

Wednesday, May 18th, 2016

REFUSAL TO STUDY THE IMPLICATIONS OF ADVANCED DIRECTIVES AN INEXPLICABLE ERROR OF JUDGMENT

Canadians from many perspectives have spoken forcefully about the risks to some of our most vulnerable citizens, if the law were to permit the administration of assisted death upon patients who no longer have the capacity to give - or withdraw - their consent.

Bill C-14 commits to further study of the issue of advance directives in the context of medical assistance in dying. But a [report](#) released yesterday from the Standing Senate Committee on Legal and Constitutional Affairs recommends proceeding to permit this practice without any study.

The Committee's recommendation appears to disregard an abundance of evidence and expert advice underscoring the necessity for careful study and attention to the experience of other jurisdictions before a hasty move toward authorization by advance directive for assisted death. Dr. Jeff Blackmer, speaking on behalf of the Canadian Medical Association in his submission to the Senate Committee earlier this month, referred to his discussions with the director of the Royal Dutch Medical Society, indicating that authorities in the Netherlands are "very glad that they didn't include it in their initial legislation because they're having a lot of challenges implementing it now". Dr. Blackmer emphasized that "It's very important for Canada to learn from their experiences ... before we try to implement this at the outset of a bill."

Only four jurisdictions in the world - Belgium, Luxembourg, Columbia and the Netherlands - permit an assisted death on the basis of an advance directive. In Belgium and Luxembourg, the practice is only permitted when a patient is in a

state of irreversible unconsciousness. In the Netherlands, as noted by Dr. Blackmer, the practice has been severely criticized. A [Dutch case of great concern](#) involving the euthanasia of a woman named Hannie Goudriaan, was documented last year by VPS advisor and Scholl Chair in Health Law and Policy at the University of Toronto, Trudo Lemmens. Professor Lemmens provided an [English translation](#) of a scathing rebuke by Dr. Victor Lamme, Professor of Cognitive Neuroscience at the University of Amsterdam, in which he wrote:

"To hold demented people to their living will is as weird as saying to an 18-year old that he must become a fireman, simply because he said that once when he was eight years old. People change, and nowhere faster than in the context of dementia."

Supporters of the Vulnerable Persons Standard are now urging Canadian Senators to heed the advice of medical, legal, ethical and community experts who have cautioned against introducing the practice of medically assisted death for persons no longer capable of expressing their consent. As Dr. Harvey Chochinov, Distinguished Professor of Psychiatry noted in a [Huffington Post commentary](#) in April:

"Fear is seldom a reliable guide to good social policy."

IMPORTANT RESOURCES:

The following research reports and submissions illustrate many of the problems with advanced directives that warrant further study:

- [Advance directives for euthanasia in dementia: how do they affect resident care in Dutch nursing homes?](#)
- [Physicians' experiences with demented patients with advance euthanasia directives in the Netherlands](#)
- [Brief submitted to the Standing Committee on Justice and Human Rights](#) by Dr. Catherine Ferrier, VPS advisor

DID YOU KNOW?

The [Advocacy Centre for the Elderly](#), the first and oldest legal clinic in Canada with a specific mandate to serve low-income older adults, routinely advises families of critically ill patients on end-of-life decisions. On the basis of their extensive experience with issues of health care consent, [in a brief to the Joint Parliamentary Committee on Physician-Assisted Dying](#), the Centre strongly opposed authorization of assisted death by advance directive, because this would effectively authorize substitute decision-makers to consent to the death of a person who is not capable of expressing their consent directly. The Centre concludes that "Parliament should not seek to stray from the guidance provided by the Supreme Court and that only capable persons can consent to physician-assisted dying."

"To imagine a society where, as a matter of course, individuals who had reached a certain stage of dementia would be euthanized is inconceivable, regardless of whether the action is supported by end of life directions. It would still of necessity involve someone other than the individual making the final determination. It also could potentially lead to unconscious or more blatant societal coercion that such directives were expected. Concern for vulnerable people, as well as other concerns, have led many jurisdictions that support physician-assisted dying to reject the next step of pre-planned euthanasia. The difficult reality of dementia-related illnesses would best be addressed through the development of better care options and facilities."

The Right Rev. Jordan Cantwell, Moderator of the United Church of Canada
[Submission to the Special Joint Committee on Physician-Assisted Dying](#)

The Vulnerable Persons Standard was developed by a group of more than forty advisors with expertise in medicine, ethics, law, public policy and needs of vulnerable persons. The Standard is a series of evidence-based safeguards intended to help ensure that Canadians requesting assistance from physicians to end their life can do so without jeopardizing the lives of vulnerable persons who may be subject to coercion and abuse.

To learn more about the Standard and the many Canadians and organizations endorsing the Standard, please visit us at www.vps-npv.ca.

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