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# Should Canada's Expansion of Its Medical Assistance in Dying Program Concern Americans?

By: Tova Wolkenstein



After suffering from severe chronic back pain and fearing losing his home, 54-year-old Canadian Amir Farsoud applied to Canada's Medical Assistance in Dying program (MAID) to alleviate the stresses of his life.[1] Farsoud is just one instance of an individual choosing to die with a physician's help under the new criteria of MAID. As Canada is America's "neighbor to the North," the expansion of physician-assisted suicide there might be a canary in the cc [Save](#) as to what will happen in the United States, unless there is an active pushback to stop it.

The United States and Canada are neighboring nations with similar values, rights, and legal systems. Both countries have written constitutions that serve as the supreme law of the land. Additionally, both countries have similar legal protections for individual rights and freedoms, such as freedom of speech, freedom of religion, and the right to a fair trial. The Bill of Rights in the U.S. Constitution and the Canadian Charter of Rights and Freedoms both outline these individual rights and protections. However, even with these similarities, each respective country's highest court came out very differently on the "right to die" and physician-assisted suicide.

In 1997, the U.S. Supreme Court in *Washington v. Glucksberg* upheld the Washington State statute criminalizing physician-assisted suicide.[2] After a lengthy historical analysis, the Court concluded “that the asserted ‘right’ to assistance in committing suicide is not a fundamental liberty interest protected by the Due Process Clause.”[3] This holding protects individual states’ autonomy to thoughtfully consider whether to criminalize or legalize physician assisted suicide as they see fit.[4] Ten States and the District of Columbia have enacted laws that allow physician-assisted suicide in limited situations; 40 states have declared it illegal.[5]

When the issue of physician-assisted suicide was contemplated by the Supreme Court of Canada, they took a different approach. In *Carter v. Canada* (2015), the Court held that the statutory ban on voluntary assisted suicide and euthanasia was constitutionally invalid.[6] This case arose out of a legal challenge to Section 241(b) of the Criminal Code, which criminalizes acts that aid or abet a person in committing suicide, and Section 14, which states that no person may consent to death being inflicted on them.[7] The result of these laws was the prohibition of physician-assisted suicide in Canada. Ultimately, the Court concluded that these laws “unjustifiably infringe s.7 of the *Charter* and are of no force or effect to the extent that they prohibit physician-assisted death for a competent adult person.”[8] Section 7 of the Canadian Charter of Rights states “[e]veryone has the right to life, liberty and security of the person and the right not to be deprived thereof.”[9] The rationale of the Court was that “[a]n individual's response to a grievous and irremediable medical condition is a matter critical to their dignity and autonomy” and leaving them to endure unbearable suffering infringed their right to security of the person.[10]

After this ruling, the Canadian parliament passed legislation called MAID, which allowed physicians to aid a limited class of individuals nearing the end of their lives in terminating their lives.[11] The law laid out eligibility requirements for people to qualify for MAID, which included having a terminal illness and a prognosis of dying in the foreseeable future.[12] However, as recently as 2019, the Superior Court of Québec ruled in *Truchon c. Attorney General of Canada* that it was unconstitutional to limit access to MAID to people nearing the end of life.[13] The legislative response to this was the expansion of MAID in 2021, which no longer required an individual’s natural death be reasonably foreseeable to be eligible. [14] The new criteria lower the threshold of eligibility by simply requiring that someone have a “serious and incurable illness, disease or disability” even if it is not fatal.[15] Beginning in March 2023, mental illness will be eligible as well to all Canadians who find it acceptable to end their lives because of psychological suffering. [16]

As of today, all U.S. states that allow physician-assisted suicide require a prognosis of six or fewer months until death to be eligible.[17] The impact of this criterion is the exclusion of people suffering with lifelong illnesses like diabetes, cerebral palsy, deafness, and depression. However, Canada has just made individuals with all these chronic yet non-life-threatening conditions eligible to apply (even if they do not ultimately qualify.)[18] While the United States promotes values of freedom and autonomy, and the Supreme Court has chosen to leave the issue of physician assisted suicide to the states, Americans should push back on allowing similar euthanasia expansion to mentally and chronically ill members of our society. Rather, there should be an increase in financial and mental health support to aid people who are suffering, so people like Amir

Farsoud can live a full life in the most comfortable way possible. In *Glucksberg*, the Court concluded that States are allowed to criminalize physician assisted suicide to “preserve human life” and protect the vulnerable, poor, and chronically-ill in underserved communities from becoming victims of inappropriate euthanasia.[19] This principle should guide all physician-assisted suicide legislation in the States.

On December 15, 2022, seventeen-year-old Matthew Myslenski got accepted to Harvard.[20] This was newsworthy because Matthew lives with cerebral palsy and was able to accomplish something many “healthy” people cannot. Let’s set up a system for all people suffering with chronic and mental illness to be psychologically and financially supported so, like Matthew, they can live their lives to the fullest.

### **Tova Wolkenstein is a Staff Editor at CICLR.**

[1] Josh Marcus, *Canadian man applies for euthanasia because he can’t afford a home but reconsiders after \$60,000 GoFundMe*, independent (U.S.) (Nov. 19, 2022, 10:49 PM), <https://www.independent.co.uk/news/world/americas/canada-euthanasia-maid-gofundme-homeless-b2228890.html?amp> [<https://perma.cc/NWW2-2PHX>].

[2] *Washington v. Glucksberg*, 521 U.S. 702 (1997).

[3] *Id.* at 728.

[4] *Id.* at 719.

[5] *States with Legal Medical Aid in Dying (MAID)*, Britannica ProCon.org (Dec. 19, 2022) <https://euthanasia.procon.org/states-with-legal-physician-assisted-suicide/> [<https://perma.cc/FS9D-XW8M>].

[6] *Carter v. Canada (Attorney General)*, [2015] 1 S.C.R. 331 (Can.).

[7] *See* Canada Criminal Code, R.S.C. 1985, c C-46, s. 241(b).

[8] *Carter*, 1 S.C.R. 331 at para. 147 (Can.).

[9] Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, *being* Schedule B to the Canada Act 1982, 1982, c 11 [U.K.].

[10] *Carter*, 1 S.C.R. 331 at para. 66 (Can.).

[11] An Act to Amend the Criminal Code and to Make Related Amendments to Other Acts (Medical Assistance in Dying), S.C. 2016, c 3 (Can.).

[12] *Id.*

[13] *Truchon c. Procureur général du Canada*, [2019] Q.C.C.S. 3792 (Can. Que.).

[14] Government of Canada, *Canada’s medical assistance in dying (MAID) law*, Justice.gc.ca (Feb. 21, 2023), <https://www.justice.gc.ca/eng/cj-jp/ad-am/bk-di.html> [<https://perma.cc/8ZYA-LA3W>].

[15] *Id.*

[16] *Id.*

[17] Britannica ProCon.org, *supra* note 5.

[18] Holly Honderich, *Who can die? Canada wrestles with euthanasia for the mentally ill*, BBC (Jan. 14, 2023), <https://www.bbc.com/news/world-us-canada-64004329> [<https://perma.cc/6TG3-944H>].

[19] *Glucksberg*, 521 U.S. at 731.

[20] Sydney Page, *Teen with cerebral palsy set Harvard as his goal. He just got in early acceptance*, Wash. Post (Jan. 14, 2023, 6:00 AM), <https://www.washingtonpost.com/lifestyle/2023/01/14/harvard-acceptance-cerebral-palsy-myslenski-matthew/> [<https://perma.cc/G7BC-HQDV>].