



A Doctor's Dilemma: Doctor's Rights and Physician-Assisted-Suicide in Canada

October 28, 2014 – Not unlike the debate currently going on before the Supreme Court of Canada surrounding physician assisted suicide, we have seen and heard public outcry and resistance to changes in laws governing social and moral issues before. Decriminalising homosexuality, legalising abortion and even divorce laws in Québec and Newfoundland in the 1950s to name a few.

Last week, the Supreme Court of Canada revisited the matter when it began hearing an appeal brought by the B.C. Civil Liberties Association. The Association, along with two British Columbia families, is arguing that the current law violates the rights of terminally ill Canadians. If public opinion polls are any indication, it would seem that the majority of Canadians and Canadian health professionals agree. According to a 2014 Dying with Dignity Ipsos-Reid survey, 84% of Canadians and 85% of Canadian health professionals support the legalization of assisted dying.

From a legal perspective, there are many sides to this issue. At the core of the current debate is the concern that should physician-assisted suicide becomes legal, it may be abused by weary and overwhelmed caregivers who are responsible for the disabled or elderly. That concern however can be addressed by fashioning a law that only allows physician-assisted suicide for people who are of sound mind, if not sound body. While it is likely that some will argue this is unfair to disabled people who are truly suffering – Robert Latimer, the Canadian farmer who was convicted of second-degree murder in the 1993 “compassionate homicide” of his severely disabled daughter Tracy comes to mind –we have to face the reality that there are hard choice to make.

Another concern is that physicians will be placed in a compromising position, asked to administer end-of-life-care that goes against their moral, religious or ethical beliefs. If physician-assisted-suicide becomes the law, will doctors who

refuse to carry it out get in trouble? This is a legitimate concern; if the law is changed, physicians must be given a choice as to whether or not they will practice assisted suicide. In all likelihood there will be a limited number of physicians who actually offer the service, and, just as doctors who prescribe methadone are specifically registered to do so through their governing bodies, likely similar regulations will be imposed on physicians who do elect to practice assisted suicide.

Even if a physician does choose to assist those in his or her care with suicide, there is still the very real possibility that surviving family members will bring suit against that doctor. Family members who don't agree with assisted dying and who put their own interests and agendas ahead of a terminally ill loved one could foreseeably seek restitution by suing the physician who honoured their loved one's wishes. For that reason, in the event physician-assisted-suicide becomes legal, there needs to be a corresponding immunity protecting doctors who have acted in good faith and that prevents family members from suing them.

The overarching legal issue currently on the table is the question of whether the law should be used to prevent activities that were once, but perhaps are no longer, deemed socially undesirable, such as abortion, homosexuality and divorce. As the Supreme Court of Canada, and, for that matter, Canadians in general, considers the law regarding physician-assisted-suicide, it is essential to remember that the law must keep pace with society itself. If it does not, it is in danger of becoming irrelevant and disrespected.