

DignitySA thanks you
for the opportunity to
engage





My name is Last.
Lee Last.





Hospice
Palliative
Care
Association
of South Africa



Helderberg
Development Centre
Ontwikkelingsentrum

Section 18 A Status
Non Profit Organisation
082-633-NPO



dying with
DIGNITYSA

my life my choice

Language Matters

“Terminology is evolving because of an understanding that a mentally competent, terminally ill patient bases a decision to end his or her life for fundamentally different reasons than a clinically depressed person uses to justify suicide” ~ Kathryn L. Tucker

Assisted dying applies to terminally or chronically ill, mentally competent adults and requires the patient, after meeting strict legal safeguards, to **self-administer** life-ending medication. (SA, UK, Canada, USA - Oregon, Washington, California, etc)

Voluntary euthanasia allows a doctor to administer life ending medication directly to the patient, at the patient’s request. (Netherlands, Belgium)

Euthanasia is a term often used to describe life ending medication being administered by a third party, perhaps without the consent of the patient.



1975 - Dr Hartmann

In 1975 Dr Hartmann was accused and found guilty of murder for assisting his terminally ill father to die.

He was sentenced to one year in prison, nearly all of it suspended, and was detained until “The Rising of the Court”, after which he was free to leave.

The court recognised that it was an act guided by [compassion](#).

2000 - Former President Nelson Mandela presented “The End of Life Decisions Act of 1999” to Parliament



2006 – Dr Patricia Davison

LIVING WILL Sept 2006
To whom it may concern:
And to: My children:
Fergus Davison, Philippa Davison,
Joanna Bwer, Sean Davison:
I am ill with a progressive
cancer which can only get worse.
My quality of life can only
deteriorate, ~~and I do not~~
~~wish for a protracted~~
~~disagreeable death,~~ and
I think I can count on
all of you in supporting
me in this. I have decided
to die by ~~ing~~ inanition
(unless alternative means
occur) And would like to
make the following
Request:

Living Will, Sept 2006

To whom it may concern:

And to: My children: Fergus,
Philippa, Joanna, Sean.

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disagreeable death, and I think I
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supporting me in this. I have
decided to die by inanition (unless
alternative means occur) and would
like to make the following request:



No resuscitation (or E.C.T.)
No antibiotics
No attempts to make me eat
I wish to be the one to
decide when I stop fluids

I would prefer as few
people to know about this
as possible

(It is what I call a Bobby
Sands)

I would like to thank every-
one for their help up till now
' Sean, what would I have
done without you!

P.E. Davison

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2010 – Professor Sean Davison arrested and charged with murder



2011 – Archbishop Tutu appeals for leniency



The Most Reverend Desmond M Tutu, O.M.S.G. D.D. F.R.C.
Anglican Archbishop Emeritus of Cape Town

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24 November 2011

To: The New Zealand High Court

Character Reference: Dr. Sean Davison

Although I respect the law in New Zealand I feel that the case of Dr. Sean Davison is an exceptional and tragic one. In my opinion he is an upright citizen who has made a contribution to society and has much more to offer. In South Africa he worked in a laboratory which was instrumental in identifying the remains of anti-apartheid activists whose mass grave sites were revealed during the TRC hearings which I chaired.

I urge the court to show leniency in sentencing Sean Davison.

Archbishop Emeritus Desmond Tutu
Cape Town, South Africa

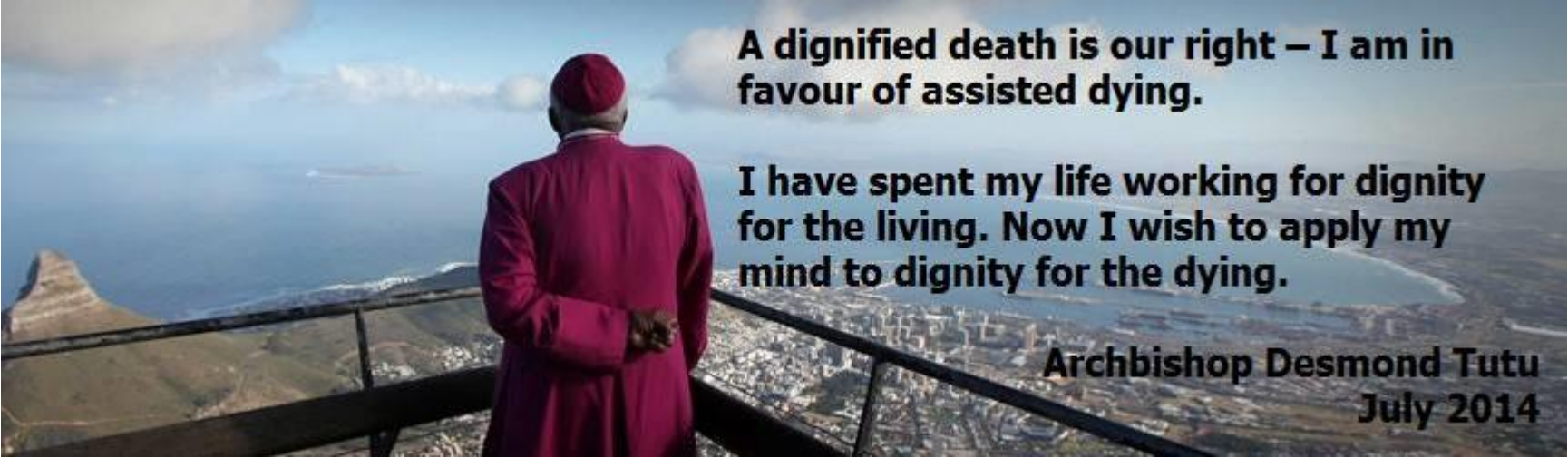


2011 - The Judge reduced the charge from murder to assisted suicide.



She further accepted his motive was "compassion and love" and sentenced him to home detention for five months.

2014 – Archbishop Desmond Tutu spoke out in favour of Assisted Dying



A dignified death is our right – I am in favour of assisted dying.

I have spent my life working for dignity for the living. Now I wish to apply my mind to dignity for the dying.

**Archbishop Desmond Tutu
July 2014**

He went on to say that he believes in the sanctity of life, but not at all costs.



2015 – Robin Stransham-Ford applied to the North Gauteng High Court for the right to an assisted death



Purpose of the Application of Robin Stransham-Ford

To have judicial oversight and obtain a court order:

- giving effect to his fundamental rights to:

- * human dignity;
- * not to be treated in a cruel, inhuman or degrading way;
- * bodily and psychological integrity;

“Stransham-Ford argued that an absolute prohibition was inconsistent with the Constitution as it infringed on his right to human dignity, which included the right to die in a dignified manner” - *Van Loggerenberg*



Judge Fabricius on the Basis of Applicant's Relief:

The Applicant relied on the following provisions of the Constitution:

Human dignity, the achievement of equality and the advancement of human rights and freedoms.



Judge Fabricius on the Basis of Applicant's Relief:

And in particular, the Bill of Rights:

Section 7:

1) This Bill of Rights is a cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom.

2) the State must respect, protect, promote and fulfil the rights in the Bill of Rights.”

3) When applying a provision of the Bill of Rights to a natural or juristic person in terms of subsection (2), a Court in order to effect to a right in the Bill, must apply, or if necessary develop, the common law to the extent that legislation does not give effect to that right.”



Judge Fabricius on the Basis of Applicant's Relief:

Section 10:

“Everyone has inherent dignity and the right to have their dignity respected and protected.”

Section 12:

- 1) Everyone has a right to freedom and security of the person which includes the right – “Not to be treated or punished in a cruel, inhuman or degrading way.”
- 2) Everyone has the right to bodily and psychological integrity, which includes the right – “To security in and control over their body.”

Assisted dying is a fundamental human right

~ Judge Hans Fabricius, North Gauteng High Court, 2015

~ Nine Supreme Court Judges in Canada, 2015

Judge Fabricius acknowledged as a categorical imperative the courts' **duty** to recognise and protect the right to human dignity by **developing** the common law, to bring it in line with these constitutional imperatives.

“It is therefore not a matter of discretion or personal “inclination”, but rather a constitutional imperative. My personal thoughts and feelings are irrelevant and do not enter the picture at all in the decision-making.”

~ Judge Hans Fabricius



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JUDGE Fabricius also referred in his judgment to Stransham-Ford's request to the court to afford him the same dignity which our law afforded animals by prohibiting their merciless and cruel suffering and obligating an owner of an animal "to destroy such animal which is seriously injured or diseased or in such a physical condition that to prolong its life would be cruel".



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The norms of the Constitution should inform the public,
and its values, not sectional, moral or religious convictions.

As with gay marriage and termination of pregnancy, it's not about
public perception but about the rights enshrined in the Constitution.



Judge Fabricius and Canada agreed that:

“The administration of palliative sedation and the withholding or withdrawal of lifesaving or life-sustaining medical treatment — can have the effect of hastening death and that there is a strong societal consensus that these practices are ethically acceptable.

The ‘preponderance of the evidence from ethicists is that there is no ethical distinction between physician-assisted death and other end-of-life practices whose outcome is highly likely to be death’.

There are qualified physicians who would find it ethical to assist a patient in dying if that act were not prohibited by law”.



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Judge Hans Fabricius' judgment that a medical professional who assists Robin Stransham-Ford to die will not be acting unlawfully, changed both our criminal law and medical law.“



Stats from Oregon

END OF LIFE CONCERNS (CATEGORIES ARE NOT MUTUALLY EXCLUSIVE)



What Safeguards are included in our proposed Bill?

Our Assisted Dying Bill will be based, largely, on the Oregon model and will allow doctors, at the request of a terminally ill adult, to prescribe life-ending medication, but they would not be able to administer it directly. Patients would have to take the medicine themselves.



In order to receive medical help to die under the Assisted Dying Bill, a person would have to:

- Be terminally ill with six months or less to live, and
- Be mentally competent, and
- Make a clear and settled intention to end their own life which is persistent, well-informed and voluntary.

Some of the key safeguards contained in the Assisted Dying Bill:

Assessments by two independent doctors to establish whether the request is well-informed, persistent and voluntary

- Referral to a specialist consultant if mental competency is in doubt
- The patient would be fully informed about palliative and supportive care available to them
- The patient's request would be witnessed (by someone who must not be a relative or directly involved in the patient's care or treatment
- A waiting period of 14 days for the patient to reflect on their decision. This may be reduced to six days if the two doctors agree that the patient's death is reasonably expected to occur within one month.
- Patients could orally revoke the request at any point.

Assisted Dying in Oregon



In the 16 years assisted dying has been legal in Oregon there have been no calls to extend the law beyond terminally ill, mentally competent adults.

In Oregon USA it has been legal for terminally ill, mentally competent adults to have an assisted death for almost 20 years. 71 people had an Assisted Death in Oregon in 2013.



Assisted Dying in Oregon

Only 0.3% of deaths in Oregon are attributed to Assisted Dying.

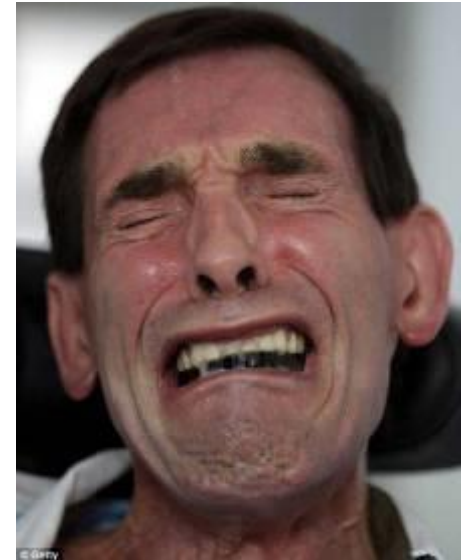
More than 90% of Oregonians who apply for an assisted death are enrolled in palliative care programs.

More than 40% of Oregonians who are granted the right to an assisted death do not make use of the life-ending drugs and die naturally.

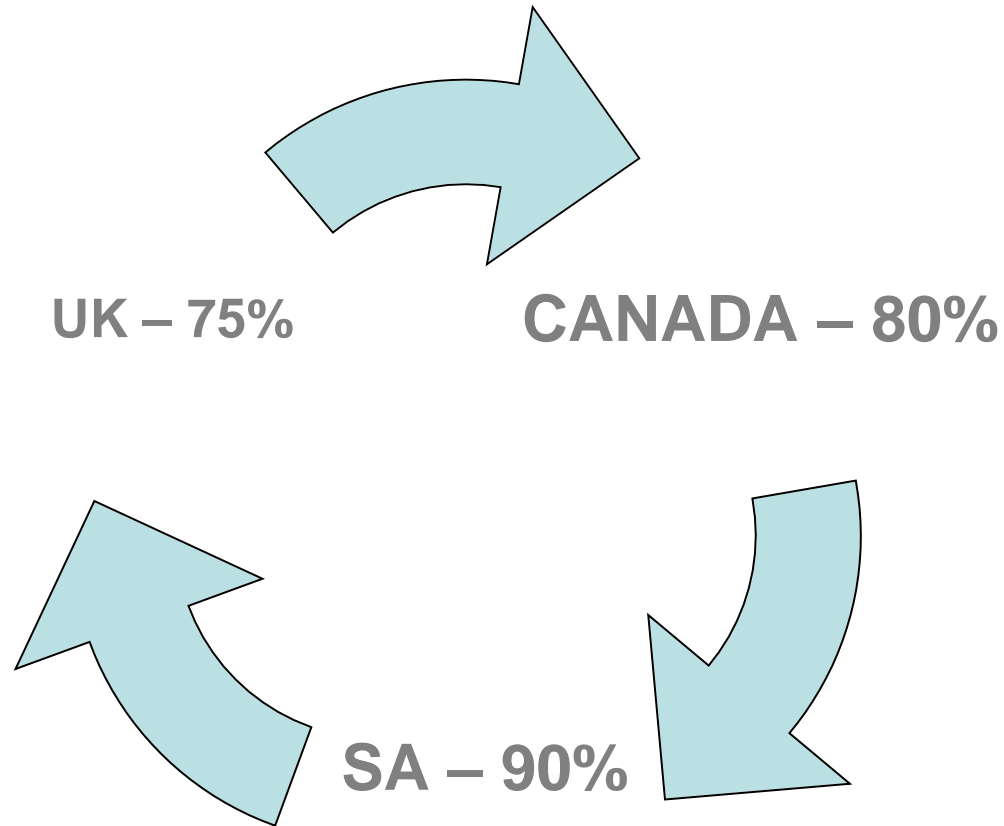


Those who would not be eligible for medical help to die under the Assisted Dying Bill are:

- People with non-terminal illnesses
- People with disabilities who are not terminally ill
- Elderly people who are not terminally ill
- People who are not mentally competent, including those with dementia or Alzheimer's, even if they are terminally ill
- People who are under 18.



% in support of Assisted Dying



(22,000 for and 2,200 against in a News24 poll)

DIGNITY

SOUTH AFRICA

"my life ~ my choice"

How Doctors Choose End-of-Life



When it comes to dying, doctors, of course, are ultimately no different from the rest of us. And their emotional and physical struggles are surely every bit as wrenching. But they have a clear advantage over many of us. They've seen death up close. They understand their choices, and they have access to the best that medicine has to offer.

DIGNITY

SOUTH AFRICA

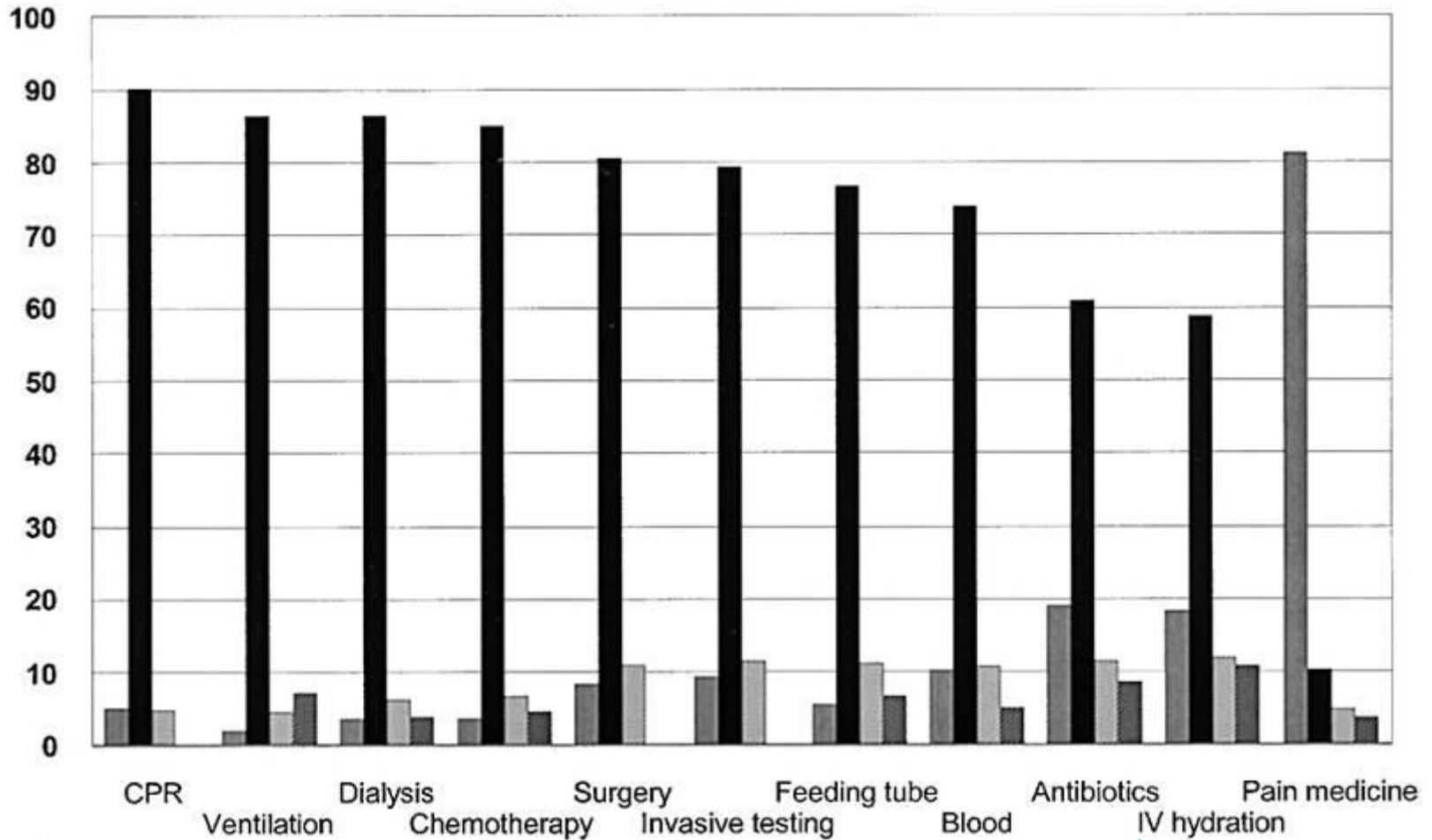
"my life ~ my choice"



DIGNITY

SOUTH AFRICA

"my life ~ my choice"



- Yes, I would want
- No, I would not want
- Undecided
- Trial, but stop if no clear improvement

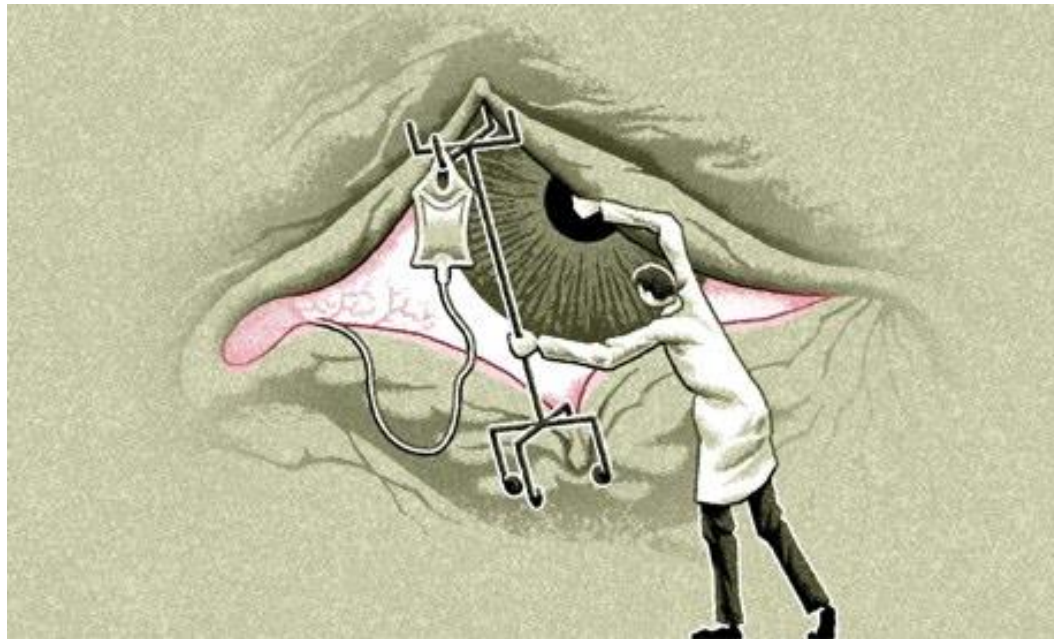


DIGNITY

SOUTH AFRICA

"my life ~ my choice"

And yet... this is what they do to us...



Let's ask why...

***Their job is to save lives**

***They don't want to force their personal choices onto us**

***We tell them we don't want to die**

***We beg them to do everything possible to save Mom**

***They're not sufficiently trained in EOL discussions**

***Follow the money**

***They see death as a failure**