Study of Euthanasia in Canada: Critical Research

Issue of Importance

The topic of euthanasia has been controversial in every way imaginable. It has been at the centre of discussions for religious, medical, ethical, cultural, and political reasons. The typical argument that is passed around is the opinion individuals have on the merit of human life. Questions that are asked are, “Is it ever right to end the life of a palliative patient who is in severe pain?”, “Under what circumstances can euthanasia be justified, if at all?' and “Is there a moral difference between killing someone and letting them die? (BBC, 2014)” Each of these questions are sure to get society into a heated debate.

Typically when an individual undergoes euthanasia, they have a medical condition that is incurable. That being said there are other instances where some individuals just want their life to be ended. While many people believe that the reason for euthanasia is unbearable pain, a variety of symptoms and conditions will lead individuals or families to request for medically assisted death. Terminally ill people can have their quality of life severely damaged by physical conditions (incontinence, nausea and vomiting, breathlessness, paralysis and difficulty in swallowing) and/or psychological factors (depression, fearing loss of control or dignity, feeling a burden, or dislike of being dependent) (BBC, 2014).

The issue of medically assisted dying has been ongoing in Canada for decades. It has caused complications when electing new members to Parliament, concerns for the competency of healthcare professionals, as well as recognizing the importance of the quality of life of citizens in Canada. Up until 2016, assisted suicide was illegal in Canada under section 241(b) of the Criminal Code. In 2015, the Supreme Court of Canada universally chose to allow physician-assisted suicide after decades of legal cases continuously coming in. Once this decision was made, the federal government then passed the Medical Assistance in Dying (MAID) Act (Marshall, 2016). This act outlines the criteria for eligible individuals and the correct processes and safety measures for the procedure.

Policy Problem

Back in 1892, the Criminal Code was brought into Canada. In this code, the rules were laid out very simply – suicide and assisted suicide were both considered criminal offences under section 241(b). These clauses stayed in place for more than 70 years without anyone questioning the significance of them. Then in 1972, the act of suicide was decriminalized, and assisted suicide remained against the law. Essentially, if an individual took their own life this would be legal, but anyone who was found to be helping or aiding someone in taking that individual’s life, could be criminally charged for up to 14 years in prison (Marshall, 2016). This clause led to large debates in provincial and federal legislatures that concerned the right of individuals, physicians, family members and other persons of interest.

Case - Sue Rodriguez, 1993

The first case that challenged the criminal offense of assisted suicide was Sue Rodriguez.

Rodriguez had been suffering from the condition of amyotrophic lateral sclerosis, better known as ALS. She wanted it to be legal for her to have the help of a medical physician to end her life, when she insisted it be necessary. So, in the 1990s, Rodriguez brought to the courts that section 241(b) of the Criminal Code was unacceptable. She believed that it was her right to be able to have a medically assisted death due to her condition, and that it violated her individual rights. Rodriguez first brought her case to Columbia Court of Appeal and the Supreme Court of Columbia, and they both denied her challenge. Rodriguez was not about to step down from her vision, and she took her case to the Supreme Court of Canada. Here, on September 30th, 1993, a 5-4 majority of Supreme Court justices upheld the two Columbia courts. They agreed that the policy of medically assisted dying, was completely constitutional and did not violate any part of the Canadian Charter of Rights and Freedoms. The five judges in favour saw that assisted suicide is completely illegal on the stance that it is morally and legally unacceptable and having it legalized could arise in mistreatment of the law. The four minority judges did not vote in favour as they did not see the case to be logical. Essentially, they saw it that if a physically able person was able to commit suicide and not be criminally charged, why should be a physically incapable person not be able to ask for a physician to conduct the same act and be criminally charged. This case came to an even fuller close a few months later. In February 1994, Rodriguez committed suicide, and was assisted by an anonymous doctor and watched by NDP MP Svend Robinson, who had been fighting alongside Rodriguez (Marshall, 2016).

Case - Robert Latimer, 1994

A second case in the fight to legalize euthanasia, was with Robert Latimer and his daughter Tracy. Robert Latimer’s daughter Tracy had her oxygen supply cut off during birth, and this resulted in her having extreme brain damage and seizures that would happen frequently. Tracy had a difficult life, with these constant seizures, immense amount of medications, and surgeries and other operations that were impacting her quality of life. In October of 1993, Robert and his wife were told by medical professionals that Tracy would need more operations. Suddenly, in late October of 1993, Robert was charged with the murder of his daughter Tracy, who was harshly disabled. Robert did not want to see his daughter suffer anymore, so he took her death into his own hands. Robert conducted Tracy’s death by placing her into his truck and asphyxiating her with the fumes from the exhaust.

When an autopsy was conducted, they found that Tracy had died from carbon monoxide poisoning and Robert then confessed that he had ended her life but insisted that he had not murdered her. In the middle of November of 1994, Robert was convicted of second-degree murder and sentenced to life imprisonment with no parole for 10 years (Marshall, 2016).

Robert Latimer’s case took place about a year after Sue Rodriguez lost her case with the Supreme Court. Both of these cases are essential to the legalization of euthanasia, but in very different ways. Rodriguez’s case was about wanting a physician’s assistance in ending her own life, whereas Latimer’s case was about him taking action through a non-voluntary euthanasia (ending someone else’s life without their consent).

Physician-Assisted Suicide Becomes Legal in Canada, 2015

After a few quiet years in the realm of medically assisted dying, a few new cases popped up. The first case was brought to the courts by the family of Kay Carter. Kay suffered from

degenerative spinal stenosis and passed away in 2010. The second case was Gloria Taylor, who suffered from ALS, just like Sue Rodriguez, and she passed in 2012. The Columbia Civil Liberties Association (BCCLA) filed a lawsuit in 2011, which challenged the law against assisted suicide (Marshall, 2016). Their case argued that not allowing medically assisted deaths, violated section 7 and section 15(1) of the Canadian Charter of Rights and Freedoms. Section 7 protects an individual's autonomy and personal legal rights from actions of the government in Canada (Government of Canada, 2019). Section 15(1) “ensures that every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability (Government of Canada, 2019)”. Surprisingly, the Supreme Court of Columbia accepted both of the cases and upheld their decisions to have medically assisted deaths to be legal. Unsurprisingly though, it was short-lived as the federal government stepped in. In October 2013, the Court of Appeal for Columbia overturned the ruling, which led the BCCLA to appeal to the Supreme Court of Canada.

When both of these cases, Carter and Taylor, came to the Supreme Court in 2014, there was a very different stigma around assisted suicide. Back when Rodriguez came to court in 1993, assisted suicide was illegal in just about every country in the world. Now, in 2014, the Netherlands, Switzerland, Belgium, Luxembourg and certain states in the U.S. had all allowed medically assisted dying through certain policies and circumstances. In a more Canadian context, the province of Quebec also legalized medically assisted death for “consenting adult patients who suffer from an incurable illness, an advanced state of irreversible decline in capability and constant and unbearable suffering.” Therefore, worldwide and in Canada, the legal and social implications that were once a roadblock to euthanasia, became insignificant. So when the Supreme Court was presented with the cases of Carter and Taylor, there was unanimous 9-0 vote to allow physician-assisted suicide for “a competent adult person who (1) clearly consents to the termination of life; and (2) 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 (Marshall, 2016).” This was a major step that the Supreme Court of Canada took, with their final vote taking place in 2015. This was the same year as the federal election, and Justin Trudeau came into office in October of 2015. The next steps for euthanasia were at a stand-still until operations were up and running again in the federal realm of Canada.

Medical Assistance in Dying (MAID) Act, 2016

In January 2016, the Supreme Court of Canada established a constitutional exemption that allowed individuals to apply for judicial authorization to access physician-assisted dying, if they met the criteria that was established in the decision of 2015. On June 6th, 2016, physician-assisted suicide became legal in Canada. Following this, on June 17th, 2016, Bill C-14 (MAID) became law. Some of the clauses in this Act were: those eligible have to be at least 18 years of age, with a “grievous and irremediable medical condition” that causes “enduring physical or psychological suffering that is intolerable” to them. Moreover, they must be in an “advanced state of irreversible decline,” in which their “natural death has become reasonably foreseeable (Marshall, 2016).”

Response of the Government

The policy issue of euthanasia and MAID was addressed by the government during a number of cases throughout the past 30 years. During the first few cases of Rodriguez and Latimer, the Supreme Court of Canada shut down both of these appeals. The Supreme Court saw respectively, assisted suicide as illegal and second-degree murder illegal as well.

Once these cases had subsided the Special Committee of the Senate of Canada created a report, Of Life and Death, as a response. The Special Committee of the Senate of Canada was appointed on February 23rd, 1994 to examine and report on the legal, social and ethical issues relating to euthanasia and assisted suicide. This report was made as a step towards finding a solution towards the problems of life and death of all Canadians for years to come. This report was a strong response from the government; they acknowledged the issue that was arising and did a semi-thorough analysis through testimonials across the country to aid in their research. With the information that they gathered, their recommendations included keeping the laws the way they are. Euthanasia and assisted suicide are still illegal. Their study looked at personal opinions, knowledge based off of experience and beliefs through morality, ethics and religious points of view. The Committee's conclusions reflected the consensus in many areas and differences on some of the most basic questions addressed (The Special Committee of the Senate of Canada, 1995).

Then over a decade passed, and some more cases started popping up in the Supreme Court. The stigma around assisted suicide had become less horrific and more understanding. This time, when presented with two cases, Carter and Taylor, the Supreme Court upheld these appeals. The Supreme Court decided that the initial Criminal Code was unconstitutional because it breached the rights to life, liberty and security of the person. This led to the most significant response from the Supreme Court of Canada – the legalization of medically assisted dying.

The topic of medically assisted dying came up again recently during the federal election in October of 2019. Current Prime Minister Trudeau said that if he was re-elected then he would bring in legislation to expand access to medical assistance in dying. He made the comment that, “The essential element around society is ensuring that everyone gets the supports, the treatment they need to live in dignity, and to make the choice of medical assistance in dying one that is made in a way that isn't because you're not getting the supports and cares that you actually need (The Canadian Press, 2019).” The Government of Canada will continue to be the strongest leader in the fight for medically assisted dying, alongside the other governments who have legalized this procedure.

Evaluation of Response to the Issue

Government

Although the Government of Canada made the decision to legalize MAID in Canada, the government will continue to face battles after the initial backlash occurred. Take Audrey Parker for example. Parker was 57 years old and had Stage 4 breast cancer that spread to her bones and her brain. Parker was from Nova Scotia woman, and she chose a medically assisted death. Unfortunately, she took her life earlier than she really wanted to because she was worried doctors will deny her the procedure if she lost her mental capacity to consent before that time arrived. 'We know that these cases do exist, and they shouldn't,' said former senator Jim

Cowan, now chair of Dying with Dignity Canada's board of directors. Cowan is now calling out to the federal government to amend the legislation on the eligibility and wait times (Hounsell, 2018).

Society

Since the Supreme Court made their decision on legalizing assisted suicide, society has gone back and forth on the issue and will continue to because of the nature of the topic. Individuals who have been fighting for their constitutional right to have a medically assisted suicide have been impacted greatly and are mostly satisfied with the outcome. There has been some pushback from these individuals like the length of time, the intense process and the slim eligibility criteria.

There are a select group of individuals that have been largely affected by the response of the Supreme Court of Canada that are not individuals seeking assisted suicide. These are medical professionals and palliative care providers. These individuals face many dilemmas and tensions when being asked about assisted suicide, MAID, euthanasia and other names for the procedure. A study done in Quebec questioned eighteen palliative care physicians on euthanasia. Because the end of life is typically surrounded by ideas of pain and grief, participants felt large amounts of tension on how to properly response to the questions, as they felt their personal and professional identities were mixing. All respondents replied with experiencing discomfort with euthanasia as end-of-life care, and all but one denied the influence of religious or political positions in shaping their views. As put by one of the participants, “I think that as an individual, I would feel a certain level of comfort in knowing that I had that degree of decision or control of my life. […] I think that professionally I’m very uncomfortable with it, […] as I feel that many individuals within the greater society in Canada do not have the ability to make fully autonomous choices. I think there are many external factors that affect people and even as simply as the access to palliative care (Belanger, et al., 2017).” The important point to make here, is that just because the Supreme Court made a policy response to allow MAID to be legal, it does not mean that medical professionals’ stances can be simply organized into ‘for’ or ‘against’ views. They are both professionals and people and having to conform to the views of the medical community even if you do agree with it, is not an easy task.

Conclusion

The policy issue of euthanasia is never going to go away. There is an immense amount of public interest to discuss the options of assisted suicide and the controversy will continue to grow with the ever-changing society of Canada. Society will continue to group together whether they are ‘for’ euthanasia or ‘against’ euthanasia, whether they are well-off or not, whether they are part of religious groups or pro-life groups and so on. Cases are continuing to pop up that question the Supreme Court’s strict eligibility criteria, and botched attempts at conducting medically assisted suicide are taking away the significance of the procedure (Stingl, 1998). With this in mind, when we go back to the similarities between the political system and the healthcare system, there are difficult and far-reaching ethical questions regarding how far the health system ought to be held responsible for guaranteeing the health of all Canadians. Moving forward, it will always be in the best interest of all Canadians, no matter their political, legal, or societal views, that both politics and healthcare continue to work hand-in-hand to increase the welfare of all.