



Medicine & Morals

A publication of the
Canadian Catholic Bioethics Institute at Assumption University

Spring 2021

The Priest and Medical Assistance in Dying

By Fr. Leo Walsh CSB

Canada, like many Western countries, has become more and more secular. Life is lived without reference to God including moral life. Medical assistance in dying (MAiD) is being extended by law to more and more situations, following the slippery slope progression foreseen and realized in the Netherlands.

Arguments offered by reason to reject MAiD have some potency in limited areas. For example, a disable person and their advocates can point to their vulnerability under present and proposed laws. But in general, in an atmosphere of secularization with its accompanying vices of relativism and overweening autonomy, arguments based on reason alone are dismissed as invalid.

Arguments abased on religious faith are dismissed too, of course, but on different grounds. Religious arguments, it is cynically claimed, are no ore worthy as grounds for action than are fairy tales. But secularization goes further, “you religious people can follow your own fantasies as grounds for action when this affects you personally. But when these same fantasies impinge on public life, you cannot be allowed to deny the right of people in the law.” In other words, medical people of faith are being forced to act against their conscience or choose another area within the medical profession that does not deal with people or leave the medical profession altogether.



DIOCESE OF
LONDON

In the middle of this whole complicated mess, some Catholics are choosing MAiD. How may a Catholic priest minister to these persons? The London Diocese has an official document which instructs its priests in this delicate matter. The document shows a proper understanding of both moral theology and pastoral practice. * Pastoral compassion and love on the priest’s part are emphasized, but the sovereignty of God over life is upheld.

The document states that the priest should begin by gently giving and explaining the Church’s teaching on life and why this teaching forbids

MAiD. The person who with proper knowledge and freedom rejects this teaching should not be granted the sacrament of confession nor the sacrament of the sick. However, when a person seriously believes in conscience that MAiD is not cutting him or herself off from God, then the sacraments may be celebrated. This latter case would seem to be the norm, or why else would the person ask for the sacraments?



A prudent priest, however, should be aware (but not suspicious) of other possible motivations. The person asking for MAiD could be in the confused state of mind that knowingly breaking the law deliberately (here, the law of life) can coexist with a concomitant expression of sorrow. Or the person could be asking for the sacraments simply to appease some worried relative. Or worse, the person could be asking for the sacraments in order to make acceptance of MAiD more acceptable.

When the person is in good faith and has a sound conscience that all is right with God, the priest is still faced with the very real possibility of scandal. "If the priest can give X the sacraments, then it's clear that MAiD isn't all that bad. In fact, it must be OK." Scandal has to be avoided as much as possible, especially through explanation to relatives and friends who know the situation.

The diocesan instruction speaks about the priest trying to bring the person to a change of mind and heart. And that is obviously good. However, care must be taken not to bring a person with a clear conscience to having a guilty conscience.

A prudent priest is calm in the situation, knowing that dealing with a person who is asking for MAiD is not like playing chess with God, where God is trying to counter the priest's every move. God is on the priest's side as he is on the side of the person. Love finds a way.

Fr. Walsh is Professor Emeritus Moral Theology, USMC, Vice President Academics and Executive Director of the Canadian Catholic Bioethics Institute at Assumption University and a member on staff at the Canadian Catholic Bioethics Institute in Toronto



Canada's newly amended Medical Assistance in Dying Legislation:

By Maria Giannotti MA,MSc

In February 2016, the Supreme Court of Canada struck down Canada's prohibition of medical assistance in dying (MAiD) because it breached the Canadian Charter of Rights and Freedoms by preventing competent adults with a grievous and irremediable medical condition from making a free and informed decision to access MAiD. Bill C-14 was passed in order to bring the Criminal Code in line with the Charter. Initially the law was presented as an exceptional mechanism in order to prevent suffering in the final stage of the dying process. It was to be employed only to hasten an already imminent death, a death that was reasonably foreseeable.

However, in less than four years since its legalization, it has been expanded far beyond this limited role. The narrowing of the eligibility criteria in Bill C-14 resulted in a number of Charter challenges. The first challenge in the *Truchon and Gladu v. Canada in Quebec* was concerned with removal of the eligibility criterion of 'reasonably foreseeable'. In September 2019, the Quebec Superior Court ruled that Canada's (MAiD) law was unconstitutional, because only individuals whose natural deaths were "reasonably foreseeable" could be eligible. Rather than appeal the decision, the government introduced Bill C-7 as a direct response and committed to amending the *Criminal Code* to make it compliant with the Court's decision and the *Charter*. The concept of 'reasonably foreseeable' however remains in the legislation and determines which track a person will follow with respect the procedural safeguards. On March 17th,2021 Bill C-7 received royal assent and became law.

WHO IS ELIGIBLE FOR MAiD CURRENTLY?

Canada now has a two-track approach to accessing MAiD. The most significant change is that it is no longer necessary for an individual's natural death to be "reasonably foreseeable. This precondition for accessing MAiD has been eliminated and a separate pathway for individuals whose deaths are not reasonably foreseeable but meet the other eligibility criteria has been created. Based on whether an individual's natural death is reasonably foreseeable determines which track you will be follow and which procedural safeguards apply.

There are two important changes for the track one pathway (natural death is reasonably foreseeable) The first relates to consent. Bill C-14 required a person's consent initially and immediately before providing assistance in dying, thus if you were approved for the procedure but at some later point lost the capacity to provide consent at the time of the assistance, you could not proceed with the request. Under Bill C-7 however, the person is permitted to waive, in writing, the requirement to give final consent, if they have been approved (date/time scheduled) and have been told by a health-care provider that they could lose capacity to consent before the procedure.

The second change is the removal of the reflection/waiting period. Those requesting MAiD in track one will no longer be required to wait 10 days between when the request is signed and the date when assistance is provided.

If natural death is not reasonably foreseeable a person would follow a track two pathway which includes more onerous procedural safeguards. Chief among them:

- having a serious and incurable “illness, disease or disability,” being in an advanced state of decline and suffering intolerably.
- A 90-day waiting period between when the person’s first assessment for MAiD begins and the day on which the MAiD procedure is carried out.
- Individual must undergo two MAiD eligibility assessments by two different medical practitioners.
- Individuals must be informed about and consider alternative means of relieving their suffering including counselling, mental health and disability support services and palliative care. This includes offering consultations with professionals related to those services.
- If neither the assessor or provider of MAiD have expertise in the condition causing their suffering, someone with such expertise must be consulted.

The requirement for independent witnesses has also been amended for both tracks. reducing the number of independent witnesses from two to one.

ELIGIBILITY: WHAT’S ON THE HORIZON?

Although the current legislation explicitly excludes mental illness alone as a qualifying condition for seeking MAiD, the Bill contains a 24-month sunset clause during which time governments and medical bodies can further study the issue and come up with guidelines and safeguards to apply to requests made by those with a mental illness only. In addition, a Joint Committee of the House and Senate will commence a review of “issues relating to mature minors, advance requests, mental illness, the state of palliative care in Canada and the protection of Canadians with disabilities.”

WHO REMAINS INELIGIBLE FOR MAiD?

Individuals who do not currently meet the eligibility criteria *but* want to make their request now for fear of losing capacity to make such a decision later, will not be able to do so. The government rejected a Senate amendment to allow people who fear losing mental competence to make advance requests for an assisted death these remain prohibited by the legislation.

CONCERNS FOR SOCIETY'S VULNERABLE

Despite Justice Minister David Lametti's tweet stating, "This law will respect the autonomy of Canadians while protecting the vulnerable," many Canadians are not buying it.

Religious leaders, disability advocates, physicians, health care ethicists and legal professionals have all raised concerns regarding Bill C-7. There have been numerous joint statements and individual statements from many different perspectives issued by these groups.

Members of Canada's disability community strenuously oppose this legislation arguing that the bill targets people with disabilities and will have an especially negative impact on marginalized groups. The most often-voiced serious criticism is that the bill's second-track access system devalues the lives of people with disabilities, chronic illness, and those who are already marginalized and face discrimination in our health system. Bill C-7 exposes them to a higher risk of premature death even when they are not approaching death.

There is a concern that people with disabilities will be pushed toward seeking MAiD due to a chronic lack of supports and will be pressured — either directly or indirectly through societal attitudes and lack of support services — to end their lives prematurely.

This is a major concern for The Council of Canadians with Disabilities. Jewelles Smith the Council's communications and government relations co-ordinator, points out that MAiD is now be available to people with disabilities while there continues to be a chronic lack of appropriate supports and services for many of them. She notes "For many people, when they're newly disabled, there's a period of time to adjust, your whole life changes. Now, instead of connecting with mentors — particularly someone with a disability who can be supportive — people might decide it's better to end their life because they haven't yet been able to imagine the amazing lives, we all live with disabilities." (Jaques Gallant Toronto Star March 17, 2021)

Medical professionals have expressed serious reservation as well about the impact of the law on the most vulnerable. Dr. Naheed Dosani is a noted palliative care physician and health justice activist who cares for homeless and vulnerably housed individuals. In an interview with Press Progress (February 2021) Dr. Dosani, expressed grave concerns about Bill C-7, noting that accessing MAiD for homeless people is already much easier than accessing housing. He goes on to say "As someone who works on the frontlines of the homelessness crisis ... even without Bill C-7 it takes me two weeks to get people MAiD but years to get people housing. Without the limited prognosis, we have now opened the floodgates for all people to pursue MAiD, and my fear is that there may be people who pursue MAiD to escape a society that doesn't give them the social supports they need."

He considers Bill C-7 as a failure to look at the issues through the lens of disabilities and systemic racism. "It takes me months to get people income support, weeks even sometimes months to get them mental health and harm reduction support", Dosani added. "It behooves us to put the same energy that was put into passing MAiD into treating the social ailments that affect people who are marginalized in our society."

There are also many Canadian physicians who opposed Bill C-7. Dr. Thomas Bouchard is one of those vocal opponents. He believes bill C-7 makes it difficult for people who are vulnerable and suffering to choose life when the easier route may seem choosing assisted death instead. Bouchard is one of about a thousand physicians who believe the legislation is reckless, especially for the vulnerable. He outlines a number of concerns with the changes for patients whose are on track 2 where death is not foreseeable.

For Dr. Bouchard, the 90-day waiting period is not long enough to make such a decision to end one's life. He references studies done with people who have sustained traumatic injuries, such as full or partial paralysis and notes that it takes at least 2 years for people to come to terms with their disability and see that they can live with the disability. Despite the safeguard included to ensure patients are informed about and connected to the means to 'relieve their suffering' such as counselling, community services and referrals to specialists, the wait times for these appointments is often months long unrealistic." (Interview with Renee Bernard, Winnipeg City News November 2020)

Heidi Janz PhD is an ethics professor at the University of Alberta, and chair of the Council of Canadians with Disabilities' Ending-of-Life Ethics Committee. She describes herself as a long hauler in the struggle against the legalization of assisted suicide and euthanasia for people with disabilities. As someone with a disability, she worries about the effect that the expansion of MAID under Bill C-7 will have on kids and youth. In the article "Dangerous Path: Why Expanding Access to Medical Assistance in Dying Keeps Us Up at Night" Professor Janz shares:

"I attended a school for kids with disabilities. Roughly half the students had muscular dystrophy and a life expectancy of 14-18 years. Growing up, we all know that some of us would live longer than others. But we also knew that all of us would live with the best quality of life possible, until we died. What keeps me up at night is knowing that this is not the message the current generation of kids with disabilities is getting. Instead, they are hearing about parents requesting MAiD for their disabled kids."

Her hope is that Canadians with disabilities can find safe doctors who will fight for the lives of those with disabilities instead of encouraging them to end their life.

Dr. Leonie Herx is past president of the Canadian Society of Palliative Care Physicians and chair of the Division of Palliative Medicine at Queen's University. One of her concerns is that physicians would be expected to raise MAID as if it were like any other medical option, when it is not. For a doctor to say, "Well, you could choose this drug, or these supports to help you, or you could choose death," would be suggesting to someone that their life isn't worth living. She believes as a physician, her job is to restore hope and promote healing. It's not to suggest death as the answer to suffering and to facilitate ending someone's life. From her perspective Bill C-7 is based on a very narrow view of autonomy and people who want to have control over their own death via an assisted suicide make up a very small percentage of the population, around two per cent. Legislative protections need to be put in place to prevent people from being pressured into MAID and doctors from being forced to facilitate it.

As a family physician who cares for people with chronic illnesses and disabilities in London Ontario, Dr. Ramona Coelho was drawn into the debate around assisted dying out of concern for her patients. Many often suffer from poverty and inadequate resources (Peters November 2020) and she is concerned they may feel pressured to choose death because of inadequate supports to live or because a doctor perceives that they might be better off dead. (Brean March 2018). One of her patients told her she is planning to access MAID because she lives in poverty and isolation and doesn't have home care supports for her disability. Sadly, many others with disabilities share her desperation. Rather than expanding access to MAID, she believes the priority should be to ensure access to the care and supports necessary to live and, when the time comes, to have a peaceful natural death with high quality palliative care.

THE CATHOLIC CHURCH'S POSITION

The Church's position remains unequivocal. Catholic teaching upholds the inherent dignity of each and every person and affirms that it is gravely unjust to enact laws legalizing practices that permit the taking of innocent human life. "Euthanasia and assisted suicide constitute the deliberate killing of human life in violation of God's Commandments; they erode our shared dignity by failing to see, to accept, and accompany those suffering and dying. Furthermore, they undermine the fundamental duty we have to take care of the weakest and most vulnerable members of society. Human life must be protected from conception to natural death, at all stages and in all conditions." (Bishop Fabbro, Letter to the Faithful 2020)

In his Pastoral Letter: *Choosing Hope and Life In view of Bill C-7: expanding access to assisted death*, Archbishop of Montreal Christian Lépine reflects "Every human being has a story: a story comprising light and darkness, beauty and trials, goodness and turmoil. To end a person's life because of suffering is not an attack on suffering, but an attack on the person who is suffering. ...Making death legally available to those in a fragile state of health cannot help but have harmful repercussions for society at large. "

He further acknowledges that this law will impact all who called to care for the most vulnerable of us. "Physicians have a vocation to preserve life for all people and to recognize the dignity of every person regardless of his or her health or physical condition. They will be pushed toward making exceptions, which cannot help but distort their outlook and weigh heavily upon their inner being. Lawyers have a vocation to serve the cause both of human dignity and of justice for all. They will be pressed to justify the hastening of death in certain cases."

The impact that this law affects each and every one of us. The consequences can leave us families profoundly scarred. Families "are trapped between feelings of compassion, helplessness, suffering and alienation, becoming spectators or actors in the taking of the life of their father or mother, their child or loved one. When life becomes stricken with unbearable suffering, a feeling of devastation certainly sets in, but the taking of life is not a solution. We must combat the person's suffering, not eliminate the person." Bill C-7 reveals the insoluble problems created when any society legalizes the taking of human life. *Maria Giannotti is the Bioethics Consultant for CCBI-A*

References and Resources:

1. Challenges to C-14. End of Life Law and Policy in Canada Health Law Institute Dalhousie University. http://eol.law.dal.ca/?page_id=2219
2. Legislative Summary of Bill C-7: An Act to amend the Criminal Code (medical assistance in dying) https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/LegislativeSummaries/431C7E
3. In a nutshell, the continuing saga of Canada's medical assistance in dying legislation. Joyce Downie, Schulich School of Law at Dalhousie University. March 19, 2021. <https://impactethics.ca/tag/medical-assistance-in-dying/>
4. Ottawa's MAID regime was never about assisting the dying. James Mahoney March 29, 2021. The Hamilton Spectator https://www.thespec.com/opinion/contributors/2021/03/29/ottawas-maid-regime-was-never-about-assisting-the-dying.html?fbclid=IwAR09SO6f5kM8yq_p8svj9D3LaG8wOFBjnh8mUah1WtTa8kiWpBK-Mbn34I
5. Canada has a new law on medical assistance in dying. Here's what it means. Jacques Gallant. Toronto Star, March 17, 2021 <https://www.thestar.com/politics/federal/2021/03/17/canada-has-a-new-law-on-medical-assistance-in-dying-heres-what-it-means.html>
6. Dehumanizing': People with Disabilities Say They've Been Ignored in Bill C-7 Assisted Dying Debate <https://pressprogress.ca/dehumanizing-people-with-disabilities-say-theyve-been-ignored-in-bill-c-7-assisted-dying-debate/>
7. Doctors condemn changes to Canada's assisted dying law as 'reckless. Renee Bernard. <https://winnipeg.citynews.ca/2020/11/28/canadian-doctors-oppose-maid/>
8. A dangerous path: Why expanding access to medical assistance in dying keeps us up at night. Janz, H., Herx, L. Coehlo, R. <https://theconversation.com/a-dangerous-path-why-expanding-access-to-medical-assistance-in-dying-keeps-us-up-at-night-153540>
9. Dying for the right to live. Gabrielle Peters. MacLean's Nov 12, 2020. <https://www.macleans.ca/opinion/dying-for-the-right-to-live/>
10. Denied 'assisted life,' chronically-ill Ontario man is offered death instead: lawsuit Joseph Brean March 16, 2018 <https://nationalpost.com/news/canada/denied-assisted-life-by-hospital-ontario-man-is-offered-death-instead-lawsuit>
11. Vancouver woman with disabilities living in pain, forced into debt seeks medically assisted dying. News 1130. Ash Kelly. July 2020 <https://www.citynews1130.com/2020/07/27/vancouver-woman-disabilities-medically-assisted-dying/>
12. Proposed MAiD law is not the compassionate response to suffering that Canada needs. Summary and Analysis of Bill C-7 <https://www.christianlegalfellowship.org/blog/2020/2/26/billc7analysis>
13. Bill expanding access to euthanasia, assisted suicide advances in Canada. Christine Rouselle. Mar 12, 2021 Catholic News Agency. <https://www.catholicnewsagency.com/news/246866/bill-expanding-access-to-euthanasia-assisted-suicide-advances-in-canada>
14. Government of Ontario. Health Care Consent Act, 1996 [last amendment 2007], c. 2. Available from: http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_96h02_e.htm
15. College of Physicians and Surgeons of Ontario. Consent to medical treatment, Policy #4-05. <http://www.cpso.on.ca/Policies/consent.htm>
16. <https://www.ourcommons.ca/DocumentViewer/en/43-2/house/sitting-64/order-notice/page-13>
17. Canadian Religious Leaders Oppose Bill C-7 <https://d2y1pz2y630308.cloudfront.net/25090/documents/2020/10/CanadianReligiousLeadersOpposeBillC-7MAiD.pdf>
18. Bishop Fabbro's Letter to the Faithful. https://www.cccb.ca/wp-content/uploads/2020/11/Bishop-Fabbro_Letter-to-the-Faithful_Bill-C-7_27-10-2020.pdf
19. Archbishop Lépine. Choosing hope and life: In view of Bill C-7: expanding access to assisted death. <https://diocesemontreal.org/en/news-and-info/latest-news/archbishop-lepine-issues-pastoral-letter-choosing-hope-and-life-view-bill>