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Paved with Good Intentions: How the Want for Basic Dignity Led to a Flawed System.

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The law is a reflection of our values as a society, adapting to changing societal values. In Canada, legislation surrounding medically assisted euthanasia reflects a growing acceptance of this practice in response to medical advancements and changing attitudes toward suicide. While the original Medical Assistance in Dying (MAiD) legislation sought to provide individuals with autonomy over their end-of-life decision, the most recent amendments can only be described as over-eager and detrimental to the intentions of the original legislation. The conditions of MAiD legislation in Canada should prompt any legal-minded individual to reconsider their support for the continued loosening of MAiD requirements.

The current legislation on MAiD arose as a result of a constitutional challenge to Section 241(b) of the Criminal Code, which prohibits aiding or abetting a person in committing suicide, and Section 14, which prohibits individuals from consenting to death being inflicted on them. In Carter v. Canada (AG), 2015 SCC 5, the Supreme Court of Canada ruled that in cases of incurable illness causing intolerable suffering, the previous sections unjustifiably infringed the right to life, liberty and security of the person under s.7 of the Charter. In light of the modern interpretations of ethics and the ability of modern medicine to prolong the life of terminal patients, this landmark case arrives with the stated specific goal of relieving suffering and restoring dignity and autonomy.

In response to Carter v. Canada, the former Bill C-14 was introduced and passed with approval from the public and healthcare community due to the positive underlying principle. Much of this success could be attributed to the stringent safeguards and eligibility criteria surrounding MAiD, requiring death to be foreseeable and final consent before administration. Yet, several points of contention were raised when viewed in combination with the current “right to refuse treatment” policy. The Supreme Court affirmed “informed choice” as the sole arbiter during the Carter v. Canada decision, sidelining the healthcare professionals to a solely advisory role and severely eroding the ability to provide evidence-based healthcare. Furthermore, “foreseeable death” was defined loosely such that even diabetes could be considered “foreseeable death” if treatments are refused.

Building on the arguments presented in Carter v. Canada, in Truchon c. Procureur général du Canada the plaintiff successfully argued that the foreseeable death requirement found in former Bill C-14 is unconstitutional due to the similar infringement of s.7 of the Charter. This case led to the proposal of the former Bill C-7 in 2020, which amends the previous MAiD legislation to weaken safeguards for patients with foreseeable deaths and to allow non-terminal patients to enroll in MAiD. Furthermore, without discussion in committee, a liberal-NDP coalition strong-armed an 11th-hour modification to Bill C-7, allowing patients with mental illness to enroll in MAiD starting March of 2023.

In the wake of Bill C-7, Canada became the first and only nation to offer euthanasia upon request on the basis of the poorly defined “grievous and irremediable” requirement, with the additional caveat that many treatable diseases can be grievous if treatments are refused. This starkly contrasts with even the laxest MAiD-providing nations such as Belgium and the Netherlands, which only administer MAiD when all other options have been exhausted. Furthermore, in combination with the College of Physicians and Surgeons of Ontario referral policy, physicians may find themselves with the legal obligation to refer patients to MAID providers against their morals.

To exacerbate the current situation, starting March 17, 2023 patients suffering solely from mental illnesses will be able to request MAiD to the consternation of psychiatrists and mental health workers. “grievous and irremediable” has yet to be defined with respect to mental illness in any of the Canadian provinces. There is not currently a common consensus among experts on whether mental illness can be considered “grievous and irremediable”. Furthermore, debate continues to rage on between experts on whether the request for MAiD would qualify as suicidal intent in the context of psychiatry.

Bill C-39 was introduced in February 2023 as a one-year extension to the delayed implementation of mental illnesses for MAiD, but concerns have been raised regarding the acute lack of mental health resources nationwide. It raises the possibility some communities will have easier access to MAiD than mental health care.

One key aspect missing from the current legislation is committee review and professional oversight. In the Netherlands, a mandatory review committee of doctors, bioethicists, and patient advocates examines the merits of each case of euthanasia administered by physicians and provides feedback for reference in future decisions. A similar system is essential for protecting and regulating the MAiD landscape in Canada.

Ultimately, this is not a criticism of MAiD, but rather an objection to the manner in which it was implemented in Canada. The rush to pass legislation has resulted in a lack of review and oversight, with no mandated review committee to monitor the implementation of the law. While MAiD has its merits, the current situation surrounding the legislation calls for a reconsideration of the continued loosening of MAiD requirements.