Analysis of Bill C-7 on Assisted Suicide

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Summary of Bill C-7

Bill C-7 proposes significant changes to laws regulating assisted suicide and euthanasia.

Bill C-7 would allow assisted death for Canadians who are not dying, by removing the requirement that a person's death must be "reasonably foreseeable" in order to be eligible for assisted suicide and euthanasia. The bill establishes two streams of eligibility: those whose natural death is foreseeable, and those whose natural death is not foreseeable.

For those whose death is reasonably foreseeable, Bill C-7 would remove some key safeguards that were established in 2016, such as a 10-day reflection period between the request and the hastened death, and the requirement that a person is able to consent at the time of the hastened death. The bill also sets additional conditions for hastened death for those who are not dying.

Finally, the bill specifies that mental illness alone cannot make someone eligible for assisted death.

History and context of assisted suicide and euthanasia in Canada

In 2016 the federal government legalized assisted suicide and euthanasia in Canada. In the legislation these practices were grouped together under the sanitized term "Medical Assistance in Dying" or MAID. Just four years later, the federal government is moving quickly to make watershed changes to the law on hastened death. The Justice Minister introduced Bill C-7 on February 24, 2020, and debate is already underway.

From the start, the EFC has been opposed to legalizing assisted suicide and euthanasia. We have consistently argued that such legalization fails to recognize the sanctity of life and that all people are created and loved by God in whose image they are made. Moreover, euthanasia and assisted suicide put the most vulnerable people at risk. People who are elderly or living with serious illness or disability are among those who would be under undue pressure to accept euthanasia or assisted suicide. Hastened death is portrayed as a means to end suffering and reduce a burden of care on family and friends.

We argued that if the government was going to take this step, it must put in place the strictest possible safeguards and guidelines to carefully limit who is eligible for euthanasia or assisted

suicide, and to offer protection for those who are vulnerable to abuse under a system of legalized euthanasia and assisted suicide.

In the fall of 2019, a lower court in Quebec (*i.e.*, the *Truchon* decision) ruled it unconstitutional to require that a person's natural death be "reasonably foreseeable." Neither the federal government nor Quebec government appealed the decision. The decision was set to take effect in Quebec as of March 11, 2020, but the judge has granted the federal government until July 11 to respond.

The bill is being rushed through Parliament as a response to the *Truchon* decision. However, we and others believe there are significant and grave implications to expanding access to persons who aren't dying.

Further, Bill C-7 includes changes that are not addressed in the *Truchon* decision. If the government feels there is need for an expedited process, then these elements should be removed so that they can be considered more carefully. In fact, we believe that Parliament should pass a different end of life requirement to replace "reasonably foreseeable." If there is concern that an end of life requirement in itself is unconstitutional, the government could ask for a Supreme Court reference on the matter. This change is significant enough to warrant the utmost caution and care.

Bill C-7 proposes fundamental changes in how we understand life and medicine. Parliament must proceed cautiously. We are urging Parliament to slow down consideration of this bill and ensure these watershed changes receive the time and attention needed for careful study.

We note three major changes proposed by Bill C-7 below, with our analysis following in italics.

1. Removing the end of life requirement

To be eligible for euthanasia and assisted suicide, an individual must have a "grievous and irremediable medical condition." In the 2016 law one of the criteria for having a grievous and irremediable medical condition was that the person's natural death was "reasonably foreseeable."

Bill C-7 still requires that a person have a grievous and irremediable medical condition to be eligible for assisted suicide or euthanasia, but it removes the criterion that a person's natural death must be reasonably foreseeable.

This is a watershed change. The 2016 law (Bill C-14) was conceived as being for people who were suffering in the last stages of life, but now it will be made broadly available to people who are not dying.

This change means that people with chronic illnesses or disabilities who are not dying would be eligible to have their lives ended. Persons living with disability would be exempt from the

protections offered to other Canadians, solely on the basis of disability. Disability advocates have asked for this change not to be made, expressing serious concern that it will pressure people with disabilities to end their lives and put them at risk in a regime that accepts that certain lives can be ended, particularly in an overburdened medical system.

As Professor Catherine Frazee has said, "To reinvent MAID so that it is no longer an alternative to a painful death, but for some, instead, an alternative to a painful life, is to embrace uncritically the notion that suffering associated with disability is a burden greater than death."

The government can and should re-enact an end-of-life criterion for medical assistance in dying. This is a matter of equal protection, otherwise the law distinguishes between those who have a disability or chronic illnesses and those who do not. People will be treated differently depending on whether or not they have a disability or serious illness. This is discrimination on the basis of disability and violates the equality rights of Canadians with disabilities.

This change was prompted by the decision of one judge and the decision was not tested by higher courts. Parliament should introduce an alternative end of life requirement for this legislation. If there is concern about the constitutionality of an alternative, it could be tested by asking the Supreme Court to review the constitutionality of the alternative end of life provision.

2. Fewer safeguards for people whose death is foreseeable

Bill C-7 not only removes the reasonably foreseeable criterion, it also goes further and includes changes not suggested or required by the court.

Bill C-7 removes the following safeguards for people whose "natural death is foreseeable":

The 10-day reflection period between asking for and receiving assisted death would be removed. The *Criminal Code* currently requires 10 clear days as a reflection period and allows the reflection period to be waived if the medical practitioners believe that the person is likely to lose their capacity to consent or if their death seems imminent. This bill proposes to remove a reflection period altogether for individuals whose natural death is foreseeable.

This change could allow a person's life to be ended on the same day they make a request. The safeguard is there to ensure a person doesn't make a life-ending decision on a particularly difficult day, but rather gives careful consideration to the question of a hastened death. Arguably, the existing 10-day period is already not sufficient in many cases. This change seems both unnecessary (given the exception allowed in the current law) and dangerous. This important safeguard should remain in place, especially given that 'foreseeable death' is a subjective term without a clearly defined timeframe. In fact, in the Lamb case, it was suggested that 'reasonably foreseeable' could be very widely interpreted by medical practitioners, to include people who may not die for years, if not decades. The exception in the original legislation allows this period to be shortened only under exceptional circumstances.

The requirement that a person is able to consent at the time of the assisted death would also be removed by Bill C-7. A person whose natural death is foreseeable, who is eligible and who knows that they may lose capacity to consent would be able to arrange in writing with their medical practitioner to receive euthanasia or assisted suicide on a specified day, even if they will have lost the capacity to consent at the time of death. The bill specifies that the medical practitioner will not administer a substance to cause the person's death if the person demonstrates "by words, sounds or gestures, refusal to have the substance administered or resistance to its administration."

The requirement that a person be able to consent at the time of assisted death is a crucial safeguard to prevent wrongful death. It is also important because people often change their minds. Removal of this safeguard creates a significantly greater role for and responsibility by medical practitioners, requiring them to make decisions about patient communications that have subjective elements, such as determining whether the patient is communicating a refusal or making involuntary movements or gestures.

C-7 offers very few rules or guidelines as to how a medical or nurse practitioner and their patient would form and execute a 'waiver of final consent.' For example, there is no requirement for an independent witness to the written agreement or for confirmation of the assessment of the risk of capacity loss by another medical practitioner.

The safeguard of being able to give final consent at the time of assisted death is crucial and should remain in place. Bill C-7 should be amended to maintain this safeguard, by removing the waiver of final consent.

If the government wishes to address exceptional circumstances in which it would not require final consent, rather than remove this safeguard for all patients, the government might consider alternatives, such as creating a tightly-worded exception that is subject to strict rules and clear guidelines, to be applied under specific circumstances. It is not an appropriate and proportionate response to remove this key safeguard from all patients whose deaths are reasonably foreseeable, as a way to respond to exceptional circumstances. Given the significant step of ending a person's life without their consent at the time, this is a minimum safeguard.

Only one independent witness to the person's request for MAID would be required, rather than two, as is currently required. Further, the witness may be the person's paid health care provider.

One of the functions of independent witnesses is to ensure that the decision for assisted suicide or euthanasia is a free, unforced decision. Reducing the number and independence of witnesses reduces this protection.

Under Bill C-7, the single witness can be a paid health care provider. Again, this puts significantly increased responsibility upon a health care provider who otherwise has been tasked

with a person's care. Disability advocates are concerned that this would increase the potential for abuse of a person with disabilities by their paid health care provider. The government must ensure that no one is rushed or pressured towards ending their lives, and that the process for hastened death has strict safeguards that are scrupulously enforced to best prevent abuse or wrongful death.

The safeguards in the current legislation need to be maintained and strengthened, not removed.

3. A second stream of accessibility for those whose natural death is not foreseeable

Bill C-7 would allow assisted death for people who are not dying. It removes the requirement that a person's natural death must be reasonably foreseeable in order to be eligible for assisted suicide or euthanasia.

Under the new legislation, the person must meet existing eligibility criteria, for example, they must be 18 years or older with a grievous and irremediable medical condition (defined as: a serious and incurable illness, disease or disability; in an advanced state or irreversible decline in capability; and enduring physical or psychological suffering that the person find intolerable and that cannot be relieved in a way they find acceptable), but they would no longer have to be dying or have a terminal illness to be eligible for hastened death.

Whether a patient's death is deemed to be foreseeable or not seems left to the arbitrary determination of the medical practitioner or nurse practitioner assessing the patient. The legislation offers no clear criteria or guidance for doctors in making such a determination.

The bill proposes some additional safeguards that must be met before a person who is not dying can receive assisted suicide or euthanasia:

- One of the two medical or nurse practitioners who provide a written opinion that the person meets all of the criteria must have expertise in the condition that is causing the person's suffering.

- The person must be informed of the means available to relieve their suffering (including, where appropriate, counselling services, mental health and disability support services, community services and palliative care) and be offered consultations with professionals who provide those services or care.

For those who aren't dying, Bill C-7 says they must be informed of options and treatments to relieve their suffering, but the reality is that access to palliative care, mental health care, support and care for those living with disability are not readily available. Unlike other jurisdictions that have legalized assisted death, Canadian patients don't have to TRY those things, they only need to be INFORMED of them. Further, many of these forms of care and

support are not adequately available across Canada. What if the discussion of means available to relieve the person's suffering is to simply state that there are no means available? It should be unthinkable that a patient would choose assisted death because the supports and care required to live are not readily available.

It should not be easier to obtain an assisted death in Canada than it is to obtain good quality palliative care, mental health care or other needed medical or social supports.

- The person must have discussed reasonable and available means to relieve their suffering with the medical or nurse practitioners who confirmed they are eligible for assisted suicide or euthanasia, and they must agree that the person has given serious consideration to those means.

This safeguard should be required for those whose death is foreseeable, as well. The requirement of information and the assurance of careful consideration to be offered to patients in that situation are much weaker. We believe all patients should have the benefit of extensive information about options and careful consideration with their medical practitioner. This is particularly important since it is possible for the time frame of reasonably foreseeable to be lengthy.

- There will be a waiting period of 90 days from the first assessment for MAID until the day MAID is provided, unless the two medical or nurse practitioners who found the person eligible for MAID both believe the person is likely to imminently lose the capacity to consent, in which case Bill C-7 allows for any shorter period of time the practitioner considers to be appropriate.

It is deeply problematic that we would proceed with expanding access to hastened death when as a nation we've not addressed the lack of widely accessible, quality palliative care, mental health care and supports, or supports to those living with disability. It is also unclear how expanding access to medical assistance in dying is compatible with other attempts to succeed at suicide prevention. These two approaches simply seem contradictory.

What's missing from Bill C-7?

In addition to our deep concerns about changes made in Bill C-7, as noted above, there are at least two things we believe are missing from the proposed legislation.

First, Bill C-7 does not address situations where a person has an illness or disability with concurrent mental illness. This bill should add additional safeguards to protect patients who may also have mental health issues, such as mental health assessments and ensuring awareness and consideration of treatment options for all patients.

Second, Bill C-7 should establish specific conscience protection for medical practitioners so that no one is compelled to provide or participate in euthanasia or assisted suicide against their conscientious objections or deeply held beliefs. It should also specify that institutions will not be compelled to provide MAID or allow it to be carried out on their premises

Conclusion

Given the fast pace at which this bill is moving through Parliament, it is important to contact Members of Parliament to ask for the process to be slowed down and for changes to be made to the legislation. This bill proposes watershed changes which must be carefully studied and their impact considered.

The EFC believes Bill C-7 must be amended so that it does not expand euthanasia to those who are not dying, nor remove crucial safeguards.

Please take a few minutes to communicate with your MP. Although MPs from many parties support the expansion of euthanasia and assisted suicide, which the government calls medical assistance in dying (MAID), if they hear concerns from their constituents, they will be more likely to pause and consider these views.

A phone call or email to an MP's office takes little time but has a big impact. It tells MPs that people care about this issue.

You can find your MP's name and contact information online at www.ourcommons.ca/members/en/search.

When you call or write, share these three key concerns:

1. Parliament is moving too fast to pass Bill C-7 and must slow down to study its impact more carefully.
2. Euthanasia must not be expanded to people who are not dying. Listen to the serious concerns of the disability community who will be affected.
3. Don't remove critical safeguards like the 10-day reflection period or the ability to consent at the time of death.

And please continue to pray for hearts and minds to be changed, and for the lives of vulnerable Canadians to be protected.

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