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It's Not That Simple

Euthanasia and Assisted Suicide Today

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Chapter 1

Introduction

On a balmy Friday evening in the early summer of 2015 the Institute of Medical Science at the University of Toronto held what it called "A Thought-Provoking Conversation on the Future of Physician-Assisted Suicide". Four experts representing different shades on the spectrum of opinion debated one another and answered questions. The audience comprised 200 or more medical professionals, medical students and members of the general public. At the beginning of the evening they were polled on the question, "Do you think Canada is ready for physician-assisted suicide?" Their response was Yes by a margin of 51 to 49 per cent. Two hours later, having heard all sides of the question, and reflected on reports about the distress of many medical professionals over the prospect of having to administer lethal pills and injections, and about how many elderly patients were anxiously asking their doctors what the recent legalization of assisted suicide would mean for them, a significant proportion of the audience changed their mind. Having thought seriously about the ramifications of the Supreme Court ruling, only 28 per cent were still convinced that Canada was ready for physician-assisted suicide; 72 per cent thought it was not.[1]

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1 "Beyond the Debate: A Thought-Provoking Conversation on the Future of Physician-Assisted Suicide", Institute of Medical Science. Isabel Bader Theatre, University of Toronto. June 19, 2015.

Why public opinion is unreliable

This shift of opinion over the course of one evening on the part of a large group of well-informed and highly-qualified people, illustrates why public opinion polls --which consistently show massive support for the legalization of physician-assisted suicide -- are not necessarily the best guide in the formulation of public policy. Still less ought the shifting sands of public opinion to have influenced the Supreme Court of Canada in deciding on the constitutionality of physician-assisted suicide. Yet the Court implicitly admitted that public opinion had been a significant factor in its decision.[2]

The many consequences of the Supreme Court ruling

There will be many ramifications to the elimination of the Criminal Code prohibitions against assisted suicide. Among them will be the legacy of sorrow and distress that will be left to the families and loved ones of those who opt to have themselves killed. Those close to them will be haunted by the question of what they might have done to steer their loved one away from suicide. Many doctors and nurses who have dedicated their lives to healing bodies and minds, and preserving lives, will also suffer great mental anguish when they are called upon now to destroy life.

The healing vocation of medical professionals will be corrupted by the practice of assisted suicide.

2 *Carter v Canada*, 2015 SCC 15, [2015] 1 SCR 331. See paragraph 28, which refers to "changes in the social and factual landscape over the past 20 years".

Equally, many sick, frail, vulnerable, disabled and elderly people, will find their lives at risk as never before. Those who doubt this prediction should consider the evidence we advance in Chapter Four of the extent to which this has already happened in the Netherlands and Belgium. Close family members and those with power of attorney will also face unprecedented temptations. The need to save on expensive medical bills, or the desire to hasten the arrival of a long-awaited inheritance will pose great temptations once physician-assisted suicide becomes an easy option. A physician specializing in geriatric care recently said to one of the authors, "I run into this all the time. The relatives of elderly patients often ask me, "'Doctor, *can't you do something...*'[to hasten the patient's death]?"

The Expert Panel to recommend legislation on assisted suicide

In July of this year the Federal Government announced the appointment of a three-member expert panel to make recommendations for dealing with the Supreme Court's lifting of the prohibition against assisted suicide and euthanasia chaired by Dr Harvey Max Chochinov, who holds a Canada Research Chair in palliative care at the University of Manitoba. He has pioneered "dignity-preserving care" – ways of making palliative care patients feel valued. Committee member Dr, Catherine Frazee, former Chief Human Rights Commissioner of Ontario and an expert in disability studies, has said that state-sanctioned assisted death raises questions of how far personal freedoms should extend.

> At the heart of this debate, we must choose between competing visions of our social fabric. Shall we uncritically submit to the voracious demands of individual liberty no matter what the social cost? Or shall we agree that there are limits to individual freedom, limits that serve us all when we are vulnerable and in decline? [3]

The awareness of these two members of the expert panel of the great perils of unrestricted legalization of physician-assisted suicide gives grounds for hope that the law, when it is eventually adopted, will feature stringent safeguards against abuse. On the other hand, as we demonstrate in this book, all the safeguards in the world are not proof against abuse, and will not necessarily protect significant numbers of people from being euthanized without their knowledge or consent. The third member of the panel is Benoit Pelletier, an expert in constitutional law at the University of Ottawa.

The religious and conscience rights of doctors, nurses and healthcare institutions

Another question raised by the Supreme Court's ruling is the rights of medical professionals who have religious or conscientious objections to euthanasia and assisted suicide. Will they be entitled not only to abstain from these procedures, but also to decline to refer patients for them? Within the medical profession there has been strong pressure to force physicians with religious or conscientious objections to refer patients

3 Quoted by Sharon Kirkey, "Panel to review assisted dying". *National Post*, July 18, 2015, p. A1.

who request assisted suicide to others willing to provide the service. The argument is that if the service is legal then all physicians, whatever their religious or ethical position, have a duty to make that service available to patients who want it. This argument demonstrates, on the part of those who make it, what amounts to willful obliviousness to religious freedom, freedom of conscience and freedom of professional judgment. Consider the following analogy. What if female genital mutilation were a legal medical service, as it still is in some countries today? Would it show respect for a physician with religious, medical or ethical objections to the practice to obligate him or her to refer patients for that service, just because it was legal?

Perhaps helpfully, the Canadian Medical Association, at its annual convention in August 2015 found that the greatest support among attendees was for the option that limited a physician's duty to providing "complete information on all options and [to] advise on how to access a separate central information, counselling, and referral service".[4] Any move to force doctors to refer for assisted suicide or euthanasia would undoubtedly be appealed to the Supreme Court on the ground that it violated article 2 a) of the Canadian Charter of Rights and Freedoms which guarantees freedom of conscience and religion.[5]

Almost overlooked in the debate over freedom of conscience and religion is the freedom of institutions

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4 25 Aug. 2015. For this information we thank Sharon Koke, who was in attendance at the CMA Convention on that day.

5 Constitution Act, 1982. Part I, Canadian Charter of Rights and Freedoms. http://laws-lois.justice.gc.ca/eng/const/page-15.html

such as Catholic hospitals to follow their founding principles and refrain from destroying innocent human life. This freedom has been recognized when it comes to abortion. But the government of the Province of Quebec shows no such sensitivity in its Bill 52, now An Act Respecting End-of-life Care, due to come into force on 15 December 2015. [6] It assumes that "medically assisted dying" is part of the "continuum of healthcare". While doctors with religious or conscience objections to assisted suicide will not be compelled to participate in "assisted dying", they will be expected to refer their patients to physicians willing to offer the service. Similarly, while palliative-care hospices will not be required to offer "medically assisted dying", other institutions such as hospitals, will be expected to carry out state policy. This policy, if enforced, could result in the shutting down of Catholic hospitals.[7]

The Quebec government has already demonstrated that it will not wait for the recommendations of the Federal Government's Expert Panel. At the beginning of September it announced that Quebec doctors will shortly be given standardized kits with which to end the lives of patients seeking euthanasia.[8] This "service" will be available to anyone judged to be in "constant and unbearable physical or psychological pain."

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6 *An Act Respecting End-of-Life Care*, RSQ c S-32.0001, s 1; http://www.assnat.qc.ca/en/travaux-parlementaires/projets-loi/projet-loi-52-40-1.html

7 *An Act Respecting End-of-Life Care*, Chap III.9.

8 Sharon Kirkey, "Quebec MDs to get euthanasia packages", *National Post*, Sept. 1, 2015, p. A1.

The perils for vulnerable people: lessons from Belgium and the Netherlands

The Quebec law is modelled on legislation already in place in Belgium. It shows little interest in the perils that legislation poses to vulnerable people. It demonstrates indifference to the virtual abandonment of palliative care that has been documented in the Netherlands. That country now has a total of only 70 palliative-care beds, in contrast to the many thousands of such beds in Britain, which has not legalized euthanasia. [9] Nor have the Quebec policy makers evidently taken any account of Theo Boer, who was involved in developing and implementing the Dutch legislation legalizing euthanasia. He warns, "we were wrong, terribly wrong", and urges other countries not to make the same mistake.[10] Nor apparently have they read the testimony of Lord McColl, of the British House of Lords Select Committee on Euthanasia. After returning from a fact-finding mission to the Netherlands he stated, "Our visit convinced me that euthanasia is impossible to police and will be abused."[11]

The purpose of our book is to show that there is substance to these warnings, and that our policy makers will ignore them at their peril. But our book

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9 H. Matthews. Better Palliative Care Could Cut Euthanasia. BMJ 12 Dec.1998; 317 (1773), p. 1613. Britain (the U.K.) has approximately four times the population of the Netherlands.

10 Quoted by Steve Doughty. "Don't Make Our Mistake: As Assisted Suicide Goes to Lords, Dutch Watchdog Who Once Backed Euthanasia Warns UK of 'Slippery Slope' to Mass Deaths. Daily Mail; July 9, 2014.

11 Quoted in Matthews. Better Palliative Care Could Cut Euthanasia, p. 1613.

has an additional, equally important purpose. We also intend to show that if there is good palliative care, and compassionate attention to human pain in all its dimensions, the demand for assisted suicide will be greatly reduced.[12]

12 See for example, C. Marijke et al. Requests for euthanasia and physician assisted suicide and the availability and application of palliative options. Palliative and Supportive Care 2006; 4:399-406; Marit Karlsson et al. Suffering and euthanasia: a qualitative study of dying cancer patients' perspectives. Support Care Cancer 2012; 20: 1065-71.