

# **A decade after MAID became legal, life has become cheap in Canada**

Medically assisted dying has helped tens of thousands of Canadians die beautiful deaths, but this country is becoming a place where people are offered death instead of care

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What does it look like when a country starts to die?

We can see it plainly when the death is catastrophic: when a nation succumbs to a hostile takeover, or to the forces of tyranny, corruption or lawlessness.

But what about when the soul of a nation starts to atrophy, slowly, in a manner that's nearly undetectable at first? Maybe it starts with just a little ache – the niggling kind you can ignore when you're out and about during the day. But when it's nighttime and you're alone, you wonder if that little ache might signal something far more pernicious.

German philosopher Georg Wilhelm Friedrich Hegel wrote that “the state is the actuality of the ethical idea;” that morality is not simply an abstract, subjective concept, but one that manifests in the tangible apparatus of the state. True freedom, according to Hegel, was living within this ethical order.

But what happens when that ethical order starts to break down? When a state becomes less a collection of rational institutions upholding a universal moral framework, but one that perverts it.

Ten years ago, Canada's government passed legislation granting terminally ill citizens the ultimate mercy: the chance to avoid the pain and suffering of their final few days or weeks by choosing to die on

their terms, with the help of a medical provider. Until June 17, 2016, this compassion was afforded only to animals; it was seen as cruel, after all, to allow dogs to writhe in pain when they were in the process of dying anyway. But no such mercy had ever been extended to people in Canada.

But that changed after the Supreme Court of Canada issued its decision in *Carter v. Canada*, which found that Criminal Code prohibitions on assisted suicide infringed on Section 7 of the Charter of Rights and Freedoms, which protects the rights to life, liberty and security of the person. That 2015 decision paved the way for Canada's first legislation on medical assistance in dying (MAID), which allowed competent adults suffering with "grievous and irremediable" illnesses, and whose natural death was "reasonably foreseeable," to die on their terms.

In the near-decade since, tens of thousands of Canadians have had beautiful deaths. Some have thrown parties; taken pictures, played music. MAID has given relatives a chance to say their last goodbyes, knowing they are their last goodbyes. For many Canadians, the decision of when and where to die represents their final act of autonomy: one they wouldn't have been able to exercise just 10 years ago.

But there have been other types of deaths, too. Less beautiful ones. The ones that began after Quebec's Superior Court struck down the provision that an eligible MAID death be "reasonably foreseeable." These are the deaths that tore apart families, raised questions about coercion and capacity to consent, and challenged the entire notion of the ethical state.

There was the 52-year-old man with chronic back pain and bipolar disorder who was an in-patient in a B.C. hospital and received MAID while out on a day pass from the hospital. His family is now suing the federal and provincial governments. There was the 26-year-old man with Type 1 diabetes, partial blindness and mental illness, who was

denied MAID in Ontario, so he went to B.C. where he got it approved. The 51-year-old woman with multiple chemical sensitivities who couldn't find appropriate housing, so she chose death. The disabled person in their thirties who, according to testimony before the Committee on Medical Assistance in Dying, applied for MAID after being denied funding for an in-home caregiver. And the 45-year-old man with Crohn's disease and mental illness who was assessed outside of a Tim Hortons, where he was approved to die.

Instinctually, most of us understand that these deaths – which were less assisted dying than outright euthanasia – were tragedies: borne out of desperation, systemic failures, and mental illness (though MAID for those with mental illness as the sole underlying condition will not be legal until March, 2027). Yet in a rather dystopian way, these tragic deaths have become the price of the beautiful ones.

Canadians overwhelmingly support access to MAID as defined in the original 2016 legislation, and a majority still support the expanded 2021 criteria, even though we can plainly see how MAID in Canada has morphed from an option of last resort to simply an option. Indeed, it is no longer unusual to hear stories of patients being offered death in lieu of treatment; of people who want to live better, but are choosing to die instead.

But collectively, we've come to accept what's happening, casually sipping our coffees while the man on the other side of the café window literally signs away his life. Because we want to know that the option will be there if we happen to reach a state of intolerable suffering ourselves, and because notions of compassion, freedom, autonomy make us feel better about what is, really, a malignant indifference toward our fellow man. That malignant indifference is taking the lives of the most vulnerable, and it's slowly eating away at this country's soul.

It was not inevitable that over the course of just 10 years, MAID in Canada would evolve from a last-resort option for the dying to an on-demand service for nearly anyone experiencing illness. In fact, the Supreme Court in Carter expressly dismissed the notion that Canada would fall down the same slippery slope as have other jurisdictions that legalized assisted suicide before us, writing that “the permissive regime in Belgium is the product of a very different medico-legal culture.”

But when Quebec’s Superior Court ruled in *Truchon v. Canada* in 2019 that it was unconstitutional that an individual’s natural death be “reasonably foreseeable” to access MAID, everything changed. The government opted not to appeal that ruling, and instead it drafted new legislation allowing for physician-assisted suicide for non-terminal illnesses. That legislation divided MAID eligibility into two tracks: “Track 1” for those whose deaths were “reasonably foreseeable” and “Track 2” for those whose deaths were not.

The vast majority of MAID deaths in Canada fall under Track 1; in 2024, it accounted for 95.6 per cent, or 15,767 people. Just 4.4 per cent, or 732 people, in 2024 fell under Track 2. But these numbers can be misleading because federal data rely heavily on self-reporting by MAID practitioners, some of whom have admitted to creative forms of classification. For example, guidelines published by the Canadian Association of MAID Assessors and Providers (CAMAD) in 2023 advise that people with chronic – but not terminal – conditions could meet the reasonably foreseeable criterion if they “have demonstrated a clear and serious intent to take steps to make their natural death happen soon.” An example CAMAD provides includes someone saying they will not take antibiotics for a current or future infection. In this way, a Track 2 death can be classified as Track 1.

A report prepared by researchers at the University of Alberta and submitted to Health Canada earlier this year describes the extent of

the dysfunction and fragmentation of MAID delivery across the country.

In short: Each province has its own rules within the federal framework, its own approach to data collection and oversight, and its own practices. There is no countrywide standard for dealing with disagreements between assessors (two assessors must conclude an individual qualifies for MAID for it to be approved), no prohibition on doctor shopping (an applicant can travel to another province to find a provider to perform MAID) and no specific guidelines as to what constitutes consent (in one case, an Ontario woman with “cognitive impairment,” whose request for MAID was brought forward by a family member, was deemed to have consented to the procedure by echoing the consent question and squeezing the provider’s hand). Most critically, there is little in the way of comprehensive pre-emptive committee oversight for complex cases. Most reviews happen after the fact, when the patient is already dead.

With such lax reporting, oversight and regulation, it is inevitable that some cases will fall through the cracks, meaning some individuals who shouldn’t meet eligibility criteria will be helped to die anyway. Many Canadians shrug that off, reasoning that edge cases likely make up just a fraction of Track 2 cases, and inferring that tightening regulations would risk excluding individuals who clearly meet the criteria for assisted death. But the state is not in a position to shrug off even one erroneous death. The Supreme Court outlined that plainly in an unrelated landmark decision, United States v. Burns in 2001, in which the Court weighed in on whether Canada should extradite fugitives to countries where they could face capital punishment. Citing potential wrongful convictions, the Court wrote that “the state’s execution of even one innocent person is one too many,” and ruled that to subject Canadians to that risk would be to violate their Section 7 Charter rights.

These scenarios are not directly comparable, of course; someone wrongly convicted and executed by a foreign state doesn't have much in common with an octogenarian in an Ontario retirement home who may or may not have consented to her own death by squeezing the practitioner's hand. But Canada's obligation to their lives is the same: it must err on the side of preservation of life when and where the circumstances are unclear. Yet we know that is not always happening, and still, the system as it exists – inherent with cracks and loopholes – persists.

Why? Why haven't stories of tragic deaths, of deaths pursued because of socioeconomic suffering, loneliness or despair, provoked a major push for reform?

Part of the reason is rooted in the way Canadians see the role of our institutions. Canada is, in fact, quite a libertarian country when it comes to bodily autonomy (notwithstanding a brief period during the COVID-19 pandemic, when vaccine mandates were implemented across the country). We have no criminal laws regulating abortion.

The Supreme Court of Canada has repeatedly reaffirmed the right to refuse medical treatment, even when the outcome is death. Provinces broadly take a harm-reduction approach to illicit drugs. This notion of bodily autonomy is central to how we view freedom in Canada, which explains why Ottawa, in 2019, would've been reluctant to challenge a ruling affirming that right.

Another reason is cultural. To challenge the Truchon decision would have been to challenge the conclusion that the original MAID legislation discriminated against persons with disabilities and chronic illness. Canada's cultural ethos is one of inclusion and equality: much of our identity is rooted in the belief that we are accommodating, accessible and compassionate. So when the Quebec Superior Court said that denying MAID to persons with non-terminal illnesses was an

act of discrimination, Canada did what it so often does when it is accused of perpetuating systemic inequity: it yielded to the accusation.

**And that's why the government intends, for now, to legalize assisted suicide for those whose sole underlying condition is mental illness next year, despite the concerns expressed by 90 disability and mental-health organizations in a recent letter to the federal government. Because to distinguish between mental illness and physical illness would be discriminatory, or so the justification goes.**

And one final reason why we have allowed MAID access to expand so rapidly, with so little oversight, is about what it would say – and what we would admit to ourselves – if we were to start tightening up regulations now. We could, after all, easily do what some jurisdictions in Australia have done, for example, and legislate that patients – not health care providers – must be the ones to initiate conversations about MAID in an effort to better protect vulnerable persons from coercion. Or adopt Spain's policy of requiring applications to pass through a multidisciplinary regional commission for approval before death is administered, not after.

But to backtrack now would be to concede that the state has erroneously helped some of its own citizens to kill themselves. It would be an admission that a B.C. man who struggled with mental illness and whose stated reason for MAID was “hearing loss” should have been helped to live better, not put to death. That the right to bodily integrity does not necessarily mean the right to access a particular service, especially when that service is death, and especially when death would not have occurred otherwise. And that there is an important difference between hastening the dying process and initiating it, and that Canada has failed to recognize that difference.

Instead, this country has become a place where death has become the solution to suffering. Where parents now have to worry that their

mentally unstable child will be able to find two medical practitioners who agree that his Type 1 diabetes is causing intolerable suffering.

**Where disabled Canadians fear that they will be coerced into accepting MAID when they ask for additional support.** Where we cushion our consciences with notions of autonomy and compassion, so that we don't have to deal with how the value and sanctity of life has become so cheap in this country, over such little time.

Canada is failing in its core obligation as the actuality of the ethical idea; as the purveyor of a good life. And we're all just sipping our coffees, watching it happen. This is what it looks like when a country starts to die.