

No Age Limits for Assisted Suicide?

A nationwide government advisory group is making a serious mistake

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By Julia Beazley, Director of Public Policy, The Evangelical Fellowship of Canada

We don't allow children to drive, vote or drink alcohol before certain legal ages, not because we want to arbitrarily restrict the actions of young

people, but because it has long been accepted that there are developmental considerations to our ability to handle certain responsibilities.

Yes, much of the human brain is fully developed by the time we reach the age of 12. Certainly, the "feeling brain," the part responsible for emotions, urges and impulses is not only fully functional by that age, but quite dominant.

But the so-called executive control centre of the brain, the pre-frontal cortex, doesn't fully mature until we are in our early twenties. This is the part of the brain that understands and evaluates consequences, and moderates emotions and impulses.

My son will be 12 in a few months. He is incredibly bright, funny and insightful, and, in certain ways, more mature than many others his age. He understands and looks at the world around him in a way that prompted his Grade Five teacher to describe him as a 40-year old in an 11-year old body. I suppose that could qualify him as a "mature minor?"

But he can also, like any child or teenager, be utterly ruled by his emotions at times – whether good or bad. He can be impulsive or lack judgment. He sometimes makes choices without fully considering the consequences. And this is all perfectly, developmentally normal.

And so our laws say that until he is less moderated by things like emotion and impulse, until he is capable of greater responsibility and appreciation of consequence, he can't drive a car. He can't buy cigarettes or consume alcohol. And he can't vote (as much as he would like to).

What decision is of greater consequence than the decision to end one's life?

The Provincial-Territorial Expert Advisory Group on Physician-Assisted Dying has released its' recommendations. Many of these recommendations are very troubling, as they go far beyond what the Court prescribed in its ruling in the *Carter* case, and far beyond what has been recommended by the Canadian Medical Association.

Particularly troubling is the recommendation that there be no "arbitrary" age limits set on physician-assisted death.

In its ruling, the Supreme Court said that physician-assisted death should be allowed for a "competent

adult person who (1) clearly consents to the termination of life and (2) has a grievous and irremediable medical condition (including an illness, disease or disability) that causes enduring suffering that is intolerable to the individual in the circumstances of his or her condition.”

The Advisory Group disagrees, recommending that “access to physician-assisted dying should not be impeded by the imposition of arbitrary age limits.” They suggest the federal government “make it clear in its changes to the *Criminal Code* that eligibility for physician-assisted dying is to be based on competence rather than age.” As reported in the National Post, at least one of the Advisory Group’s members has suggested that a patient as young as 12 could be deemed competent.

When taken together with their recommendation for how the terms “grievous and irremediable medical condition” be handled, the picture becomes even more alarming.

The Advisory Group suggests that “grievous and irremediable medical condition” should be defined as a very severe or serious illness, disease or disability that cannot be alleviated by any means acceptable to the patient.

But what if that patient is a 12-year old child with severe anxiety, depression or a disability that cannot be alleviated by any means acceptable to them, at this moment in time? Given what we know about child development, can we really consider age restrictions on requesting assistance in dying to be arbitrary?

Just a few months ago, I participated in a press conference introducing an interfaith Declaration on Euthanasia and Assisted Suicide. During the question and answer period, the prospect of child euthanasia was raised, and the presenting organizations were accused of fear mongering.

Legal age restrictions are not arbitrary. Things like age limits are set in a free and democratic society through institutions like Parliament in order to protect individuals, both from the actions of others and sometimes from their own. Our laws have always affirmed that children are among our most vulnerable, and most in need of protection.

If our nation proceeds down the road of decriminalizing euthanasia and assisted suicide, let’s hope the federal government will ensure the greatest protection possible for all who may be vulnerable.

<http://blog.evangelicalfellowship.ca/no-age-limits-for-assisted-suicide/>

Responding to the Supreme Court ruling in the Carter case And its February 2016 deadline

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By Bruce Clemenger, President,
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I was in a meeting the other day when someone argued the Supreme Court's decision to allow assisted suicide in certain circumstances was the "law of the land," and we have no choice but to make it available.

Actually there are several options the Federal Government could pursue in response to the ruling in the *Carter* case.

1. Do nothing

The Federal Government could do nothing and let the February 2016 deadline given by the Supreme Court expire. This would effectively leave it to provinces and territories, and their colleges of physicians, to develop regulations and guidelines to govern the practice.

Some, for example the Quebec government, argue that assisted suicide and euthanasia are an extension of health care and therefore fall under provincial and not federal jurisdiction.

Quebec had planned to begin facilitating what it calls "medical aid in dying" as of December 10, but the Quebec Superior Court has granted an injunction to delay implementation until the February 6 deadline has expired.

To do nothing would mean Canada's Parliament has abrogated its responsibility. The Supreme Court affirmed that Parliament has the power to

legislate on matters that touch on health, citing a previous ruling that the Federal Government has "historic jurisdiction to prohibit medical treatments that are dangerous, or that it perceives as 'socially undesirable behaviour' " ([par. 51](#)). The Supreme Court also maintains that health is an area of "concurrent jurisdiction" ([par. 53](#)).

The reason the Supreme Court put its ruling on hold until the February 2016 deadline was partly to give the Federal Government opportunity to respond. The ruling clearly assumes stringent limits should be put in place to protect vulnerable people, and that Parliament is the proper place to enact these protections.

2. Invoke the Notwithstanding Clause

Another option is to invoke section 33 of the *Charter* – the Notwithstanding Clause – which enables governments to maintain a law the Supreme Court has ruled against. While it would have the immediate effect of retaining the *Criminal Code* prohibitions against assisted suicide, the section would need to be re-invoked every five years.

No federal party has supported this option, and it is unlikely to be invoked unless there is significant public pressure. What is critical is a broad national conversation about the issue and its societal implications. In other jurisdictions that have had meaningful public debates on the issue, public opinion often shifts as people come to understand the broader implications of the practice.

3. Re-assert a ban on assisted suicide

A third option is for the federal government to re-assert its federal objectives in banning assisted suicide. Parliament, perhaps after undertaking a broad and substantive review of the Supreme Court's decision and the issue of assisted suicide, could in legislation re-affirm its desire for a complete ban on assisted suicide and re-assert its objectives for the prohibition against assisted suicide and euthanasia.

In the *Carter* case, Canada identified two objectives for the complete ban: the protection of the vulnerable and the promotion of life.

In their ruling, the Supreme Court focused on the protection of vulnerable persons and expressed the view that stringent guidelines could protect vulnerable people from coercion or abuse. The Court said that to accept the second objective would be to foreordain the outcome of the appeal and pre-empt a complete section 7 analysis of the laws, as it would be difficult to argue that the prohibition was overbroad or disproportionate by that criteria.

If the objective is to promote life, then a ban on assisted suicide is a reasonable legislative response. This second objective was a key reason why Parliament previously maintained the total prohibition.

For many reasons, including protection of the integrity of the health care system and medical

professionals, and to affirm the respect for life of all persons, the EFC argues the prohibition on intentional killing should remain and our laws be unequivocal that killing or assisting in the killing of another is wrong and should not be condoned in Canadian society.

The Federal Government should re-enact or re-assert *Criminal Code* sections 14 and 241(b), making it clear that the blanket prohibition is necessary to not only protect vulnerable persons, but also for the promotion of life, the integrity of our health care system and the *Criminal Code*.

4. Enact harm-minimizing laws

Last, the Federal Government could enact strict legislation to minimize the harm of decriminalization. The Supreme Court felt that a complete ban on assisted suicide was not necessary, agreeing with a lower court that the Federal Government's objective of protecting vulnerable people could be met by "a carefully designed system imposing stringent limits that are scrupulously monitored and enforced" (par. 105).

The Court acknowledged that it could have created a constitutional exemption from the *Criminal Code* provisions for people in specific circumstances, but felt that this would "create uncertainty, undermine the rule of law and usurp Parliament's role" (par. 125). The Court also affirmed that "complex regulatory regimes are better created by Parliament" (par. 125).

Indications are that this is the path the Federal Government will pursue. Yet, based on evidence from other jurisdictions, we know that safeguards will never fully eliminate the risk of abuse. The practice will put vulnerable people at risk, will seriously compromise the integrity of the medical profession and the health care system, and undermine our society's commitment to the

sanctity of human life and our commitment to care for one another.

Before proceeding down this path, the government should explore all its options, beginning with a broad and national consultation. This issue raises profound questions about life and death, about our society's commitment to life and the duty of care we owe to one another, the appropriate limit of medical care and the robustness of our protection of conscience. The Court has ruled, but its ruling should not usurp the public conversation the issue deserves.

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