

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.¹ 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*,² 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.³ 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.⁴ As of 2017, 22 per cent of

Canadians over the age of 15 are living with one or more disabilities.⁵ Nearly 13 per cent of Canadians report two or more chronic illnesses.⁶ Nearly half of Canadians can be expected to be diagnosed with cancer in their lifetime.⁷ By the age of 40, half of Canadians will have or have experienced a mental illness.⁸ 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.

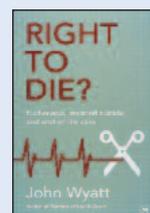
In Canada, healthcare is funded federally but managed, implemented, and regulated by each province. This separation of jurisdiction allowed for a tapestry of different frameworks for MAID in each province and territory. In Canada's most populous province, Ontario, the provincial regulatory body for physicians 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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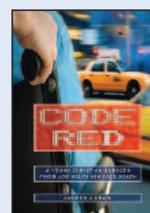
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