Assisted Dying in Canada
Problems with Legislative Draft

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Conflict of Interest Declaration

- No conflict of interest to declare.

Brief Timeline

- 2009-2011 – Royal Society of Canada International Expert Panel recommends decriminalization of medical aid in dying for decisionally competent Canadians suffering from intractable conditions that render their lives not worth living to them.
- 2011 British Columbia Civil Liberties Association files suit on behalf of a number of plaintiffs, including an ALS suffered, Gloria Taylor, and Ms Carter, among others.

Brief Timeline

- Criminalization of medical aid in dying denies the Charter rights of individuals to have control over choices that are fundamental to their lives and causes unnecessary suffering.
- Criminal Code = Federal
- Health Care = Provincial

Quebec – Bill 52 (June 2014)

- Medical aid in dying bill defined as part of continuing medical care, therefore provincial responsibility.
- Terminal illness is a threshold condition for access.

Supreme Court rules – February 2015

- be a competent adult;
- clearly consent to the hastening of death;
- have a grievous and irremediable medical condition (including an illness, disease or disability), and
- be suffering intolerably.

Eligibility threshold in Quebec

- **Quebec's Current Legislation**
  - People must be toward the end of their lives
  - Conflict with SCC criteria (Quebec too restrictive)

- **SCC**
  - '1 the person affected clearly consents to the termination of life; and 2 the person has a grievous and irremediable medical condition (including an illness, disease or disability) that causes enduring suffering that is intolerable to the individual in the circumstances of his or her condition'

Government ignores Supreme Court criteria

- **Supreme Court**

- the person affected clearly consents to the termination of life; and
- the person has a grievous and irremediable medical condition (including an illness, disease or disability) that causes enduring suffering that is intolerable to the individual in the circumstances of his or her condition'

- **Federal Government**

241.2 (2)

- (b) they are in an **advanced state of irreversible decline in capability**;
- (d) **their natural death has become reasonably foreseeable**, taking into account all of their medical circumstances, without a prognosis necessarily having been made as to the specific length of time that they have remaining.

Trifecta

- 1) Non-Terminal
- 2) Advance Directives
- 3) Mature Minors

- be a competent adult;
- clearly consent to the hastening of death;
- have a grievous and irremediable medical condition (including an illness, disease or disability), and
- be suffering intolerably

Federal state of play

- Parliamentary Special Joint Committee
  - Terminal Illness not a threshold condition
  - Mature Minors eligible
- Provincial and Territorial Expert Advisory Panel
  - Terminal Illness not a threshold condition
  - Mature Minors eligible

Slippery Slope concerns

- **Protagonists**
  - Anti-choice academics
  - Conservative newspaper columnists
  - *Not dead yet*

- **Claims**
  - Terminal illness SCC threshold condition
    - Demonstrably false
  - Dramatic increases of euthanasia cases involving psychiatric patients in the NL
    - Demonstrably false

Slippery Slope concerns - Facts

- Wente: “The rationale [in the parliamentary report] is that psychiatric patients should have the same rights as everybody else.”
- Fun fact: There is nothing in our Charter of Rights and Freedoms that provides for a special set of rights for competent people with mental illness.

Competent patients suffering from treatment-resistant depressive disorder should be treated no different in the context of assisted dying to other patients suffering from chronic conditions that can render their lives permanently not worth living to them.

Supreme Court Decision vs Government

- **Supreme Court**

- 1 the person affected clearly consents to the termination of life; and
- 2 the person has a grievous and irremediable medical condition (including an illness, disease or disability) that causes enduring suffering that is intolerable to the individual in the circumstances of his or her condition'

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-

Government draft vs Supreme Court standard

- The Supreme Court's criteria are clear:
- **patients do not need to be in an advanced state of irreversible decline to be eligible**;
- **patients do not need to suffer from a condition where their natural death has become reasonably foreseeable to be eligible**.

- Justice Department's justification:
  - Protection of the vulnerable
  - Anecdotes from NL/Belgium
- Overbroad, lumps all competent patients who are not terminally ill under the vacuous category of 'vulnerable', but really it uses the label to remove agency from competent patients.

Supreme Court rejected slippery slope claims

- Court agrees that the evidence from permissive jurisdictions established that medical aid in dying could be regulated in a safe manner.
- Politicians disagree.
- In second reading of draft bill in House of Commons, Liberal Party majority rejects amendments aimed at removing terminal illness as a threshold condition.

Opposition to Draft Bill

- Canadian Bar Association
- Colleges of Physicians and Surgeons
- Lead Counsel in Carter case promises to have legislation thrown out in Supreme Court
- Chairman of Special Joint Parliamentary Committee
- Constitutional law professors
- Dying with Dignity Canada
- Me ☺

- Response in draft bill (May 12 version)
  - "The Minister of Justice and the Minister of Health must, no later than 180 days after the day on which this Act receives royal assent, initiate one or more independent reviews of issues relating to requests by mature minors for medical assistance in dying, to advance requests and to requests where mental illness is the sole underlying medical condition."

Consequences

- People have begun starving themselves to death to meet the reasonably foreseeably death standard.
- Doctors could still provide medical aid in dying in cases where patients meet the SCC standards, and then have the government legislation tested in court.
- If legislation is not immediately referred to SCC for review, it'll be taken back there by lead lawyer in Carter case.