Editorial ? And now it?s up to Parliament

Last week's decision of the Supreme Court of Canada on the highly contentious subject of euthanasia was most unusual ? not simply because it was unanimous, but that it was made per curia, written ?by the Court? rather than just some of the nine judges.

The decision was also unusual in that it effectively reversed itself on the major issue it faced.

Although suicide itself is not a crime in Canada and hasn't been since 12972, physician-assisted suicide is not just illegal but is seen as a form of murder. The Criminal Code states in section 241(b): ?Every one who ?. (b) aids or abets a person to commit suicide, whether suicide ensues or not, is guilty of an indictable offence and is liable to imprisonment for a term not exceeding fourteen years.?

In 1993, when Chief Justice Beverley McLachlin was already on the court, she was one of four judges in Rodriguez v. British Columbia Attorney General who disagreed with the five-judge majority in finding that s. 214(b) did not violate the Charter rights of a terminally ill patient by prohibiting a physician from assisting his or her suicide. The appellant, ALS victim Sue Rodriguez, nonetheless was given her request by an unidentified doctor.

The issue came up again in June 2012 when a B.C. Supreme Court judge struck down the Code provisions on constitutional grounds as they apply to severely disabled patients capable of giving assent, holding that ?the impugned provisions unjustifiably infringe s. 7 [and s. 15] of the Charter, and are of no force and effect to the extent that they prohibit physician-assisted suicide by a medical practitioner in the context of a physician-patient relationship.? The court also found that the relevant sections were legislatively overbroad, had a disproportionate effect on people with disabilities, and were ?grossly disproportionate to the objectives it is meant to accomplish.?

The judgment was overturned by a divided B.C. Court of Appeal, the majority finding that the lower courts were bound by the Rodriguez ruling. But the unanimous Supreme Court concluded that conditions had changed since 1993, when no other jurisdiction anywhere permitted doctor-assisted suicides. Now it was permitted in several European countries and four U.S. states, led by Oregon.

Oregon's Death with Dignity Act (DWDA), enacted in late 1997, allows terminally ill adults to obtain and use prescriptions from their physicians for self-administered, lethal doses of medications. In recent years, although more than 100 such prescriptions were obtained, the number of patients who died from them has hovered around 70 in the state with a current population of about 4 million.

We see some things as crystal-clear, among them that supporters of the existing law see replacing it in any way, shape or form as an invitation to a ?slippery slope? that will eventually lead to state-sanctioned murder of the physically or mentally disabled. But another is that despite the current harsh penalty, doctors do assist terminally ill patients who ask for help in dying, particularly if they are compassionate family physicians and know there will be no autopsy.

Clearly, Parliament needs to deal with the issue and come up with legislation that includes an absolute guarantee that lethal medication will never be administered without the patient's continuous consent.

And while they are at it, our parliamentarians should also look at the need to modify another of the Criminal Code's provisions on homicide, that which provides the same penalties for ordinary killers and those like Robert Latimer who kill a loved one who has a serious illness simply to put him or her out of their misery. Inappropriate as such actions obviously are, they do not deserve mandatory life sentences.