

Assisted Dying and Medical Marijuana



The failure of Canada's Parliament to address the highly sensitive issue of physician-assisted dying has left doctors and patients without any legal framework. Doctors in each province are being left to their

own consciences to decide when or if to help a patient die. This legal void is entirely the fault of the Liberal government.

Lessons from the government's inability to pass remedial legislation on time are very instructive for this same government's approach to marijuana.

First, the Supreme Court of Canada decision in *Carter*. This unanimous decision was released in Feb, 2015, and at its core decriminalized doctor assisted suicide. The key phrase from the decision was:

"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..."

In other words, it was unconstitutional, and therefore illegal, to ban physician-assisted dying in Canada.

The Supreme Court gave the government one year, and then another four months, to pass new legislation governing physician-assisted suicide. That deadline expired Monday June 6, 2016 at midnight. The Liberals failed to get the new legislation in place. That means there is as of today no law in Canada on this divisive and personal issue.

Our hearts go out to anyone stuck in this horrible situation. Will any doctor take the risk of assisting a patient with suicide? What standard of consent must the doctor reach? Can one doctor make the decision or must it go through a panel? Will the doctor face disciplinary action from a medical association even if the actions are not illegal? Will the doctors only consider adults, or will they consider older teenagers with excruciating terminal illnesses? Can someone with a power of attorney make the decision on behalf of a comatose patient? Who has a right to death?

We don't have guidance on any of these major questions because the Liberals failed to meet the court-ordered deadline.

There are clear parallels here to Canada's marijuana industry. First, we have a court order in both situations finding federal medical legislation to be unconstitutional. In February of 2016, in *Allard* the Federal Court struck down the new MMPR regulations as being in violation of *The Charter of Rights and Freedoms* Like in *Carter*, the court in *Allard* gave the federal government a deadline within which to draft replacement regulations, failing which there would be no regulation at all.

(See here for links to prior articles on *Allard* and *Smith*, the two most important cases on medical marijuana in Canada).

Both *Carter* and *Allard* addressed deeply personal issues of medical care, meaningful choices and quality of life. Both decisions went unappealed. Both put the duty to govern back where it belonged – on Parliament.

Under *Allard* the feds have until the middle of August, 2016 to pass new regulations. Granted, this will be easier than passing new legislation as in *Carter* because the Senate's approval won't be needed for regulations, but still, so far this government has not shown the kind of discipline needed to make hard decisions in tight deadlines.

We have earlier pointed out the considerable risks to the MMPR's inherent in the *Allard* decision. The greatest of these is that the Liberal government might fail to pass the replacement regulations on time, and then like in *Carter*, would miss the court-ordered deadline. That would mean that every MMPR licence would evaporate.

In a business like this, the only driver of value is the licence to sell. If the licences to sell should disappear due to Liberal inactivity, the MMPR's would lose all value apart from the net value of real estate if any and cash on hand. The market wouldn't just crash, it would vanish, and only the MMAR's could legally sell medical marijuana.

In our view, this legislative risk is a large part of the reason for the down-drift in Canadian marijuana stocks since *Allard* was released.

And recall that *Allard* only applies to medical marijuana, which must be authorized by a physician. It has nothing to do with the decriminalization of marijuana. That legislation is still a long way from being introduced, discussed, debated or enacted.

Yes, part of the Liberals' campaign pledged to decriminalize, and yes some Canadians are acting as though it's a *fait accompli*. But it's not. The recent crackdown on Toronto's illegal dispensaries is proof of that. It's still illegal and will continue to be illegal until the government changes the *Controlled Drugs and Substances Act* and the *Criminal Code*, and finds a way to deal with the United Nations and the other 184

signatories to the *Single Convention on Narcotic Drugs*. Those are steep uphill challenges, despite the pretty election pledges.

How you see the federal government's conduct in dealing with the assisted dying legislation should shape how much confidence you have in its ability to get the new MMPR regulations in place before the court ordered deadline expires.