A Review of Euthanasia Policies in Canada

Written by: David Jerome ©

On June 12 2013, Quebec became the first Canadian Province to introduce legislation to legalize and regulate the practice of euthanasia. *An Act Respecting End-of-Life Care* was introduced by the Minister of Social Services on behalf of the governing Parti Quebecois, but it was the result of an initiative that had broad political support within the province. The subsequent national media attention sparked debates in jurisdictions across the country on the many issues that surround the legalization of euthanasia and physician-assisted suicide.

In order to help facilitate an informed and productive debate on the future of euthanasia and physician-assisted suicide in Newfoundland and Labrador, this paper will work to clarify the historical and contemporary contexts in which this debate is occurring. It will begin with an introduction of the Canadian legal context that outlaws assisted-suicide, and some of the recent legal challenges to these laws. The paper will then outline the discussions in Quebec that led to the introduction of Quebec's Respecting End-of-Life Care Act, and review the Act itself.

Canadian Legal Context

The Canadian Criminal Code is designed to express and protect specific societal values. These values are enshrined into law when it is deemed that they represent the values held by a significant majority of the country's population, and that their protection would contribute to the functioning of society. Due to the European background of the early Canadian settlers, it has historically been predominantly Christian values and morals that informed the development of the Criminal Code. These values include a strong emphasis on the sanctity of human life, and prohibitions against purposefully ending a human life. The Christian tradition includes a specific prohibition on suicide, dating back to the writings of the early Christian theologians St. Augustine and St. Thomas Aquinas in the early third century[1]. The Criminal Code includes sections that specifically outlaw assisted-suicide[2] (sections 14, 241). Suicide itself, and attempted suicide, used to be illegal in Canada as well, but those provisions were removed from the Criminal Code by Parliament in 1972.

In the last few decades, incredible developments in medical knowledge and technology have allowed healthcare providers to extend human life in various situations, so that people are living longer with degenerative or chronic diseases, or with severe physiological impairments. These medical achievements have prompted questions about what constitutes a desirable quality of life, especially in circumstances where an individual's physiological deterioration is understood to be non-reversible or even progressive. Some people who have reflected on these questions have decided that there are some conditions in which it may be undesirable to prolong a patient's life. This idea most often comes up in a situation in which an individual has become permanently dependent on medical intervention in order to sustain normal physiological functions (such as someone who is permanently dependent on mechanical ventilation), or when

[1] Library of Parliament; pg. 1

[2] **Euthanasia** is defined as a deliberate act by one person to end the life of another in order to relieve that person's suffering.
Assisted Suicide is the act of deliberately killing oneself with the assistance of another person who provides knowledge, means, or both
These definitions come from the Canadian Senate's Special Committee Report – Of Life and Death

an individual with a progressive debilitating disease decides they would rather end their life before the disease process reaches an advanced stage associated with significant physical or psychological discomfort. In the latter situation, patients have begun to request the help of their physician (or other healthcare providers) in enabling them to take their own life at a time, and in a manner, of their own choosing.

Sue Rodriguez became the first patient in Canada to launch a legal challenge to change the law so that she would be able to ask a physician to help her commit suicide[3]. Ms. Rodriguez suffered from amyotrophic lateral sclerosis (ALS). This degenerative disease's natural progression would eventually leave her unable to swallow, speak, or move her body without assistance. In 1992, Ms. Rodriguez filed a motion to strike down section 241(b) of the Criminal Code (which states it is illegal to counsel or aid suicide) on the basis that this section is discriminatory and therefore contravened sections 7, 12 and 15 of the Canadian Charter of Rights and Freedoms. Her argument was that it is not illegal for physically able individuals to attempt or commit suicide in Canada, but individuals with physical disabilities may be incapable of committing suicide without assistance, and so the legal barrier to assistance effectively barred this option for individuals with physical disabilities and was therefore discriminatory. The case was eventually appealed all the way to the Supreme Court of Canada, which dismissed her request in a five-to-four decision. Writing for the majority, Mr. Justice Sopinka agreed that section 241 "deprives the appellant of autonomy over her person and causes her physical pain and psychological stress in a manner which impinges on the security of her person.[4]" Section 241(b) was not struck down, however, because "any resulting deprivation, however, is not contrary to the principles of fundamental justice[5]" – specifically, the principle of "the sanctity of life."

Nearly 20 years later, a very similar case was launched which again aimed to strike down Section 241(b) of the Criminal Code because it violated sections 7 and 15 of the Charter. This case had multiple plaintiffs including a woman named Gloria Taylor, who also had ALS. Justice Lynn Smith ruled that, despite the precedent of the Rodriguez case, there had been sufficient change in the applicable legal principles since 1993 that she was not bound to the previous Supreme Court decision. She then concluded that since able-bodied individuals had no legal impediment to committing suicide, but physician-assistance would be required for some disabled individuals wishing to commit suicide, section 241(b) created a distinction between the two groups and "the effect of this distinction was to create a disadvantage by perpetuating prejudice and stereotyping.[6]" Justice Smith declared section 241(b) invalid. She suspended her declaration for a year in order to allow Parliament an opportunity to amend the legislation to bring it into compliance with the Charter. She also granted Ms. Taylor a constitutional exemption during that year so that she could choose to have a physician-assisted suicide.

The case was appealed to the BC Supreme Court, which ruled against the trial judge, and upheld the legality of section 241(b). Ms. Taylor died (of an infection) before this ruling by the BC Supreme Court. The BC Civil Liberties Association filed an appeal with

[3] R v BC(AG)
[4] R v BC(AG); pg. 521
[5] R v BC(AG); pg. 521
[6] C v C(AG); pg. 5

the Supreme Court of Canada, who agreed in January 2014 to hear the case[7]. It is expected that the Supreme Court will hear the appeal sometime in the fall of 2014.

Quebec's Bill 52

Starting in 1991 there have been several attempts by federal politicians in Ottawa to amend the Criminal Code and legalize euthanasia and/or physician assisted suicide. There have been 9 separate Bills or Motions introduced in Parliament, and 2 Bills introduced in the Senate aimed at changing the law[8]. Many of these died for procedural reasons, while some of them were voted on and rejected. The Senate has also established a Special Senate Subcommittee on Euthanasia and Assisted Suicide to investigate the issue.

Partly in response to some of the Bills being introduced federally, the Board of Directors of the Quebec College of Physicians adopted a reflection paper in 2009 called *Physicians, Appropriate Care and the Debate on Euthanasia*. In this document, the College declared that, "a new sensitivity is clearly perceivable within the population… [and] physicians must acknowledge this new sensitivity.[9]" Anticipating that the evolving opinions within society would soon lead to successful changes to the laws prohibiting euthanasia, the organization decided to proactively try to affect the tone of the debate within Quebec. "Neither the status quo," the paper said, "nor the draft legislation tabled in Parliament really take into account the diversity of clinical situations, the complexity of the decision making process pertaining to appropriate terminal care, or the active role that doctors must play.[10]"

Most of the legislation that had been introduced federally up until this time had attempted to provide specific definitions of when it would or would not be appropriate to allow for euthanasia. The College wanted to shift the debate away from attempts to define all potential scenarios, and instead focus on creating a system that could ensure a fair, transparent and accountable process would be followed on a case-by-case basis focused on specific patients. The paper did not recommend a specific process to implement, but instead emphasized that whatever process was implemented ensures that both patients and physicians be active participants and work "in solidarity" when making decisions around difficult clinical decisions. "There is nothing to be gained by a return to medical paternalism, nor by leaving patients on their own under the pretext of respecting their autonomy." The document concludes that "The more clinical situations call for difficult choices, the more we must concentrate on the decision making process… the question of euthanasia must be integrated as a part of appropriate end-of-life care as soon as possible."

Citing both the Quebec College of Physician's 2009 discussion paper, and multiple public opinion polls that indicated popular support for euthanasia under certain circumstances, the Quebec National Assembly (the provincial legislature) voted unanimously in December 2009 to create a Select Committee "to study the issue of

[7] CBC News Website
[8] Library of Parliament
[9] QCP; pg. 2
[10] QCP; pg. 1

dying with dignity.[11]" This committee was comprised of 9 elected members of the National Assembly, representing all four political parties represented in the Assembly[12]. Following extensive public outreach and consultation with stakeholders, the Select Committee published their report *Dying with Dignity* in March 2012. The members of the Select Committee concluded that "an additional option is needed in the continuum of end-of-life care: euthanasia, in the form of medical aid in dying.[13]" In their report, the Select Committee made 24 Recommendations, which included a recommendation that "relevant [provincial] legislation be amended to recognize medical aid in dying as appropriate end-of-life care" as well as specific suggestions for the structure, criteria and guidelines for a formal process for euthanasia within the Quebec medical system.

Despite the fact that the governing Liberal government lost to the Parti Quebecois in a provincial election 6 months later, the new PQ government acted on the Select Committee's recommendations and tabled *An Act Respecting End-of-Life Care* (also known as Bill 52) on June 12, 2013. Bill 52 outlines a highly regulated process that would allow physicians to perform euthanasia when it is requested by the patient. Some aspects of the system detailed in Bill 52 include;

- very strict restrictions on which patients are eligible to apply for euthanasia, with a specific provision that patients younger than 18 years of age are not eligible to apply for euthanasia,
- a specific multi-step consultation process that a patient's physician must undergo during the assessment phase of the process,
- a recognition that healthcare providers would not be required to participate in euthanasia if they chose not to, but the Bill outlines that physicians would have a *duty to refer* patients to another physician who is willing and able to carry out the assessment and procedure
- the creation of a provincial Commission that would actively review the medical file associated with every case of euthanasia performed in the province to ensure compliance with the law, and which would be charged with making reports and general recommendations to the Minister

Bill 52 ultimately died on the order paper when Premier Marois dissolved the legislature in March 2014 and triggered a spring election. We shall have to wait until after the election on April 7 2014 to see what party forms the new government, and if they choose to reintroduce some form of the *Act Respecting End-of-Life Care*.

The Debate Continues

The national debate on the merits and risks of euthanasia has not died with Quebec's Bill 52. Nor is the popular support for euthanasia seen in Quebec as unique as some might believe. A national poll run by Angus Reid in 2010 found that 69% of respondents

[11] QNA; pg. 2
[12] Quebec Liberal Party: 4 members, including the Committee Chair
Parti Quebecois: 3 members, including the Committee Vice-Chair
Coalition Avenir Québec: 1 member
Québec Solidaire: 1 member
[13] QNA Select Committee; pg. 76

in Atlantic Canada indicated they supported the legalization of euthanasia[14]. This was the second highest regional level of support in the country (second only to Quebec). The national average was also high at 63%. These findings are consistent with other polls, which have found that support for euthanasia has remained stable over the past 15 years[15].

Here in Newfoundland and Labrador, the conversation around euthanasia, and the potential roles for physicians, continues. The Canadian Medical Association hosted a Public Town Hall and a separate private Members Meeting on end of life issues in St. John's in late February 2014, both of which were well attended. The views presented by the public and by physicians at these sessions represented the full spectrum of opinions presented nationally. To date, neither the provincial College of Physicians and Surgeons nor the Newfoundland and Labrador Medical Association have released specific policies or recommendations on the potential use of euthanasia in our jurisdiction.

It will remain the responsibility of physicians in the province to keep informed as the debate surrounding the use of euthanasia progresses across the country. Given the consistently high popular support for euthanasia that has been measured in this region, and the likelihood that the prohibition against euthanasia will be lifted either nationally or in other regions in Canada, we can anticipate that physicians in Newfoundland and Labrador will be called upon to debate the possibility of legalized euthanasia in our province as well. By staying well informed on the issues, and taking a leadership role in any upcoming discussion, physicians in Newfoundland and Labrador will be best positioned to ensure that any changes to the laws regulating euthanasia in our jurisdiction will be inline with the professional and ethical boundaries set by local physicians.

[14] Angus Reid 2010

[15] RSC Expert Panel; pg. 24

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