CANADA'S ASSISTED DYING LAWS

Briefing from Humanists UK, March 2023

Humanists UK

ABOUT HUMANISTS UK

At Humanists UK, we want a tolerant world where rational thinking and kindness prevail. We work to support lasting change for a better society, championing ideas for the one life we have. [Our work helps people be happier and more fulfilled, and by bringing non-religious people together we help them develop their own views and an understanding of the world around them. Founded in 1896, we are trusted to promote humanism by 100,000 members and supporters and over 100 members of the All-Party Parliamentary Humanist Group.

We have long supported attempts to legalise assisted dying in the UK and crown dependencies for those who have made a clear decision, free from coercion, to end their lives and who are physically unable to do so themselves. We support this for people who are of sound mind and are either terminally ill or incurably suffering, and on the basis that there are robust safeguards. Humanists defend the right of each individual to live by their own personal values, and the freedom to make decisions about their own life so long as this does not result in harm to others. We believe it is possible for an assisted dying law to enhance people's freedoms in precisely this way.

We gave written and oral evidence to Jersey's citizens' jury in 2021 and to the UK Parliament's last assisted dying inquiry in 2005. We intervened in support of the claimants in the 2012-14 case *Nicklinson* and all subsequent assisted dying cases in England and Wales, each time being the only organisation to have done so. In 2019 we helped establish the Assisted Dying Coalition, the national coalition working for assisted dying.

CANADA'S ASSISTED DYING LEGISLATION

Recent coverage in UK media and elsewhere has expressed concern about how Canada's assisted dying law is working. We have analysed the various claims in this coverage in order to see if there are real problems and, if so, what can be learned from them.

The facts surrounding some of the cases featured in the coverage are often hard to verify due to doctor/patient confidentiality. This has made our analysis difficult to conduct. It's also always possible that there are situations that have occurred that haven't at all come to light. But what we have found is that many cases have been reported in inaccurate or misleading ways, and in some instances, it appears that the problem of confidentiality has been exploited by religious opponents of assisted dying to enable the propagation of misinformation. Accounting for all this, the result is that we don't believe that anyone has had an assisted death who shouldn't have been able to.

In what follows, we consider each of the reported cases in turn, and also whether Canada's assisted dying law could be improved.

In general, we have found that the safeguards and criteria have enabled clinicians to successfully assess patients to establish whether or not they should be eligible for an assisted death. (Indeed, it is for this reason that Canada's assisted dying law remains very popular among Canadians.) But

there are also areas where we think that if the UK were to have an assisted dying law, different safeguards should be introduced so as to deliver additional assurance of its sound operation.

International context

Firstly, we note that many commentators are discussing apparently concerning cases from Canada without looking at the international context. The global track record of assisted dying safeguards shows that they work extremely well: assisted dying has been legal in Switzerland for over eight decades, and has been legal in the Netherlands, Belgium, and the US state of Oregon for over 20 years. There have also been numerous large-scale, objective studies into the assisted dying legislation in these countries. All of these studies have shown these laws to be both safe and compassionate. It clearly is possible, and indeed it is the norm, for assisted dying laws to allow for choice at the end of life at the same time as protecting vulnerable people through sufficiently robust safeguards.

The role of religious groups in the media

While we understand that there are areas of Canada's assisted dying legislation where lessons can be learned, a sanguine discussion of the facts has been made more difficult by the role of some groups that are opposed to assisted dying for religious reasons. *Christian Today*, Christian Action, Research and Education (CARE), the Alliance Defending Freedom (ADF), Right to Life, and the Christian Institute have published a number of articles about Canada's legislation. In 2019 Dignity in Dying produced a report on the network of anti-choice activists and their alarming (sometimes American and ultra-right wing) sources of funding.

'LifeSiteNews', a Canadian Catholic anti-abortion advocacy website and news publication, has run numerous sensational headlines such as 'Baby boomers are at risk of mass suicide under Canada's euthanasia regime'. LifeSiteNews is banned from several social media platforms for publishing Covid conspiracies. It has heavily criticised a colouring book produced by a Canadian Hospice designed for children that 'provides support and personalized information about advanced illness, palliative care, loss and grief'. This story was picked up on the blogging platform Medium, which ran it with the alarmist headline: 'In Canada, Kids From 6 to 12 Learn the Basics of Euthanasia. The liberal government has created a true killing machine'.

WHAT IS THE CURRENT LEGISLATION IN CANADA?

In order to be eligible for medical assistance in dying, an applicant must:

- Be Canadian
- Be 18 years old and mentally competent
- Have a grievous and irremediable medical condition
- Make a voluntary request that is not the result of outside pressure or influence
- Give informed consent

To be considered as having a grievous and irremediable medical condition, they must:

- Have a serious illness, disease, or disability (excluding a mental illness)
- Be in an advanced state of decline that cannot be reversed
- Experience unbearable physical or mental suffering from their illness that cannot be relieved under conditions that they consider acceptable

They do not need to have a fatal or terminal condition to be eligible.

Any request for an assisted death must be:

- made in writing
- signed by an independent witness
- assessed by two independent practitioners.

In this sense, independent means they:

- Do not hold a position of authority over the applicant or the other assessor
- Could not knowingly benefit from the applicant's death
- Are not connected to the applicant or the other assessor

In 2021, the average age of a person having an assisted death was 76. 80% had received palliative care and 65% had cancer.

LOOKING IN DEPTH AT REPORTED CASES

Can 'anyone' apply for an assisted death in Canada?

Yes, anyone can apply, just as anyone can request any other medical procedure. But making an application is not the same thing as having your application approved. This is what safeguards are for.

This hasn't stopped a cottage industry of clickbait articles from emerging, such as this Vice article about someone applying for an assisted death due to being anxious about the climate.

The individual in the *Vice* article was not approved by any doctor and would clearly never meet the criteria. This is an example of safeguards being effective.

Has the Canadian law 'expanded' over time?

Canada's laws have indeed changed from when assisted dying was first introduced in 2016, but these staggered changes are mostly due to Canadian MPs legislating for less than was required by the original Canadian Supreme Court decision that led to assisted dying in the first place, back in 2015.

The Supreme Court in 2015 ruled that competent Canadian adults suffering *intolerably* and *enduringly* have **a constitutional right** to a doctor's assistance in dying. This ruling was not restricted to only those suffering physically.

The Bill that lawmakers introduced in 2016 to bring this judgment into force was only for people whose death was deemed 'reasonably foreseeable'. This restriction did not appear in the ruling. So after another court case, the Court ruled again in 2019 that the law should be changed to fit the original ruling. This ruling further required regular reviews around criteria like mental health and age. In 2021, the law was amended by Parliament to remove the 'reasonably foreseeable' criterion.

Canada has taken over eight years to implement a law that respected the constitutional rights of Canadians as ordered by the Supreme Court in 2015. While it took too long for assisted dying to be available to those who are incurably suffering, some delay is clearly necessary to allow (and did in Canada allow) safeguards to be developed, studies to be carried out, doctors to be trained, and guidance to be updated. In the UK, we are calling for an implementation period of a minimum of a year to make sure that medical professionals can be trained and proper guidance can be developed.

Will Canada's law expand to include mental illness and mature minors?

As per the 2019 court ruling, there have been regular reviews around the inclusion of mental illness as the sole underlying medical condition, mature minors, and other factors such as advanced requests. Canada does look likely to allow mature minors to have an assisted death, although this remains uncertain.

The definition of 'mature minor' depends on the province, is judged on a case-by-case basis, and is 'reflective of his or her evolving maturity', not an arbitrary chronological age. It is likely to be restricted to only individuals who are terminally ill with a physical illness. In many jurisdictions across Canada, mature minors already have the right to make other important decisions regarding their healthcare and treatment.

An expert panel on assisted dying eligibility for mental illness was formed in August 2021 and it has recommended that eligibility should include treatment-resistant mental illnesses subject to additional safeguards. This recommendation was due to be implemented in March, but this has been delayed until 2024. The treatment-resistant mental illnesses to be newly eligible are distinct from neurocognitive and neurodevelopmental disorders, or other conditions that may affect cognitive abilities. The latter include dementia, Huntington's and Parkinson's, sufferers of which are already eligible for an assisted death under current legislation.

The potential inclusion of mental illness and mature minors will move the Canadian law closer to that of Belgium and the Netherlands. But in Belgium in 2020, 2021, and 2022 there were no assisted deaths for people under 18. In 2021, less than 1% of assisted deaths were people who had signed an advanced decision and then lost mental capacity and less than 2% were for mental conditions, which includes people with Alzheimer's. So in practice, these forms of assisted dying were still very rare.

There is not a single campaign group in the UK or Crown Dependencies that is advocating for mature minors to be eligible for assisted dying, or for people with mental illness to be eligible. In 2023 in Scotland, a petition calling for assisted dying for people with long-term mental illness received only 40 signatures.

Were there problems with a Veterans Affairs Canada caseworker?

Yes, but no-one applied for or had an assisted death as a result.

There were four cases where a Veterans Affairs Canada caseworker suggested to a veteran that they should look into assisted dying. All five involved the same caseworker, who has since been suspended. They included a Paralympian who was asking for a chairlift. The offers were in some cases repeated even after these veterans said no. None of the veterans wanted an assisted death. None of them started the assisted dying process. None of them were seen by doctors.

In response to the rogue employee's inappropriate conduct, Canadian MPs have launched investigations and made apologies to Canada's veteran community. Prime Minister Justin Trudeau commented on the situation:

> 'We are following up with investigations and we are changing protocols to ensure what should seem obvious to all of us: that it is not the place of Veterans Affairs Canada.'

The investigation concluded the issue was isolated to a single employee who raised assisted dying as an option with four veterans. Veterans Affairs says it reviewed hundreds of thousands of files and followed up with hundreds of former service members and family members as part of its investigation. The department says it has issued new guidance and training forbidding staff from raising assisted dying as an option.

What happened in this case shouldn't have happened. But we must remember that **none of these five individuals applied for, much less were approved for, an assisted death. The existing safeguard of two doctors assessing each individual would have stopped anything further from happening. This was a case of one rogue individual acting without any authority or medical capacity.**

Have hospital staff pushed assisted dying on patients?

Roger Foley is a chronically ill man who captured and released audio of hospital staff raising the option of an assisted death, despite his repeated requests to live at home. Foley has never applied to have an assisted death.

He has launched a lawsuit against the hospital, several health agencies, the Ontario provincial Government, and the Federal Government, alleging that health officials will not provide him with an assisted home care team of his choosing, instead offering, among other things, medically assisted death. None of the claims in Foley's lawsuit have been tested in court.

In one audio recording, Foley argues that he hasn't been informed of a plan for his care and that his rights as a patient are being violated. A man replies 'Roger, this is not my show, I told you my piece of this was to talk to you about if you had interest in assisted dying.'

In another audio recording, a different man asks Foley how he is feeling and if he wants to harm himself. Foley replies 'I'm always thinking I want to end my life because of the way things are going. Like, if I had self-directed funding then I'd be fine'. The man replies 'you can just apply to get an assisted, if you want to end your life… You don't have to do it in a drastic manner.' Foley replies: 'Well, they already presented the outcome option to me. But, it's like, why force me to end my life when…' The other man interrupts to say 'I don't want you to be in here and wanting to take your life.'

The hospital refused to comment on the case to ensure privacy and confidentiality, but has said:

> 'As per Canadian law, our healthcare teams are prepared to have conversations regarding Medically Assisted in Dying with patients who verbally express an interest in exploring this option… If the patient does not verbally express an interest or changes their mind, our healthcare team will not engage in these conversations.'

Again, Roger never applied for an assisted death. It's also unclear if Roger had ever requested information about an assisted death. Both audio clips allude to further conversations having happened and both only capture part of a full conversation.

If either of these healthcare providers captured in the audio clips had engaged in these conversations without Foley expressing an interest then they would be breaking hospital policy.

A 2021 Gallup poll found that a third of Canadians still don't know assisted dying is legal. This shows that there is a need to inform individuals that assisted dying is available, as many may suffer unnecessarily simply because their health literacy is low. However, this must be balanced with not promoting assisted dying over other options, or when it is clear that it is not wanted.

This case underlines the need for mandatory, uniform training for healthcare professionals to have conversations about death and assisted dying in a dignified, respectful way.

Is assisted dying being approved in Canada for hearing loss or other remediable conditions?

No. A case that has been getting a lot of media attention is the case of Alan Nichols. Many news sources have cited that on his application form 'hearing loss' was the main criterion. But this is not right.

Alan suffered all his life from seizures and brain bleeds. It was for this reason that he was granted an assisted death. However, his family disagreed with his decision and have spoken extensively with the media. That has led to this misinformation circulating.

The hospital said Alan Nichols made a valid request for an assisted death and that, in line with patient privacy, it was not obligated to inform relatives or include them in treatment discussions. A psychologist and psychiatrist had assessed Nichols' competence.

The provincial regulatory agency, British Columbia's College of Doctors and Surgeons, investigated the matter and told the family it could not proceed without a police investigation. In March, Royal Canadian Mounted Police Cpl. Patrick Maisonneuve emailed the relatives to say he had reviewed the documentation and concluded Alan Nichols 'met the criteria' for an assisted death.

'Hearing loss' is not and has never been an eligibility criterion for an assisted death. The law in Canada states that the individual must suffer from a 'grievous and irremediable medical condition'.

Hearing loss is not a serious illness, disease, or disability that causes unbearable physical or mental suffering. No two doctors would sign off on a statement to that effect.

How do poverty, poor healthcare, and inadequate housing in Canada factor in?

We believe that all people equally should have the same rights, and it would be gravely immoral to forbid someone less well-off the same right to an assisted death when a richer person with the same condition would be able to proceed. A stringent, doctor-led safeguarding approach is essential in making any assisted dying regime available to all on equal terms.

There have been a few cases of people, always with an underlying physical condition that causes them to suffer, reportedly seeking an assisted death due to their housing situations or being refused benefits. But we do not believe that anyone has had an assisted death without the presence of a qualifying medical condition.

A very high-profile case is Amir Farsoud, who has said he applied to have an assisted death at a time when he was facing homelessness. He was approved by one doctor but things have gone no further.

There are two elements to clarify here. First, Amir had, in the views of that doctor, met the medical criteria necessary to access assisted dying because of chronic pain. Second, he has told news organisations that despite receiving housing and generous donations from the public since his case was reported, he thinks he may still want an assisted death at some point on account of his chronic back pain. He has tweeted that his story 'has been hijacked by the right trying to spin it into their own agenda.'

Using assisted dying as a means to promote other campaigns

It has been reported that woman from Toronto with the pseudonym Sophia had an assisted death allegedly after failing to find suitable housing.

Firstly, verifying the validity and details of cases like these is hard because of doctor-patient confidentiality. We do not have any insight into the cases we hear about in the media, besides what the person or family choose to share, and what the media extrapolates from this. Unless a patient gives a doctor permission to discuss their case publicly, as happened in this case but is incredibly rare, then the information is protected by doctor-patient confidentiality.

Secondly, in the case of Sophia, reported by CTV, there are indications that the story was prompted by a non-governmental organisation called the 'Environmental Health Association of Québec' (EHAQ). EHAQ has used the case to campaign for people suffering issues like Sophia's to be provided with housing.

It's not clear what support Sophia *did* in fact receive from authorities. Indeed, in a letter from four doctors about the case that is cited in the CTV article, they write 'Our patient struggled to get her family doctor's support to apply for [Ontario Disability Support Program], though once she applied, her application was approved. She had noted that her symptoms improved in cleaner air, and eventually had Human Rights Tribunal of Ontario-ordered renovations to make her apartment's indoor air quality safer. However, for unknown reasons, the renovations failed badly.'

What is more, one of the authors of that letter, Dr Chantal Perot, who is mentioned in the CTV article as apparently speaking out against Sophia's assisted death, has also disputed the narrative that Sophia wouldn't have wanted an assisted death even if she had managed to find suitable housing.

In a submission to the Canadian Parliament's Special Joint Committee on Medical Assistance in Dying, she wrote:

> 'This thoughtful, mature, intelligent woman has been mischaracterized as choosing [assisted dying] simply because of lack of housing. Hers was a much more complex and considered decision than media reports suggest. She was aware the only effective treatment for her condition was protection from all triggers, all the time. Her written appeals focused on housing. She was hurt by the lack of response from government officials, but she knew better housing was not a cure. She might have enjoyed more time, but living in a more pleasant "dungeon" was not the life she wanted. She wrote a note I received after her death: "...Thank you for helping me to end my suffering... Even if I were to find a medically-safe, affordable home, I would still be isolated from the rest of the community, unable to go into public buildings or visit friends and family".

Dr Perot argues that Sophia has been mischaracterised as living in poverty and would have been appalled at such accusations. Even though Sophia received social assistance, she was clear that she had adequate resources to live and financial concerns were not contributing to her choice to have an assisted death. Dr Perot argues:

> 'Unfortunately, those opposed to [assisted dying] and special interest groups wanting to misuse her life and history have created a false impression of who she was and how she chose to live and die.'

WHAT THE UK CAN LEARN FROM CANADA

There is a wealth of international evidence which will help establish the best assisted dying legislation for the UK and Crown dependencies and legislators will benefit from examining these international examples when creating a law that works for us.

We don't know that anyone has had an assisted death in Canada who shouldn't have been able to, but the following are all important, well-tested safeguards that are missing in Canada but any UK system should learn from.

Mandatory training for professionals involved in end-of-life care

Due to Canada's federal system of government, its provinces have a large level of devolved responsibility over assisted dying. Some provinces provide mandatory training for doctors, nurses, and other healthcare professionals, which ranges from guidance on how to raise the issue of assisted dying with patients to additional training on assessing an individual's eligibility. And the amount of training provided is still expanding across the country. But a few provinces don't have mandatory training for all healthcare professionals involved in the process, instead just relying on the clear law and guidance.

In February 2023, the first recommendation of a Report of the Canadian Parliament's Special Joint Committee on Medical Assistance in Dying was to establish standards for medical professionals who are assessing assisted dying requestions, 'with a view to harmonizing access to [assisted dying] across Canada'. The second recommendation was to continue to address the quality and standardisation of assisted dying assessment and delivery.

The UK clearly differs from Canada. Assisted dying would probably be part of the NHS, which would provide clear training and guidance. In addition, we believe there should be clear guidance for all healthcare professionals on how to appropriately raise assisted dying with patients. We believe specialised assisted dying assessment training should be mandatory for at least one of the two healthcare professionals assessing the applicant.

The law in Victoria, Australia, requires one of the doctors to be 'a specialist registered medical practitioner who has appropriate skills and training in that disease, illness or medical condition.' In addition to being a specialist, they must have completed specific assisted dying assessment training.

The States of Jersey has proposed creating a national Assisted Dying Service that can provide guidance to both professionals and individuals throughout the process. We believe this is a sensible approach to take.

Country-wide standardisation for application forms and guidance

Similarly, due to Canada's federal system, the application forms across the country are not uniform, and ask for different levels of detail. They are not standardised in guidance or legislation. This has led to a lack of consistency on how assisted deaths have been approved and even some negative media around accusations of individuals requesting assisted deaths for minor conditions (something addressed while discussing the case of Alan Nichols).

As it happens, Health Canada and an association of assisted dying providers have said they are working on improving and standardising the process. But there is no reason why such standardisation cannot exist from when assisted dying is first introduced to a jurisdiction, and that is what we would want to see in the UK. In the UK, the format of forms is often set out in secondary legislation.

We recommend that any assisted dying legislation in the UK insists on standardisation across, for example, the NHS in England and Wales. We also hope the NHS and Government health departments in England and Wales would coordinate on this matter with NHS Scotland and the Scottish Health and Social Care Directorates.

Exhausting other options first

Current law in Canada states that the medical practitioner involved in the case must:

> 'ensure that the person has been 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 has been offered consultations with relevant professionals who provide those services or that care'.

While this is a sensible and important step, we think it can be improved. We think the medical practitioner should have to be confident that all possible means to relieve suffering, including palliative care, have been thoroughly tried and exhausted.

This would need to be balanced with the right that all UK citizens currently have to refuse treatment. For example, a patient could refuse cancer treatment or palliative care, even if it may relieve some suffering, because they believe their quality of life would not be improved to a point they would consider suitable. In these circumstances, the assessor would need to feel confident that the options had been fully explored and the wishes of the applicant were clear and settled.

The law in the Netherlands states: 'the physician and the patient hold the conviction that there was no other reasonable solution for the situation he was in'. The legislation in Belgium is: 'Together with the patient, the physician must come to the belief that there is no reasonable alternative to the patient's situation and that the patient's request is completely voluntary'.

The physical, incurable illness must be the root cause of assisted death request

It must be the physical, incurable condition that causes the individual to want an assisted death and not any economic, social, or external factors. In situations where the healthcare practitioner is unclear or unable to determine if the applicant squarely meets the criteria, they should be referred for additional assessment.

Limits on second opinions

Every assisted death in Canada needs to be signed off by two independent doctors. If a doctor determines that an individual doesn't meet the criteria and refuses to sign off on the assisted death, that individual can approach a different doctor for another opinion.

Second opinions are an important part of healthcare and most people who have experienced serious illness have gone to different specialists who have had differing opinions. This is normal. However, Canada's assisted dying legislation does not limit the number of second opinions, meaning in theory an individual could repeatedly apply for an assisted death, even after being rejected. To be clear, we haven't heard of this being abused. But jurisdictions like Western Australia limit the number of second opinions and the proposed legislation on the island of Jersey is set to do the same. We think these are sensible safeguards.

CONCLUSION

Does the situation in Canada give reasons for the UK not to legalise assisted dying?

No.

We can and should learn from Canada to create laws that are right and fit for the UK but UK legislators should not deny people here the right to make decisions about the end of their lives.

A humane assisted dying system is something that 90% of British adults support. In designing one, the UK benefits from decades of data from assisted dying's implementation in Europe and around the world as well as a wealth of global legislative and safeguarding frameworks to consider. We can do this and get it right.

For more details, information, and evidence, contact Humanists UK:

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