

**Larry Worthen** and **Stephanie Potter** examine how Canada opened the door to ever more drastic euthanasia laws and the erosion of freedom of conscience



# EUTHANASISING?

## HIPPOCRATIC MEDICINE

### CANADA'S ATTEMPT TO KILL CONSCIENCE

#### key points

- A society that hides from suffering, disability and death is more and more likely to accept the deliberate ending of human life by health professionals.
- Despite attempts to challenge the legalisation of euthanasia and defend freedom of conscience, disability rights and Christian organisations have found the legislature and wider society unwilling to defend the vulnerable or make reasonable accommodation for those with conscientious objections.
- Christians and other people of conscience must continue to take a stand on these issues.

#### From mercy killing to death on demand

In the early 1990s, the death of a twelve-year-old girl captured the attention of Canadians. Tracy Latimer, who was only a month shy of her 13th birthday, lived with cerebral palsy and loved music, horses, and the circus. Her life was like that of many who have complex disabilities – filled with medical treatments and surgeries, but also with school, her family, and joy. Tracy's father chose to end her life out of a desire to end her pain. After a series of trials that garnered much public attention, he was convicted of second-degree murder. He began serving his sentence in 2001, and by 2010 he was granted full parole. A 1999 poll revealed that 73 per cent of Canadians thought Tracy's father should have received a more lenient sentence. Forty one per cent of respondents believed that 'mercy killings' should be legalised.<sup>1</sup> The issue was debated on television screens, in homes, and in

#### Were those with disabilities better off dead?

classrooms across Canada. Were those with disabilities better off dead? Who should make the most final of all decisions?

Twenty-two years after Tracy's murder, on 6 February 2015, the Supreme Court of Canada brought down their unanimous decision in *Carter vs Canada*,<sup>2</sup> striking down sections of the *Criminal Code of Canada* that made euthanasia and assisted suicide illegal. In doing so, they reversed the precedent the Court had set in 1993 in the *Rodriguez* case. When parliament passed legislation a year later, the initial requirements of the law were that the patient must be a competent and clearly consenting adult who

has a grievous and irremediable condition, for whom death is reasonably foreseeable.

Six years after legislation, euthanasia in Canada continues to expand its impact on the Canadian population. In 2020, deaths by the euphemistically named medical assistance in dying (MAID), which includes both euthanasia and assisted suicide, increased by 34.2 per cent after a 26.4 per cent increase the previous year. From 2016-2020, 21,589 Canadians have died by MAID, 7,595 of whom died in 2020 alone. The percentage of all deaths attributable to MAID continues to climb to 2.5 per cent in 2020. In British Columbia in 2020, four per cent of all deaths are attributable to MAID. These numbers are expected to climb at an even greater rate with recent national legislative changes.

On 12 March 2021, Canada received Royal Assent to expand access to euthanasia to those with disabilities, chronic illnesses, or mental health concerns, even if their deaths are not reasonably foreseeable. There is still a two-year delay for those with mental health concerns as there is currently no protocol for those patients.

By passing this into law, Canadian legislators removed safeguards like the ten-day waiting period when death is reasonably foreseeable. Even the waiting period for euthanasia when death is not reasonably foreseeable (90 days) is not as lengthy as waiting periods for the services needed to encourage the patient to continue to live. In addition, the waiting period can be waived when the patient is in danger of becoming incompetent.

Throughout the lead up to this expansion, disability and mental health advocates publicly called for Members of Parliament to vote against the legislation. They shared their stories of the challenges they currently face to access adequate healthcare before legislators and via social media. They streamed a days-long filibuster with voices from across the country. Their repeated cry was: *'nothing without us'* – no governmental decision about their lives without consultation and support. Despite their compelling and consistent pressure, the Government passed the Bill, declaring it a victory for personal autonomy. We conceal our disregard for those living with different disabilities and medical conditions with phrases like *'medical assistance in dying'* and *'mercy killing'*, but the reality is that, as a country, we would rather offer death as a final solution for those who are suffering than get into the expensive and challenging business of providing real support.

The Council of Canadian Academies was commissioned to convene an expert panel on MAID. A series of reports were released in December 2018, covering MAID for mature minors, advance requests, and patients whose sole underlying condition was a mental disorder.<sup>3</sup> Already the subject matter of the last report has been incorporated into law.

Within months of the report, Canada's leading paediatric hospital, Toronto Sick Kids, had drafted a policy for euthanasia for youths over 18 that could one day apply to minors.<sup>4</sup> As of 2017, 22 per cent of

Canadians over the age of 15 are living with one or more disabilities.<sup>5</sup> Nearly 13 per cent of Canadians report two or more chronic illnesses.<sup>6</sup> Nearly half of Canadians can be expected to be diagnosed with cancer in their lifetime.<sup>7</sup> By the age of 40, half of Canadians will have or have experienced a mental illness.<sup>8</sup> We no longer theorise the slippery slope in Canada but seem to have enthusiastically jumped off a cliff.

Tracy Latimer's murder and her father's trial consumed the news cycle for years, but in the end, the name most Canadians know isn't hers; it's that of her father. No one championed her dignity and value. The debate was whether his punishment was too lenient or too harsh, not whether Tracy's life had been beautiful and worth living.

The same perspective that certain lives aren't worth living underlies the opinions of Canadians today. In a July 2021 public opinion survey, 62 per cent of Ontarians acknowledged that some see the lives of those living with disabilities as less valuable. We've eased our national conscience by talking about autonomy and self-determination. But one wonders how easy it would be to convince us that we can euthanise another person like Tracy without their consent, so long as we all agree their life is one we can't imagine living.

### Regulators, courts and legislators: the battle for conscience rights

In this context, we turn to the state of conscience rights of healthcare professionals in Canada. In the Supreme Court ruling and the preceding euthanasia legislation, there was language to the effect that physicians could not be compelled to participate in euthanasia against their conscience. This well-intentioned wording, however, was not enough to protect the conscience rights of healthcare professionals.

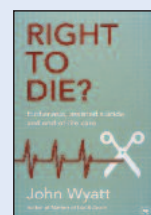
In Canada, healthcare is funded federally but managed, implemented, and regulated by each province. This separation of jurisdiction allowed for a tapestry of different frameworks for MAID in each province and territory. In Canada's most populous province, Ontario, the provincial regulatory body for physicians created a framework that was, in essence, adopted by the province. Their policy regulated the implementation and reporting of MAID but also included requirements around conscientious objection. The College of Physicians and Surgeons of Ontario (CPSO) requires physicians who cannot participate in MAID, including the assessment process, to provide an effective referral to another willing physician. The Ontario government has subsequently created a direct access system allowing patients to self-refer by calling the provincial telehealth line, making referral unnecessary.

As the need to protect the conscience rights of Ontario physicians became increasingly urgent, the Christian Medical and Dental Association of Canada (CMDA Canada), along with two other organisations and five individual physicians, joined together to launch a legal application to challenge the CPSO's policies.



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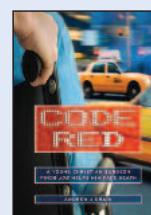
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In many ways, we feel like John the Baptist, crying out in the wilderness. We are announcing truths that no one wants to hear

#### references (accessed 24/8/21)

1. Three quarters (73 per cent) of Canadians believe Robert Latimer ended his daughter's life out of compassion. *IPSOS*. 1 January 1999. [bit.ly/3B2d1Ps](https://www.ipsos.com/en-ca/news-stories/three-quarters-of-canadians-believe-robert-latimer-ended-his-daughters-life-out-of-compassion)
2. *Carter v. Canada* (Attorney General). *Supreme Court of Canada*, 6 February 2015. [bit.ly/3CnRGR8](https://www.scc-csc.gc.ca/media/record/2015/02/06/20150206-eng.aspx)
3. The Expert Panel on Medical Assistance in Dying. *Council of Canadian Academies*, 12 December 2018. [bit.ly/2XRIRJM](https://www.cca-cca.ca/en/panels/medical-assistance-in-dying)
4. Kirkey S. Toronto's Sick Kids hospital preparing policy for euthanasia for youth over 18 that could one day apply to minors. *National Post*. 9 October 2018. [bit.ly/3DbkOMT](https://www.nationalpost.com/health/sick-kids-hospital-preparing-policy-for-euthanasia-for-youth-over-18-that-could-one-day-apply-to-minors/2018-10-09)
5. Canadian Survey on Disability – Reports a demographic, employment, and income profile of Canadians with disabilities aged 15 years and over, 2017. *Learning Disabilities Association of Canada*, 2017. [bit.ly/3DnMBd8](https://www.ldac-adca.ca/en/2017-csd-report)
6. Roberts K C, Rao D P, et al. Prevalence and patterns of chronic disease multimorbidity and associated determinants in Canada. *Health Promot Chronic Dis Prev Can*. 2015 Aug; 35(6): 87-94. [bit.ly/3msHcv3](https://www.hc-sc.gc.ca/hp/lcdc/prevention/promotion/2015/06/06-eng.aspx)
7. Cancer statistics at a glance. *Canadian Cancer Society*. 2020. [bit.ly/3kjAKUL](https://www.cancer.ca/en/about-us/press-releases/2020/cancer-statistics-at-a-glance/)
8. Fast Facts about Mental Health and Mental Illness. *Canadian Mental Health Association*. 19 July 2021. [bit.ly/3DnO3w6](https://www.cmha.ca/en/press-releases/2021/fast-facts-about-mental-health-and-mental-illness/)
9. Kinsinger K. *CMSD v CPSO (Part 1): ONSC Weighs Religious Physicians' Charter Claim*. *the Court.ca*. 1 March 2018. [bit.ly/3CRAAIH](https://www.thecourt.ca/2018/03/01/onsc-weighs-religious-physicians-charter-claim/)
10. Ontario Court of Appeal Upholds 'Effective Referral Requirements' for Euthanasia, Abortion. *Evangelical Fellowship of Canada*. 15 May 2019 - [bit.ly/3nM8tcD](https://www.efc.ca/en/press-releases/2019/05/15/ontario-court-of-appeal-upholds-effective-referral-requirements-for-euthanasia-abortion/)
11. [canadiansforconscience.ca](https://www.canadiansforconscience.ca/)

On 31 January 2018, the Court declared that the CPSO's policies violated freedom of religion by requiring physicians and surgeons to make referrals when their consciences do not allow them to perform a procedure or treatment.<sup>9</sup> The court made several findings that are difficult to reconcile with each other.

The court held that:

1. The CPSO policy violated the right to freedom of religion.
2. Other protocols were in place in other jurisdictions that were less restrictive on freedom of religion, but the CPSO policy framework was reasonable. The Court failed to insist that the CPSO use the least restrictive option to achieve the goals of the policy.
3. While there was no proof that the exercise of conscientious objection has ever affected access to treatment, the apprehension that it might affect access was sufficient to justify the policy.
4. The effect on the applicants of the policy was not trivial and was held to be substantial. However, the court indicated that since there was no right to join the profession, the physicians in question could alter their practice or leave medicine entirely. The court failed to understand that almost all specialties can face requests for euthanasia. Furthermore, it is practically impossible for a graduate doctor to re-train in another specialty to avoid the challenge to their conscience.
5. The policy had no discriminatory effect, as the class of persons in question was not a disadvantaged group.

CMDA Canada *et al* appealed, but on 19 May 2019, the Ontario Court of Appeal upheld the lower court's decision.<sup>10</sup> It was decided not to pursue an appeal to the Supreme Court of Canada.

In 2016, we worked with other like-minded organisations, both medical and religious, to form a coalition to amplify the reach of our advocacy. The Coalition for HealthCARE and Conscience<sup>11</sup> is a group of diverse organisations opposed to legalising euthanasia and assisted suicide. Together our Coalition represents over 2,000 physicians across Canada. The Coalition advocates for respect for the sanctity of human life, the protection of the vulnerable, and individuals and institutions' ability to provide healthcare without having to compromise their conscience. This Coalition helped create visibility for this issue among Canadian citizens and now has a database of over 45,000 Canadians concerned about the expansion of euthanasia and the contraction of conscience rights.

With our Coalition partners, we continue to pursue legislative relief. We have been successful in the province of Manitoba, where conscience legislation was passed in 2017. However, in Ontario, where the need is the most urgent, there is a pronounced disconnect between public support for conscience protection and goodwill from legislators.

As of July 2021, a public opinion survey commissioned by CMDA Canada shows 85 per cent support for conscience legislation in Ontario.

In many ways, we feel like John the Baptist, crying out in the wilderness. We are announcing truths that no one wants to hear. We are called as Christians to see our place with those at the margins. Patients at risk of losing their hope due to lack of support, fear of pain, fear of being a burden, or other reasons benefit from healthcare professionals who are willing to accompany them and give them hope. One cannot help but look at the current state of conscience rights and wonder with great fear how many years it will be until healthcare professionals who see the value in patients' lives beyond their diagnosis are pushed out of the system or not even admitted to medical school.

In listening to the voices of the disability community over the years, we see the plague of ageism and ableism has set down pernicious roots. As a society, we have lost the ability to recognise that all lives, even lives that don't look like ours, have implicit value and are sites of real encounter with God. In Canada, human dignity is under attack. Our government has enshrined our ableism and fear of death in ever-expanding euthanasia legislation. The treatment for the rot in our culture is for Christians to stand up and be faithful in our mission, to seek out those at the margins, and act as a refuge for those in need of care.

By fighting for conscience rights across our country, we are fighting for our patients, who desperately need healthcare professionals who will offer life and not death. Not every patient has family and friends to speak hope to them. Not every patient has a Church community to offer prayers, sustenance, and respite care. The same people that regulators are worried don't have adequate support to access euthanasia on their own are the exact patients who most need the support offered by healthcare professionals who still believe their lives are worth living. These patients need the grace of God in their healthcare professionals to touch them when they face a challenging diagnosis.

In our experience, healthcare professionals can feel somewhat self-serving fighting for conscience rights. However, when you fight for conscience rights, you are fighting for your patients to access healthcare professionals who will not transform a fearful cry for help into death at the end of a needle. The same community who protested at being targeted by euthanasia laws are the ones who need conscientious objectors throughout the medical system, shining a light on the path ahead. They need champions who acknowledge their human dignity in a world that has lost its way.

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