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Court judgment in Canada may set guidelines for physician-assisted death in terminal cases

By PETER SINGER

UTRECHT, Netherlands — Gloria Taylor, a Canadian, has amyotrophic lateral sclerosis (ALS), also known as Lou Gehrig's disease. Over a period of a few years, her muscles will weaken until she can no longer walk, use her hands, chew, swallow, speak and, ultimately, breathe. Then she will die.

Taylor does not want to go through all of that. She wants to die at a time of her own choosing.

Suicide is not a crime in Canada, so as Taylor put it: "I simply cannot understand why the law holds that the able-bodied who are terminally ill are allowed to shoot themselves when they have had enough because they are able to hold a gun steady, but because my illness affects my ability to move and control my body, I cannot be allowed compassionate help to allow me to commit an equivalent act using lethal medication."

Taylor sees the law as offering her a cruel choice: either end her life when she still finds it enjoyable, but is capable of killing herself, or give up the right that others have to end their lives when they choose.

She went to court, arguing that the provisions of the Criminal Code that prevent her from receiving assistance in dying are inconsistent with the Canadian Charter of Rights and Freedoms, which gives Canadians rights to life, liberty, personal security,and equality.

The court hearing was remarkable for the thoroughness with which Justice Lynn Smith examined the ethical questions before her. She received expert opinions from leading figures on both sides of the issue, not only Canadians, but also authorities in Australia, Belgium, the Netherlands, New Zealand, Switzerland, the United Kingdom and the United States. The range of expertise included general medicine, palliative care, neurology, disability studies, gerontology, psychiatry, psychology, law, philosophy and bioethics.

Many of these experts were cross-examined in court. Along with Taylor's right to die, decades of debate about assistance in dying came under scrutiny.

Last month, Smith issued her judgment. The case, Carter v. Canada, could serve as a textbook on the facts, law and ethics of assistance in dying.

For example, there has been much debate about the difference between the accepted practice of withholding life support or some other treatment, knowing that the patient is likely to die without it, and the contested practice of actively helping a patient to die.

Smith's ruling finds that "a bright-line ethical distinction is elusive, and that the view that there is no such ethical distinction is "persuasive."

She considered, and accepted, an argument advanced by Wayne Sumner, a distinguished Canadian philosopher: If the patient's circumstances are such that suicide would be ethically permissible were the patient able to do it, then it is also ethically permissible for the physician to provide the means for the patient to do it.

Smith also had to assess whether there are public policy considerations that count against the legalization of physician assistance in dying. Her decision focuses mainly on the risk that vulnerable people — for example, the aged or those with disabilities — will be pressured into accepting assistance in dying when they do not really want it.

There are conflicting views about whether legalization of voluntary euthanasia in the Netherlands, and of physician assistance in dying in Oregon, has led to an increase in the number of vulnerable people being killed or assisted in dying without their full, informed consent.

For many years, Herbert Hendin, a psychiatrist and suicide expert, has asserted that the safeguards incorporated in these laws fail to protect the vulnerable. He gave evidence at the trial.

So, too, on the other side, did Hans van Delden, a Dutch nursing home physician and bioethicist who for the past 20 years has been involved in all of the major empirical studies of end-of-life decisions in his country.

Peggy Battin, the most prominent American bioethicist working on assisted dying and euthanasia, also took the stand.

In this dispute, Smith comes down firmly on the side of van Delden and Battin, finding that "the empirical evidence gathered in the two jurisdictions does not support the hypothesis that physician-assisted death has imposed a particular risk to socially vulnerable populations."

Instead, Smith says, "The evidence does support Dr. van Delden's position that it is possible for a state to design a system that both permits some individuals to access physician-assisted death and socially protects vulnerable individuals and groups."

The most recent Dutch report, released after Smith handed down her judgment, confirms that there has been no dramatic increase in euthanasia cases in the Netherlands.

Smith then declared, after considering the applicable law, that the provisions of the Criminal Code preventing physician assistance in dying violate disabled people's right not only to equality, but also to life, liberty and security.

Through her judgment, Smith thus opened the door for physician assistance in dying for any grievously and irremediably ill competent adult, under conditions not very different from those that apply in other jurisdictions where physician assistance in dying is legal.

The decision will almost certainly be appealed, and the final outcome seems likely to depend on the appellate judges' interpretations of Canadian law.

But Smith's verdict on the ethics of assistance in dying — and of the facts regarding jurisdictions, like the Netherlands and Oregon, that have it — seems likely to stand for a long time to come.

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