

Presentation by Me Michel Racicot

Choosing hope and life - 2020

in view of Bill C-7; expanding access to assisted death

1. INTRODUCTION

Before addressing Bill C-7, it is important to get our facts straight.

Medical aid for dying began to be permitted in Quebec as of December 10, 2015, and in Canada as a whole on June 17, 2016.

It should be remembered that, prior to these laws, it was permitted to refuse, interrupt or stop treatment, even though such action might accelerate death.

The same was true for sedation, i.e. the relief of pain even to the point of unconsciousness, as long as the sedation was done without intent to cause death, even though sedation might accelerate death.

This was permitted not only by virtue of civil law but also by virtue of the positions taken by the Catholic Church through the declarations of Pope Pius XII in 1951, '56 and '57 and those of Popes John XXIII, Paul VI, John Paul II, Benedict XVI and the more recent declarations of Pope Francis, all of whom recognized the ethical character of these decisions but condemned euthanasia and assisted suicide in all their forms. This position is summed up in nos. 2276 to 2279 of the Catechism of the Catholic Church.

2. QUEBEC BILL 52.

With the coming into force of Bill 52 entitled *An Act respecting end-of-life care* on December 10, 2015, it became permissible for a physician to practice euthanasia, called "medical aid in dying," on a person of full age, capable of giving consent, suffering from a serious and incurable illness, being in an advanced and irreversible decline in capability and experiencing constant and unbearable physical or psychological suffering that cannot be relieved in a manner the patient deems tolerable.

However, the person had to be considered to be "at the end of life." In fact, the entire scope of this Quebec law was precisely about end-of-life care, and when it was adopted, both Mrs. Yvon and Dr. Barrette reiterated that only persons at the end of life would be eligible for medical aid in dying. As for people suffering from degenerative diseases, they too were eligible, but only when they reached this final stage of life.

3. THE CARTER DECISION

On February 6, 2015, the Supreme Court of Canada, in a decision known as **Carter**, struck down the provisions of the *Criminal Code* that prohibited euthanasia and assisted suicide despite the request of a suffering person, on the grounds that they violated the right to life, liberty and security of the person guaranteed by s. 7 of the *Canadian Charter of Rights and Freedoms*.

4. BILL C-14

Following this decision, the federal Parliament amended the *Criminal Code* through Bill C-14, which came into force on June 17, 2016, to allow not only euthanasia, as in Quebec, but also assisted suicide, as long as these acts are performed by a physician or a nurse practitioner on any adult who has a serious and irremediable medical condition. Hence, the *Criminal Code* uses the phrase “medical assistance in dying” to describe both euthanasia and assisted suicide while the Quebec law uses “medical aid in dying” to describe only euthanasia.

Contrary to the Quebec law, the *Criminal Code*, as amended by C-14, allows “medical assistance in dying,” not only in the event of illness, but also for persons suffering from a serious and incurable disease or disability.

Unlike Quebec, which specifies in its law that medical aid in dying is only permitted for people at the end of life, the amendments to the *Criminal Code* allow medical assistance in dying in the form of euthanasia or assisted suicide to persons whose “natural death is reasonably foreseeable.” However, this criterion, which was interpreted rather strictly when these provisions first came into force in June 2016, has been interpreted more and more broadly over time, particularly at the instigation of physicians who practice medical assistance in dying.

5. THE TRUCHON DECISION

In a decision rendered on September 11, 2019, known as **Truchon**, the Superior Court of Québec invalidated the "end of life" eligibility criterion in the Quebec law and the "reasonably foreseeable natural death" criterion in the *Criminal Code* as being discriminatory against persons whose suffering is equally great but who are not at the end of their lives.

The Quebec and federal governments did not have the courage to appeal this decision. It must be said that the court's choice to render this decision in the middle of a federal election campaign did not help.

Quebec chose not to amend Bill 52 and simply no longer took into account the "end of life" criterion restricting eligibility for euthanasia.

By contrast, the federal government chose to amend the Criminal Code to address the invalidation of the "reasonably foreseeable natural death" criterion.

6. BILL C-7

And here we are with Bill C-7, a federal Bill to amend the *Criminal Code*, which is currently being debated in the federal Parliament.

Bill C-7 allows for euthanasia and assisted suicide for people **who are not at the end of their lives**, as the Court requested in **Truchon**, but it goes much further.

Thus, C-7 proposes to eliminate several safeguards adopted in the current version of the *Criminal Code*.

And C-7 proposes different safeguards depending on whether one is at the end of life or not.

6.1 SAFEGUARDS FOR PEOPLE WHO ARE AT THE END OF LIFE

Let us begin by examining the measures proposed for abolition for those who are at the end of life or, as the *Criminal Code* says, those whose "natural death is reasonably foreseeable."

I must stress that the modification or abolition of these measures for persons who are at the end of life is an initiative of the federal government and one that was not necessary in order to comply with **Truchon**.

Currently, the written request for medical assistance in dying must be signed by the person requesting it in the presence of two independent witnesses. This was deemed necessary to avoid undue pressure

on the person. Now, with C-7, only one witness is required, which leaves room for all sorts of more or less subtle pressures from the nursing staff or even the patient's family.

Under the current federal law, a 10-day waiting-period is required between the request for medical assistance in dying and the performance of this act, a very short waiting-period but one deemed necessary to allow the patient a period of reflection before this irreversible act. However, under current law, even this brief period may be shortened if the physician or nurse deems that the person's death or loss of capacity to consent is imminent.

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Well, C-7 proposes to eliminate the 10-day cooling-off period so that it would be possible to seek and obtain medical help in dying on the same day!

This would introduce "death on demand!"

And what an easy death!

You are guaranteed to die at the hour and on the day of your choice, with or without your family, by a death that is quick and the result of which is certain! What's more, the government pays the executioner!

That's where we are now.

But there is more. Currently, the *Criminal Code* requires that, immediately before receiving medical assistance in dying, the patient must be given the opportunity to withdraw his or her request and must expressly consent to receiving medical assistance in dying. This requires that the person be of full capacity and conscious.

On the pretext that some people are currently unable to receive medical assistance in dying because they have lost the capacity to consent at the time the physician is about to carry it out, C-7 now proposes to allow that this requirement be waived and medical assistance in dying be provided notwithstanding, as long as, prior to losing the capacity to consent, the person had entered into a written agreement with the physician or nurse authorizing the administration of a substance causing death on a specified date, had been informed of the risk of loss of capacity before that date and had nevertheless consented, in the event of loss of capacity, to receive medical assistance in dying on or even before that date.

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If, however, at the time of the injection, the person expresses by words, gestures or sounds his or her refusal or resistance to have the poison administered, it cannot be administered.

But C-7 goes even further. It even states that involuntary words, sounds or gestures in response to contact "do not constitute a manifestation of refusal or resistance."

In practice, as the two doctors who perform the most euthanasia procedures in Quebec, one in Quebec City and the other in the Montreal area, admitted at a public meeting that I attended, this poses no problem in practice, since if the patient is agitated, he or she is given a sedative and, once calmed down, euthanasia will be carried out!

Furthermore, C-7 even provides that, if a person, at the end of life or not, loses the capacity to consent after self-administering a substance provided by the physician or nurse to cause death, but death has not occurred, then the physician or nurse may still administer medical assistance in dying if the person had previously entered into an arrangement in writing to that effect.

In other words, the doctor or nurse is allowed to "finish the job" in the case of a failed suicide!

What a beautiful society we are preparing for. A society that advocates a culture of death rather than a culture of life!

6.2 MEDICAL ASSISTANCE IN DYING FOR THOSE WHO ARE NOT AT THE END OF LIFE

Now we come to the worst: the introduction through C-7 of medical assistance in dying for those who are not at the end of life.

These may be people who are ill, those with one or more disabilities, or those with a condition, for example as a result of a car or work accident or even a failed suicide. Of course, their medical situation must be serious, incurable and characterized by an advanced and irreversible decline in capability and must cause them enduring, intolerable physical or psychological pain which cannot be alleviated under conditions that they themselves would consider acceptable. But these people are not at the end of their lives!

Of course, we will be told that C-7 has safeguards in place to prevent abuse.

The person must meet all the criteria. His or her request must have been made after having been advised that he or she has a grievous and irremediable medical condition. But at that point, the person is in shock brought on by the announcement! How can that person make a free, reasoned and enlightened decision to end his or her life?

They must have been informed that they can withdraw their request at any time.

Compliance with the criteria must have been confirmed by two independent doctors, one of whom is an expert in the condition causing the person's suffering.

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Before performing the act, the physician or nurse must ensure that the person has been informed of the means **available** to relieve their suffering, and must also ensure that the professional who will perform the act and the other physician or nurse have discussed with that person **the reasonable and available** means to relieve the person's suffering and that both the person who will provide medical assistance in dying and the other doctor or nurse agree with the person that the person has given serious consideration to those means, but without the person having at least tried them!

And finally, there must be a period of at least 90 days between the first assessment and the day the medical assistance in dying is given, but, as in the case of a person at the end of life, this period may be shortened if the loss of capacity to provide consent is imminent.

Think, of course, of people with Alzheimer's disease who generally survive for about 10 years, think of those with Parkinson's, think of people newly disabled following an accident and for whom 90 days is not enough to adapt to their new condition - these are all vulnerable people that C-7 puts at risk!

Even the United Nations Special Rapporteur on the Rights of Persons with Disabilities in her preliminary observations of April 12, 2019, noted that our federal government "still lags behind in the implementation of its obligations under the *Convention on the Rights of Persons with Disabilities*." And, in her final report issued after the **Truchon** decision, she raised the fact that the ruling "might put additional pressure on persons with disabilities who are in a vulnerable situation due to insufficient community support."

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She even added: "As many persons with disabilities said during the visit, they are being offered the 'choice' between a nursing home and medical assistance in dying."

This has led a group of religious leaders of all faiths, a group of lawyers, another group of health professionals and, finally, several disability advocacy groups to call on the federal government to back down.

Are we as Christians going to remain indifferent? Are we going to remain silent in the face of the advances of this culture of death, or are we going to defend life as we have all done in this time of pandemic? Are we going to commit ourselves to denouncing this situation by contacting our MPs to express our concerns? Because we must be the defenders of life up to its natural end.

And in closing, I would be remiss if I did not repeat the words of Pope Francis on September 20, 2013, during an audience with Italian gynecologists:

"Things have a price and are saleable, but persons have a dignity, they are worth more than things and they have no price. Because of this, attention to human life in its totality has become in recent times a real and proper priority of the Magisterium of the Church, particularly for life which is largely defenseless, namely that of the disabled, the sick, the unborn, children, the elderly. [...] every elderly

person, even if he/she is sick or at the end of his/her days, bears in him/herself the face of Christ. We cannot reject them, as the

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"culture of waste" proposes to us! They cannot be discarded!"

And the Pope added a call to action that is also addressed to each of us:

"Your being Catholics entails a greater responsibility: first of all towards yourselves, for the commitment of coherence with your Christian vocation; and then towards contemporary culture, to contribute to the recognition in human life of the transcendent dimension, the imprint of the creative work of God. [...] This is a commitment to the "New Evangelization" which often requires going against the current, paying with your person. The Lord also counts on you to spread the "Gospel of life."

And the Lord also counts on each one of us.