Bill C-407: An Act to Amend the Criminal Code (Right to Die with Dignity)

CANADIAN BAPTIST MINISTRIES
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Introduction

As advances are made in the field of medical technology and as secular humanism re-shapes our cultural and political landscape in Canada, ethical questions concerning end of life issues increase, including the legal and moral consequences of euthanasia and assisted suicide. On June 15, 2005 Francine Lalonde, Bloc Québécois member from La Pointe-de-l'Île, introduced a private member's bill (C-407) in the House of Commons which, if passed, will legalize both euthanasia and assisted suicide in Canada.

According to the official website for the Parliament of Canada,

This enactment amends the *Criminal Code* to allow any person, under certain conditions, to aid a person close to death or suffering from a debilitating illness to die with dignity if the person has expressed the free and informed wish to die.

The implications of this legislation are profound, especially for the vulnerable - those who are elderly, mentally or physically disabled, terminally ill, etc. As we consider global implications, those who are living in extreme poverty may also be at increased risk.

Definition of Terms

Euthanasia: deliberately killing someone by action or omission, with or without that person's consent, for compassionate reasons, for his or her alleged benefit.

Euthanasia may be *active*, *passive*, *voluntary* or *involuntary.*

Active euthanasia: one person deliberately kills another person.

Passive euthanasia: Intentionally causing death by withholding or withdrawing necessary and ordinary (usual and customary) care or food and water.

Voluntary euthanasia: When the person who is killed gives consent to be killed.

Involuntary euthanasia: When the person who is killed is incapable of giving consent or does not give consent.

Assisted suicide: Assisted suicide is defined as counseling or helping someone to commit suicide; providing an individual with the information, guidance, and means to take his or her own life. When a doctor provides the means for a patient to kill themselves it is called "physician-assisted suicide."

It is important to understand what is **not** covered by these definitions. For example, to refuse or to discontinue medical treatment is not euthanasia, even if the result is death. To provide medication to relieve pain and suffering is not euthanasia, even if the effect of the medication is to shorten life.

The Current Law in Canada

Currently, in Canada, euthanasia is considered an act of murder, regardless of whether or not the deceased person gave consent. Assessments concerning quality of life or degree of pain and suffering the individual is experiencing are also immaterial from a legal perspective, though these variables may be considered in determining sentencing if a case goes to trial. The three relevant sections of the Criminal Code are 14, 222 and 241.

Section 14 (Consent to death) reads:

No person is entitled to have death inflicted on him, and such consent does not affect the criminal responsibility of any person by whom death may be inflicted on the person by whom consent is given.

Section 222 (Homicide) reads:

(1) A person commits homicide when, directly or indirectly, by any means, he causes the death of a human being.

(2) Homicide is culpable or not culpable.

(3) Homicide that is not culpable is not an offence.

(4) Culpable homicide is murder or manslaughter or infanticide.

(5) A person commits culpable homicide when he causes the death of a human being,

(*a*) by means of an unlawful act;

(*b*) by criminal negligence;

(*c*) by causing that human being, by threats or fear of violence or by deception, to do anything that causes his death; or

(*d*) by wilfully frightening that human being, in the case of a child or sick person.

(6) Notwithstanding anything in this section, a person does not commit homicide within the meaning of this Act by reason only that he causes the death of a human being by procuring, by false evidence, the conviction and death of that human being by sentence of the law.

Section 241 (Counselling or aiding suicide) reads:

Everyone who (a) counsels a person to commit suicide, or (b) aids or abets a person to commit suicide, whether suicide ensues or not, is guilty of an indictable offence and liable for a term of imprisonment not exceeding fourteen years.

In recent years there have been a number of highly publicized legal challenges to the law against euthanasia and assisted suicide. Each challenge to the law heightens the pressure on Parliament to change the law. Advocates in favour of euthanasia and assisted suicide are stepping up the pressure to have Parliament revisit this issue, despite the fact that as recently as June 2000, a subcommittee of the Standing Senate Committee on Social Affairs, Science and Technology, upheld the recommendation of the 1995 report of the Special Senate Committee on Euthanasia and Assisted Suicide that euthanasia and assisted suicide remain criminal offences. The 2000 Report also strongly endorsed a greater emphasis on high quality palliative care and called for national palliative care standards in order to alleviate, as much as possible, pressures on individuals afflicted with debilitating diseases and conditions, and their families.

The Global Response

Switzerland has permitted assisted suicide since 1942, provided the motive is altruistic and not selfish. More recently, in 1984, the Netherlands legalized euthanasia and assisted suicide, under certain conditions. In 1991, the Remmelink Report, the first official government study of the practice of Dutch euthanasia, was released. This report reveals a disturbing trend. It notes that "to a large degree, doctors have taken over end-of-life decision making regarding euthanasia… [and] despite long-standing, court-approved euthanasia guidelines developed to protect patients, abuse has become an accepted norm." This report concludes that:

8,100 patients died as a result of doctors deliberately giving them overdoses of pain medication, not for the primary purpose of controlling pain, but to hasten the patient's death. In 61% of these cases (4,941 patients), the intentional overdose was given *without the patient's consent.* Dutch physicians deliberately and intentionally ended the lives of 11,840 people by lethal overdoses or injections--a figure which accounts for 9.1% of the annual overall death rate of 130,000 per year. The majority of all euthanasia deaths in Holland are *involuntary deaths*.

Despite these results, the Dutch government is apparently in the process of further expanding its euthanasia policy.

In the United States, Oregon legalized physician assisted suicide by lethal injection in 1997 (and remains the only state thus far to have done so). The only other country to legalize euthanasia or assisted suicide thus far is Belgium, where legislation was passed in 2002.

Canada's Response as Part of a Global Community

As with other ethical and moral issues, decisions made in Canada will impact the global community. We tend to think in cultural context. For many Canadians, the faces we associate with this discussion are people "like us" for whom life has become burdensome or even unbearable due to medical circumstances. The term "death with dignity" has been used to persuade the public that in some cases, actively and deliberately hastening death is a compassionate response to pain and suffering. However, we must look beyond our own cultural borders and consider how this principle might be applied in other cultural and political contexts.

What might "death with dignity" mean for the anticipated 25 million AIDS orphans who are expected to be living among us by 2010? What of those millions of people worldwide who are afflicted with diseases for which they cannot afford medical treatment? Will they even need to be persuaded, or will a medical practitioner make that decision for them? What of the one billion plus people living in extreme poverty around the globe? In general terms, can people who have not been privileged to "live with dignity" be persuaded that "death with dignity" is a viable option? If we agree, in principle, that there are occasions when life seems not worth living due to circumstances beyond one's control, what are we saying to the physically, politically, economically and socially marginalized peoples around the world?

In Canadian society, we have celebrated and perhaps elevated individual rights and freedoms without adequate consideration of the implications for the broader community. The euthanasia debate draws attention to the ideological question of how a society cares for its vulnerable and maybe even more fundamentally, the contribution the vulnerable make to the integrity of the whole. That is, while we may talk about one's right to die, does this beg the question of exercising a right to die at the expense of the broader community's investment in protecting the lives of its most vulnerable members? Is a community ultimately stronger if it weeds out the weak, or if it learns to value and protect them and care for them?

Jean Vanier, founder of L'Arche, an international organisation that creates communities where people with developmental disabilities and those who assist them share life together, says:

Living in community I discovered who I was. I discovered also that the truth will set me free, and so there's the gradual realization about what it means to be human. To be human is that capacity to love which is the phenomenal reality that we can give life to people; we can transform people by our attentiveness, by our love, and they can transform us. It is a whole question of giving life and receiving life, but also to discover how broken we are.

Through his intimate association with people whom society had often labeled as disabled, and discarded to the care of institutions, Jean Vanier discovered that being human is not so much about being the best or rising to the top, as it is about living in the give and take of community. Similarly, euthanasia or assisted suicide are not so much about ending the lives of the weak as they are about depriving the community of the privilege of caring for the weak and learning from them to the very end. In a sense this kind of care flies in the face of our cultural obsession with individualism and self-sufficiency.

A Christian Response

As Christians, we are committed to an a priori assumption that life is intrinsically valuable and even sacred or of divine origin. We are also committed to the principle of compassion in the face of human suffering. There are occasionally instances when the tension between these two commitments is difficult to balance. However, we believe that the current protections in the Criminal Code should be maintained so that all instances of euthanasia and assisted suicide continue to be seen as criminal offenses. Any watering down of these protections – whether directly through legislative change or indirectly through judicial interpretation - will inevitably lead to a fundamental change in the practice of medicine in our society and the parameters within which family members make decisions in the midst of difficult medical circumstances.

If cultural interpretations concerning "quality of life" are detached from a general respect for life, there is a real danger that physically and socially marginalized members of society will be at increased risk. An over zealous understanding of individual rights may result in the collective loss of rights for those on the fringes of social acceptability. If euthanasia and assisted suicide become legal options, who makes the decision as to who has an adequate quality of life to justify the expense of ongoing medical care? Will the practice of euthanasia and assisted suicide gradually become the subtle means of politely eliminating (or at least reducing the number of) individuals who are unable to make a tangible contribution to society?

While there may be some concern for those who must suffer "unendurable pain", advances in medical technology have greatly improved pain management protocols. Calls for the legalization of euthanasia and assisted suicide seem to be based primarily on quality of life concerns. We believe that the current legislation achieves an appropriate balance insofar as it does not prohibit the withholding of treatments or the use of levels of pain medication which may indirectly serve to hasten the death of a terminally ill patient. Opening the door to the legalization of interventions which will directly cause death would represent a dramatic and unwise shift.