can make rational choices about wanting to end their lives; (2) assistance should be available to people living with a terminal diagnosis; (3) "terminal illness" should not be used in only the most restrictive definition. Individuals should be able to have sufficient control over their dying to decide against experiencing the severe forms of illness that can accompany the last weeks or months of illness.

Following position statements from:

HIV Legal Network: Legal and Ethical Issues Raised by HIV/AIDS – Annotated Bibliography
www.aidslaw.ca

British Columbia Persons with AIDS Society. Choices: A Position Statement on Euthanasia. Vancouver: The Society, 1994.

The Society expresses its belief that "each individual should have safe access to medically assisted suicide, should they choose euthanasia as an option." Among other things, it urges the federal government to enact *Criminal Code* amendments that would "recognize the right of individuals to choose medically assisted euthanasia as an option, and give the individual the right to appoint a 'proxy' to exercise such decisions should they become unable to do so themselves."

Browne A. Assisted Suicide and Active Voluntary Euthanasia - A Position Paper of the British Columbia Civil Liberties Association. Vancouver: The Association, 1988.

The position paper presents arguments for and against assisted suicide and active voluntary euthanasia, replies to common objections to legalization of assisted suicide and active voluntary euthanasia, then makes proposals for law reform in the area, arguing that the law should be changed to allow for assisted suicide and active voluntary euthanasia.

Law Reform Commission of Canada. Report 20 - Euthanasia, Aiding Suicide and Cessation of Treatment. Ottawa: The Commission, 1983.

The Commission's position is that even if a patient who is terminally ill or unbearably suffering requests that he or she be killed, such an act should not be legalized. According to the Commission, a country like Canada could not, "without violating its social traditions and history, tolerate and give a legal veneer to a policy of active euthanasia, not even voluntary euthanasia." The Commission opposed the legalization of euthanasia "because it would indirectly condone murder, because it would be open to serious abuses, and because it appears to be morally unacceptable to the majority of the Canadian people." It expresses its belief that there "are better answers to the problems posed by the sufferings of the terminally ill." It states: "The development of palliative care and the search for effective pain control methods constitute a far more positive response to the problem than euthanasia on demand. To allow euthanasia to be legalized, directly or indirectly, would be to open the door to abuses, and hence indirectly weaken respect for human life."

McCoy AG. HIV Disease: Criminal and Civil Liability for Assisted Suicide. Golden Gate University Law Review 1991; 21: 437-485.

The paper discusses the applicability of the defense of the right of privacy and the right of autonomy to acts of suicide and assisted suicide. The discussion focuses on the "right" of

a person living with HIV/AIDS to enlist the assistance of the medical profession to make his or her death as quick and as painless as possible. The paper concludes with an assertion that the charges of murder, voluntary manslaughter, and aiding and abetting a rational suicide should not apply to true "mercy killing."

Musuamba ML. Euthanasia and AIDS: Ethical and Legal Considerations. *Newsletter of the African Network on Ethics, Law and HIV* 1996; 2:7.

The author, a member of the Zairian Network on Ethics, Law and HIV/AIDS, examines the reasons given for supporting euthanasia in the context of HIV/AIDS and concludes that "[e]thics and law are justified in forbidding euthanasia" and that "[i]f euthanasia were integrated into medical practice, the criteria currently used as protective mechanisms would become flexible and unstable. Protective mechanisms, such as notions of consent, terminal illness, unendurable pain or suffering, could be contested and gradually transgressed."

Neron C, Armstrong R. Euthanasia, Assisted Suicide and People Living with HIV/AIDS. Ottawa: Canadian AIDS Society, 1994.

This is the Canadian AIDS Society's brief to the Special Senate Committee on Euthanasia and Assisted Suicide. In preparation for the brief, interviews were conducted with persons living with HIV or AIDS, persons who were involved in AIDS-related suicides, and persons with an interest in the issues raised by euthanasia, assisted suicide and AIDS. These interviews revealed that cases of assisted suicide are occurring among people living with AIDS, and that many of those who want an assisted suicide will find ways to make it happen. All persons living with HIV or AIDS interviewed supported decriminalization or legalization of assisted suicide.

Ogden R. *Euthanasia, Assisted Suicide & AIDS*. New Westminster, BC: Peroglyphics Publishing, 1994.

The study undertaken by Ogden investigated the views, attitudes, and experiences regarding euthanasia of persons with HIV/AIDS and those who have been involved in assisting the deaths of persons with AIDS. It concluded that, although the practice of euthanasia is illegal in Canada, it "occurs with regularity in the AIDS population." According to Ogden, many of the acts of euthanasia in the study occurred in "such appalling circumstances that they make the case for state regulation of voluntary euthanasia and assisted suicide."

Ogden R. Palliative Care and Euthanasia: A Continuum of Care? *Journal of Palliative Care* 1994; 10(2): 82-85.

According to Ogden, the debate between palliation and euthanasia is polarized by opposing ethical views, not data. He summarizes the results of his study (see immediately supra) and concludes that "[f]or terminal or incurably ill persons who have decided that their lives are no longer worth living and where there is no hope for recovery, the imposition of continued living smacks of tyranny. What is the justification for compelling somebody to live in such a state, when that condition is contrary to his/her personal moral beliefs and values?"

Ogden R. Euthanasia Law and Policy. *Canadian HIV/AIDS Policy & Law Newsletter* 1995; 1(2): 9.

Ogden points out that, in the event that euthanasia or assisted suicide become legal in Canada, it is vital that careful consideration be given to ensuring that the implementation of such legislation be socially responsible. He briefly reviews failed proposals to change the current legal prohibition of euthanasia, as well as his own policy proposal. He concludes by stating that "[i]t is almost certain that there is a potential for abuse and error in any policy area. ... Nonetheless, it has been shown that the current prohibition against assisted death is not working and that acts of euthanasia and assisted suicide are occurring with and without the assistance of physicians. ... Given the failure of the existing law, a compromise that permits a form of regulated euthanasia is worthy of consideration."

South Africa Law Commission. *Euthanasia and the Artificial Preservation of Life: Discussion Document 71 [Summary Brief]*. South Africa Law Commission, June 1997.

The South African Law Commission is considering possible legal reforms pertaining to euthanasia and the artificial preservation of life. Areas in which reforms are being considered include: whether it would be lawful for a medical practitioner to act on the request of a well-informed, mentally competent, and terminally ill patient to end his/her suffering by administering or providing a lethal agent; the right of a mentally competent person to refuse any life-sustaining treatment, even though such refusal may cause or hasten his/her death; the recognition of a written directive or 'living will' regarding the cessation of medical treatment in cases of terminal illness; and the right of medical practitioners responsible for the treatment of a terminally ill patient to increase the dosage of medication, with the object of relieving pain and distress, even if the secondary effect of this may be to hasten the patient's death.

Yarnell SK, Battin MP. AIDS, Psychiatry, and Euthanasia. *Psychiatric Annals* 1988; 18(10): 598-603.

The authors argue that the social recognition and legal protection of physician-assisted voluntary euthanasia, "superseding outmoded, rationally insupportable taboos," would be one way to restore the trust of AIDS patients in their doctors.

Young KK. A Cross-Cultural Historical Case against Planned Self-Willed Death and Assisted Suicide. *McGill Law Journal* 1994; 39: 657-707.

The article points out how some traditional cultures (India, China, Japan, Greece and Rome) came to legitimate, at a certain period of their history, planned self-willed death for specific reasons, and describes their experiences. The author argues that, from the evidence presented, it seems that there is a real possibility of a slippery slope if planned self-willed death and physician-assisted suicide are legitimated, especially if certain social conditions (such as a large aging population and rapid social change) are present. She concludes that "it may prove better in the long run not to legitimate self-willed death, even though compassion for those who are suffering extreme pain or recognition of a person's autonomy might seem initially to be a good reason for a society to take this step."