

DEDICATION: JOE AVARY - NOTED AND RENOWNED CONSTITUTIONAL LAWYER - DIED ON MONDAY (DEC. 07,2020). WORKING FROM A WHEELCHAIR, JOE IS CREDITED FOR THE SUPREME COURT RULING (CARTER, 2015) THAT RESULTED IN THE EVENTUAL CREATION OF MAiD. AT THE TIME OF ITS PASSAGE (JUNE, 2016) HE SAID, "... *THE PROPOSED LEGISLATION "GUTS THE CARTER RULING ... THE VERY ORGANIZATIONS THAT WERE FRONT AND CENTRE IN THE CARTER CASE, AND WHOSE VERY SAME ARGUMENTS WERE REPEATED TO THIS GOVERNMENT, AND NOW, ACCEPTED BY THE GOVERNMENT AND INCLUDED IN THIS BILL ... WERE COMPLETELY AND CATEGORICALLY REJECTED BY THE SUPREME COURT OF CANADA."* JOE WAS ASHAMED AND EMBARRASSED. HE WOULD NEVER VOTE FOR THE BILL (C-14).

NOT MUCH HAS CHANGED ...

LET'S GET REAL WITH BILL C-7 (and its nay-sayers)!

By: Ron Posno, B.A., M.Ed., Ed.D. *

* (see end for more detail)

It's time! For more than a month the general public has been subjected to a steady barrage of mostly negative opinion about Medical Assistance in Dying (MAiD). Prompted by passage review of the proposed Bill C-7 - an Act to amend MAiD, so-called experts have paraded their negative views on television, radio and the print press. Patience is esteemed as a good quality, but mine is exhausted. It's time to add some reality.

MAiD was derived in 2016 as a consequence to a directive from the Supreme Court of Canada (*Carter, 2015*) to the Government of Canada to change Federal Laws within twelve months because:

- the existing Canadian Criminal Code prohibitions on voluntary euthanasia (section 14) and assisted suicide (section 241(b)) **violate the Canadian Charter of Rights and Freedoms;**
- the new law should permit physician assisted death for a competent adult person who (1) clearly consents to the termination of life; and (2) has a grievous medical condition (including an illness, disease, or disability) that is irremediable (cannot be alleviated by means acceptable to the individual) and **causes enduring suffering that is intolerable to the individual in the circumstances of his or her condition.**

That's real ... and for most ordinary Canadians - it's understandable.

However, for a variety of reasons, the change of law took sixteen months (not twelve) and MAiD was eventually passed into law on June 16, 2016. What promised to be the most significant change of health law since the passage of the *Health Services Act* in 1968, became a failure in design (*my words*). MAiD did not meet the directives of the Supreme Court of Canada and within year and a half, three cases were brought to three provincial courts across Canada (BC, ON, QC) all premised on these failures. Sue Rodriguez and Kay Carter - experiencing ALS and Spinal Stenosis respectively ... and undisputedly the progenitors of MAiD - would have been declined access to MAiD.

It's one of these failures that brought us Bill C-7. In September, 2019 the Quebec Superior Court (*Truchon & Gladu*) ruled in favour of the plaintiffs declaring MAiD as unconstitutional and directing the Federal Government to change MAiD accordingly - within six months. In October, we undertook a federal election. The Prime Minister changed his mind: he promised to not fight the Quebec ruling in Court. He'd accept the Quebec Court's ruling ... and, in addition, he'd consider other short-comings of MAiD.

Short of time (again), the Honourable Justice Minister Lametti ordered a survey of all Canadians during the last two weeks of January of this year and undertook a round of 13 provincial/territorial meetings. In spite of terrible wording, more 322,000 Canadians responded to the survey in the allowed two weeks (normal surveys usually attract 2000-2200 respondents.) This one jammed the system, which was plugged on the second Tuesday. During the same period, Leger conducted a poll indicating that **87% of all Canadians wanted better access to MAiD**. I mention this, because the preponderance of nay-sayers over the past month have only been speaking for about 15% of the population. Most people want something constructive - easing access to MAiD by removing so many of the contrived limitations.

NAY-SAYERS: Right now, the nay-sayers have the floor. Who is going to speak of reality for the majority: who is speaking of the real agonies of suffering Canadians in need of the promise of the Supreme Court Ruing (2015)? There are more *Truchons & Gladus*: far too many people “**enduring suffering that is intolerable to the individual in the circumstances of his or her condition.**”

RIGHTEOUS MORALISTS: Here are some of the nay-sayers. Right at the beginning of the line, there are ‘righteous moralists’ - those same people that condemn abortion as “against God’s will.” They tout that any form of modern secularism is a sin. I refuse to argue and according to our Charter of Rights and Freedoms, righteous moralists can say what they believe, but they *cannot impose their beliefs upon others*. MAiD offers choice: the moralists have no right to remove choice.

PROTECTIONISTS: Then we have the ‘protectionists’ - people determined to protect and safeguard the weak, the disabled, people with dementia, those with mental disorders and the minors under 18. The former Minister of Justice, the Honourable Jody Wilson-Raybould - upon learning of the early MAiD death of Audrey Fisher - tossed over her shoulder on the way-out of the press conference... “*we must protect the vulnerable.*” Well, former Minister Wilson-Raybould, I’ve had dementia for almost five years and I’m not vulnerable (yet). Neither was Ronnie Reagan when he became President. Later ... ‘yes,’ but he had almost eight years as President before his judgment became questionable. How about Michael J. Fox - still respected and honoured after his years of struggle with Parkinson’s and dementia? I could go on - there are many examples. Reality is that most people diagnosed with dementia have years to go before they become “vulnerable.”

ABLEISTS: We’ve had to endure other ‘protectionists’ - people who should know better presenting themselves as protectors and spokes persons for the disabled - those with a variety of physical disabilities. They say that MAiD is “ableist.” The Oxford Dictionary says, “*ableism*” is “*discrimination against disabled people.*” Well, MAiD is not ableist - the protectionists are. MAiD does not discriminate. The Supreme Court (*Carter, 2015*) permits everybody - even people with a disability. The ‘protectionists’ of the disabled want discrimination: they want people with disabilities to be disallowed any consideration of MAiD. To be “not allowed” is discrimination.

These protectionists of the disabled have ‘fallen into their own trap.’ They speak so often (and quite rightly) of the need to provide for the rights of the disabled, they assumed that MAiD providers will ‘feel sorry’ and permit an easy death just because they(the providers) see a disabled person. Not so, MAiD providers don’t see the disability, they’re looking for “enduring pain and incurable agony.” Rick Hansen may not be looking for MAiD anytime soon, and there are many others ... Para-Olympians, hockey players, blind people creating ingenious digital games, many people with a variety of physical disabilities - who may never look for MAiD. But, if they should choose, their application will be based upon the needs as specified by the Supreme Court - not because they have a disability. Joe Arvay - possibly Canada’s greatest constitutional lawyer - just died the other day. Joe was disabled and led the charge, from his wheelchair, on behalf of Kay Carter in 2015. He is credited with winning her case, and subsequently, creating MAiD. He, surely, would have much to say to these so-called protectors of the disabled, who are trying to deny people with disabilities their rights to choose.

MENTAL DISORDER: Mental Illness (or Mental Disorder as preferred by the professional servers) has also attracted negativism. And like physical disabilities, most of what we’ve heard is presented by “ableists.” These are people so confined to consideration of the ‘negatives of mental disorders’ they advocate limitations on those who are so afflicted with some sort of disorder. That’s ableism: that’s

absolute discrimination: that's wrong! The Canadian Association of Psychiatrists and Psychologists is clear. People with mental disorders may reach a limit of available treatments (consultation, drugs, surgical intervention). Such determination of limitation is a patient decision (possibly supported by professional consultation). With such a decision, people with mental disorders should be entitled to all their rights - including access to MAiD. Just one final word. Those 'outers' who shout so loud in denying rights for those with mental disorders are not only displaying ignorance, they are displaying personal fears.

PALLIATIVISTS: Surprisingly, a few of the loudest 'outs' are claimed by some palliative care providers. According to the Oxford Dictionary ... *"to palliate means to relieve or lessen **without curing.**"* Palliative care is a wonderful support, but unfortunately there is a definitive end - death. Some people - knowing that death is a reality - will choose MAiD as a better alternative. They don't want their life reduced to an artificial, extended period of drugged existence. They prefer a painless, dignified ending of their own choosing.. More than half of the palliative care practitioners understand this and are willing to provide MAiD, but most of the providers - hospices and hospitals - are funded and operated by religious organizations. Maybe provincial/federal funding should follow the law-of-the-land? Why can't MAiD be accepted as just part of options for palliative care? Why can't the patient choose?

MINORS: The last exemption to MAiD is a choice for minors under the age of 18 years. Not much has been said because it is so difficult to consider. I have worked many years with such minors experiencing very severe disorders - right from birth. Sometimes the disorders can be discerned before birth and abortion can be considered. Again, it's a choice. But there are many whose disorders must be addressed right from the beginnings of their painful existence. Their lives are a constant struggle - requiring complete care and nurture. Often, it's constant pain. Let me provide one, real example ...

... Tracey Latimer, was born with physician-caused brain damage in 1980. Limited to the mental capacity of a three year old, her brain defects carried her into severe cerebral palsy, epilepsy and a series of painful complications. By 1993, the best the doctors could offer was to initiate a series of operations removing her limbs one at a time. Her mother, exhausted from hearing her daughter's never ending cries for help - all day and night, finally fled the farm with her other children. Tracey was left with her father - Robert. Her father, seeing no future excepting more pain, put Tracey into his truck in the garage and let carbon monoxide take over. Finally Tracey died, without pain. See the following ...

... <https://ethics-euthanasia.ca/case-study-robert-latimer/>

What happened to Tracey, her father, and her family might not have happened if they had access to a better MAiD. But, they were too early - the Supreme Court Ruling (Carter) happened in 2015. Today, we have other minors enduring pain and agony that may never be cured. Let's not deny them and their families a legitimate choice. Maybe the Supreme Court of today would permit such a choice.

CCA ABLEISTS: One more example of ableism: the Canadian Council of Academies (CCA) was initially employed by the government in 2016 to provide recommendations for the law that became MAiD. Later (under contract) in December, 2018, they provided a large compendium of problems that may be associated or expected with MAiD. *(Please note: the government specified problems - not solutions.)* Because MAiD was new, CCA was permitted to study data from other jurisdictions like the Netherlands and Belgium where similar law permitting assisted dying had been in effect for 20+ years. Consequently, the 244 pages of problems were from other places. Our's were conjectured and hypothetical. Canada's limited reality was not studied. Unfortunately, some of these "academics" are promoting their own hypotheses as protections and safeguards. MAiD became "protectionist" claiming that people should be denied their access to MAiD because social welfare and other support programmes have failed. They go so far as to insert "independent witnesses" into the process because family members may be motivated to "get rid of the patient." **The Supreme Court of Canada's ruling (Carter, 2015) was pointed at law respecting medical practice - not social welfare nor hypothetical protections.** Let's get MAiD back to the reality of medical practice and let the other concerns be dealt with in more appropriate arenas.

CONCLUSION: I am finished with the nay-sayers. I want C-7 ... then a complete review of MAiD - primarily conducted by the 'users' and 'doers' of MAiD. The 'users' are people like me: people facing a future of "enduring pain and agony." We have many with dementia, mental disorder(s), physical disabilities ... and all their care providers including those supporting and caring for minors. They are real and they know. Contemplating MAiD is not easy - and they are experiencing it all. The 'doers' are the professional providers of MAiD. They are physicians, nurses and nurse practitioners. They have created their own professional organization to share and learn from each other. That organization is - the Canadian Association of MAiD Assessors and Providers (CAMAP). They're able and ready to help. MAiD needs help. In the words of Jean Truchon, let's give us "a ray of hope."

That's our reality.

IT'S OUR CHOICE.

** Background: Dr. Ron Posno is almost 81 years of age and was assessed with Minor Cognitive Impairments four and a half years ago. He was a teacher, consultant, school superintendent - specializing in those with special needs. Nationally recognized for his leadership in developing curricula based upon "can do" philosophies, he went on to lecture and teach in thirteen different universities and colleges across Canada and the U.S.A. Now, he advocates for people with dementia and a better MAiD.*

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