

Medically Assisted Suicide: Moving Forward

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Overview

- Caveats 😊
- The Pro/Con Debate
- Supreme Court of Canada's reasoning
- Bill C-14 (2016): Legalizing MAS
- Provincial legislation issues
- Who should qualify?

- / + Arguments re: Assisted Suicide

(-) “Gift from God” or “Playing God”

(+) Religious pluralism; delaying death interferes w/
nature/God

(-) Protect rational autonomy (e.g., Kant)

(+) Autonomy as liberty, authenticity, relational

(-) Death is the worst thing that can happen to us

(+) Some things are worse than death

Active / Passive Euthanasia

- “Active” = kill = commit act to hasten death
- “Passive” = let die = omit lifesaving act
 - Withholding, withdrawing lifesaving intervention
- “Terminal sedation” = overdose of painkillers or anaesthesia
- WHAT IS MOST IMPORTANT ETHICALLY?
 - James Rachels: **the decision to accept death as the appropriate outcome** is what matters; how to arrive at death from here is secondary.

“Rational suicide”

- Almost all suicide attempts have **remediable** circumstances
 - Feeling overwhelmed may prevent ability to envision, act on options
 - Moral imperative to provide medical, psychological, social, economic, practical supports to make living well possible
 - 24-72 hr “suicide hold” to assess, arrange help
- But some unbearable conditions are intractable
 - Logical conclusion: the **only** practical option left to relieve suffering is to die

Supreme court: Rodriguez 1994

- Rational suicide: Sue Rodriguez, ALS is exemplar case
- Equality, Equal Protection: unanimous support
 - Suicide / attempt not illegal in Canada
 - Person physically unable to exercise legal option has right to assistance
 - Assisted suicide should not be limited to terminal illness
- However: 5-4 split decision on Rule Utilitarian grounds
 - Simply ending prohibition without a framework of protections would endanger vulnerable persons
 - Parliament directed to revise the Criminal Code

Supreme Court: Carter, 2015

- New argument: Protect life and avoid premature death
 - If someone who may need help to commit suicide in the future cannot count on help later, then they may choose to end their lives prematurely, while they still can
- SCC unanimously reaffirms Rodriguez and accepts equal protection of life argument
- Gives Parliament 1 year to revise the Criminal Code

Bill c-14 (April 14, 2016) - Enacted June 17, 2016

- Amendments to Sec. 14, 227, and 241 of Criminal Code
 - Also Amends Pension Act, Corrections and Conditional Release Act, Canadian Forces Members and Veterans Re-establishment and Compensation Act
- Sec 14: “No person is entitled to consent to have death inflicted on them...”
 - Suicide request must arise from patient, not others
- General prohibition on counseling a person to die by suicide or abetting a suicide - Sec 241(1)

NEW: Criminal Code Exceptions

- Physicians and Nurse Practitioners may be exempt from culpable homicide for providing medical assistance in dying in Sec. 241.2
- Those who aid the physician or nurse practitioner also exempt (e.g., pharmacist)
- Aiding someone to self-administer a substance prescribed by a physician or nurse practitioner is allowable (e.g., family, friend, other health professionals?)

ELIGIBILITY for Assisted Suicide

- Eligible for health services funded by a government in Canada
 - No “death tourism”
- 18 years old and capable of making health care decisions
- They have a “grievous and irremediable medical condition”
- Voluntary request for assisted dying “that, in particular, was not made as a result of external pressure” and
- They give informed consent

Sec 241.2 (1)

“Grievous and Irremediable”

- “they have a serious and incurable illness, disease or disability”
- “they are in an advanced state of irreversible decline in capability”
- this condition “causes them enduring physical or psychological suffering that is intolerable to them and that cannot be relieved under conditions that they consider acceptable”, and
- “their natural death has become **reasonably foreseeable** ... without a prognosis necessarily having been made as to the specific length of time they have remaining.”

Safeguards

- Person must meet eligibility criteria above
- Written request, signed and dated before 2 independent witnesses
 - Another person may sign for a patient unable (physically?) to sign for themselves
- Request made after being informed that the person's natural death has become reasonably foreseeable
- 15 day waiting period
- Last-minute opportunity to withdraw the request

Provincial Legal Issues

- License, scope of practice for MD, PA, Pharmacy
- Conscientious objection
 - Access if no willing providers
- Care for caregivers: distress
- Insurance, Pensions, Provincial benefits plans
- Settings for MAS (hospital, nursing home regulations)
- Age of consent for treatment
- Advance directives

Number of Cases in Canada

Under Quebec law (prior to federal law):

- Dec 10, 2015 – June 9 2016: 167

Nationally under federal law (except Nunavut & Yukon)

- June 17 to Dec 31, 2016: 803
- January 1 to June 30, 2017: 1,179

- Government of Canada, First and Second Interim Reports on Medical Assistance in Dying in Canada

“Reasonably foreseen” Death

- Same as “terminally ill?”
 - Quebec MAS law: terminal prognosis required
 - SCC has twice rejected terminal prognosis as requirement

Jean Breault Sherbrooke QC

Died April 7, 2016

Blood clot at brainstem 42 years ago left nearly total paralysis

2011: 2-month hunger strike; MDs threatened transfer to psychiatric ward

Feb. 2016: Applied for MAS, denied b/c not terminal

53 day hunger strike

Offered MAS when effects of starvation irreversible



CBC News, April 15, 2016

Robyn Moro, BC

Age 68, with Parkinson's Disease

Requested MAS but denied b/c life expectancy 5-6 years

MD Ellen Wiebe changed mind after Ontario Superior Court allowed MAS for patient with life expectancy of 10+ years.

Robyn died with MAS on Aug 31, 2017

Wiebe: "Law is applied unevenly"

Len Moro: "The law is wrong. It is cruel. In Robyn's memory, we carry on the fight."



CBC News, Sept. 18,, 2017

PENDING court challenges

- Lamb v Canada
 - Filed June 27, 2016 – 10 days after Bill C-14 enacted
 - BC Civil Liberties Association
 - Julia Lamb, 26, with spinal muscular atrophy
 - Robyn Moro added to case before her death
 - Law is more restrictive than Rodriguez and Carter rulings
 - Suffering violates protection of persons
- Catholic hospital exemption
 - May be challenged by Dying with Dignity (Ontario)

Age of Consent / Mature Minor

- BC Infants Act (Sec. 17): **Anyone under age 19 can consent to their own medical care if they are capable.**
 - Child understands need for treatment, what treatment involves, consequences of treatment / non-treatment
 - If MD decides that the child understands, and treatment is in the child's best interests, consent of parent/guardian not required.
 - Most common: birth control, abortion, mental health, STDs, addiction. Very young can consent to minor procedures
 - Confidentiality

Mature Minor

- Refusal of lifesaving treatment, disagreement re: best interests: usually needs court review
- Numerous cases of children granted mature minor status to refuse treatment
- Possible: mature minor with support of parents might challenge age restriction in assisted suicide law

Non-Capable patient Access?

- Different moral foundation than autonomy
- Protection of vulnerable vs. relief of suffering
 - ability to understand/cope with condition may worsen suffering
 - mental health may cause intractable suffering
- Incomplete capacity
- Intermittent capacity
- Previous capacity: Advance directives
- Never capable: “Best Interests Standard”

Larger Context

- Fear: Easier to let people die than to provide the medical, social, psychological, economic and practical supports
- Emphasis on crisis care, rescue medicine instead of community, outpatient, long-term and home-based care
 - 1% of GDP in health care for last 6 months of life (Canada, 2016)
- Expectations, cultural constructions and barriers re: mortality

To sum it up...

I realize I have not answered all of your questions.

Indeed, the answers I have provided only served to raise MORE questions, many of which we didn't realize *were* questions.

In short, we are as confused as ever.

But we are confused at a higher level, and about more important things.

- author unknown

Thank you!

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