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Introduction

1. ADF International is a global alliance-building legal organization that advocates for religious freedom, life, and marriage and family before national and international institutions. As well as having ECOSOC consultative status with the United Nations (registered name "Alliance Defending Freedom"), ADF International has accreditation with the European Commission and Parliament, the Organization for Security and Co-operation in Europe, and the Organization of American States, and is a participant in the FRA Fundamental Rights Platform.

2. This report explains why Canada must revise its laws and policies concerning the sanctity of life, especially with respect to physician-assisted suicide. It also spells out why Canada must take steps to protect the rights to freedom of opinion, conscience, and expression.

(a) Assisted Suicide ("Medically Assisted Dying")

Summary of the Canadian Law

3. As a result of the Supreme Court ruling on 16th February 2015 of *Carter v Canada (Attorney General)*, laws prohibiting physician-assisted suicide for mentally competent and "grievously and irredeemably ill" Canadian adults "condemned to a life of severe and intolerable suffering" were deemed unconstitutional and in violation of section 7 of the Canadian Charter of Rights and Freedoms ("the Charter").

4. Parliament passed Bill C-14 in June 2016, providing for a regime of so-called "medically assisted dying." Section 241.2(1) of the Criminal Code of Canada makes physician-assisted suicide available to a person if:

    a. they are eligible — or, but for any applicable minimum period of residence or waiting period, would be eligible — for health services funded by a government in Canada;

    b. they are at least 18 years of age and capable of making decisions with respect to their health;

    c. they have a grievous and irremediable medical condition;

    d. they have made a voluntary request for medical assistance in dying that, in particular, was not made as a result of external pressure; and

    e. they give informed consent to receive medical assistance in dying after having been informed of the means that are available to relieve their suffering, including palliative care.

5. A "grievous and irremediable medical condition" under section 241.2(2) is "a serious and incurable illness, disease or disability[,] … an advanced state of irreversible decline in capability … [which] causes them enduring physical or psychological

suffering that is intolerable to them and that cannot be relieved under conditions that they consider acceptable[,] and their natural death has become reasonably foreseeable, taking into account all of their medical circumstances, without a prognosis necessarily having been made as to the specific length of time that they have remaining."

6. "Safeguards" under section 241.2(3) include the requirement of two independent medical opinions, a ten-day waiting period, and express consent given immediately prior to death, as well as the aforementioned requirement to inform the patient concerning palliative care.

Assisted Suicide and Human Rights

7. In truth, euthanasia and assisted suicide are fundamental violations of the right to life under Article 6 of the International Covenant on Civil and Political Rights (ICCPR). This right is to be protected by law, and nowhere is it indicated that the duty of the State to protect this right is abrogated in the event that the person aiming to violate it is the rightsholder himself.

8. Though Canada is not a party to the European Convention on Human Rights (ECHR), it is informative to note that within the legal order of a number of countries with which Canada shares much of its cultural and legal heritage, the right to life does not include a right to die, a principle set forth in the unanimous decision of the European Court of Human Rights in the 2002 case of *Pretty v. United Kingdom*[1] and the 2011 case of *Haas v. Switzerland*.[2]

9. These cases affirm that the right to privacy under Article 8 and the prohibition of torture, inhuman, or degrading treatment or punishment under Article 3 of the ECHR must be understood in conjunction with Article 2, which not only prohibits the State from intentionally taking life, but also obliges it to take appropriate steps to safeguard the lives of those within its jurisdiction.

10. The British Columbia Civil Liberties Association (BCCLA) has announced its intention to challenge the constitutionality of law's safeguards, saying that persons with long-term disabilities and those with potentially curable medical conditions should also be permitted to make use of "medically assisted dying" as well if they so choose.[3]

11. This has included individuals with non-life threatening spinal muscular atrophy, which the BCCLA has included among illnesses that should be considered "grievous and

[1] [2002] 35 E.H.R.R. 1.
[2] (2011) 53 E.H.R.R. 33.
[3] British Columbia Civil Liberties Association, "Notice of Civil Claim in the Supreme Court of British Columbia between Julia Lamb & British Columbia Civil Liberties Association and Attorney General of Canada," 27th June 2016, available at: https://bccla.org/wp-content/uploads/2016/08/2016-06-27-Notice-of-Civil-Claim.pdf.

irredeemable," and it considers that the legislation's scope is presently discriminatory against Canadians "who are suffering with no immediate end in sight."[4]

12. In an example from Europe, a healthy British former nurse specialising in palliative care ended her life in 2015 at the age of 75 at a suicide clinic in Basel, Switzerland, stating that she did not want to become "a hobbling old lady," and that "the thought that I may need help from my children appals me. I know many old people expect, and even demand, help from their children but I think this is a most selfish and unreasonable view."[5]

13. The inadequacy of the "protections" offered by the domestic law are further amplified by the rising number of euthanasia deaths and concomitant abuse of the system in other countries which have introduced it. In *Haas v. Switzerland*, the Court stated that "when a country adopts a liberal approach, appropriate measure to implement such liberal legislation and measures to prevent abuse are required," going on to say that "the risk of abuse inherent in a system which facilitates assisted suicide cannot be underestimated."

14. It is the duty of the State to protect human life to any extent within its power, and it is the duty of a medical practitioner under the Hippocratic Oath to treat and to heal, and not to kill or do harm. When a State takes it upon itself to be the arbiter of when innocent life can be legally taken, it sets society down a path to a place in which the right to life will cease to have any real meaning.

15. In the context of the Council of Europe, while the European Court of Human Rights has explained that there is no "right" to assisted suicide under the Convention, the Parliamentary Assembly of the Council of Europe has gone further, stating in Recommendation 1418 (1999) that:

> The Committee of Ministers [should] encourage the member states of the Council of Europe to respect and protect the dignity of terminally ill or dying persons in all respects … by upholding the prohibition against intentionally taking the life of terminally ill or dying persons, while (i) recognising that the right to life, especially with regard to a terminally ill or dying person, is guaranteed by the member states, in accordance with Article 2 of the European Convention on Human Rights which states that 'no one shall be deprived of his life intentionally'; (ii) recognising that a terminally ill or dying person's wish to die never constitutes any legal claim to die at the hand of another person; [and] (iii) recognising that a terminally ill or dying person's wish to die cannot of itself constitute a legal justification to carry out actions intended to bring about death.

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[4] Mike Laanela, *CBC News*, "Assisted-dying legislation faces new legal challenge in B.C.," 27th June 2016, available at: http://www.cbc.ca/news/canada/british-columbia/bccla-assisted-dying-legislation-1.3654220.

[5] Laura Donnelly, *The Telegraph*, "Healthy retired nurse ends her life because old age 'is awful,'" 2nd August 2015, available at: http://www.telegraph.co.uk/news/health/11778859/Healthy-retired-nurse-ends-her-life-because-old-age-is-awful.html.

16. In Resolution 1859 (2012), the Assembly went even further by stating that "euthanasia, in the sense of the intentional killing by act or omission of a dependent human being for his or her alleged benefit, must always be prohibited."

17. Canada has therefore placed itself in sharp contradistinction to other developed nations outside of a few renegade nations within the Council of Europe, Japan, and a handful of states within the United States. In Belgium, safeguards against voluntary child euthanasia have also been removed, as well as protocols in Netherlands allowing for the *de facto* legal euthanizing of infants, indicating that the slippery slope to this practice is far from avoided simply by the present inclusion of legislative limitations.

18. Canada must instead focus its attention on further developing palliative care (a process spurred on by the necessity of alleviating suffering during end-of-life care where physician-assisted suicide is not a legal option) rather than construing the active ending of life as a constitutional right, especially when it cannot be justified with reference to anything in international human rights law.

19. Concerns also exist on the part of Canadian doctors and other medical practitioners with ethical and conscientious objections to euthanasia. Although section 2 of the Charter protects the right to freedom of conscience and religion, and the federal assisted suicide legislation enshrines the right of practitioners to recuse themselves, Ontario regulations require objecting medical professionals to provide a referral to one who will perform the procedure, something which many have argued is morally equivalent to participating directly.[6]

20. This has led to groups representing over 4700 Christian doctors nationwide to launch a court challenge to the provincial regulations, with one alternative proposed to protect conscience being the establishment of a government-operated online registry of medical professionals willing to provide assisted suicide.[7]

(b) Freedom of Conscience and Expression

21. Section 2(b) of the Charter provides that "freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication" is a fundamental freedom. Nevertheless, a number of laws have been passed purporting to limit this freedom on both the federal and provincial levels, justifying this by the fact that section 1 provides that freedoms granted are subject "to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."

22. The Criminal Code of Canada forbids "hate propaganda," with section 319 prescribing imprisonment of up to two years for persons "who, by communicating statements in any public place, incites hatred against any identifiable group." Section 320 authorizes judges to order the confiscation of publications which are judged to be "hate propaganda."

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[6] Barabas Attila, *The Globe and Mail*, "Christian doctors challenge Ontario's assisted-death referral requirement," 22nd June 2016, available at: https://www.theglobeandmail.com/news/national/christian-doctors-challenge-ontarios-assisted-death-referral-policy/article30552327.
[7] Ibid.

23. There is certainly a need to regulate forms of communication that can credibly and reasonably be said to constitute incitement to violence, whether against an individual or a group. The concern, however, is that so-called "hate speech" laws, are on the whole vaguely worded and largely subjective, do not necessarily require falsehood, rarely require a victim, often only protect certain people, are arbitrarily enforced, and are often criminal rather than civil in nature.[8]

24. It is on these grounds that laws ostensibly protecting specific "vulnerable classes" could be used to silence legitimate speech, in violation of the right protected under Article 19 of both the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, as well Article 10 of the European Convention on Human Rights.

25. Section 13 of the Canadian Human Rights Act, the so-called "hate speech" provision, rendered it a "discriminatory practice" to communicate by means of the facilities of a telecommunication "any matter that is likely to expose a person or persons to hatred or contempt by reason of the fact that that person or those persons are identifiable on the basis of a prohibited ground of discrimination." This provision was successfully repealed in 2013 out of concern that rather than being a shield, it was instead being used as a sword to unjustifiably limit civil liberties.[9] Nevertheless, the problematic provisions of the Criminal Code regarding "inciting hatred" remain.

26. After Bill C-16 was introduced by the government in May 2016, proposing to add gender identity and expression to the list of "identifiable grounds" within the Criminal Code, as well as adding gender identity and expression as a protected ground within the Canadian Human Rights Act, University of Toronto psychology professor Jordan B. Peterson objected to the bill due to the negative effects it would potentially have on the right to freedom of expression.[10]

27. He argued that section 46.3 of the Ontario Human Rights Code, which construes acts done by employees of organisations within the scope of their employment to be done by the organisation itself, could be coupled with the amendments to the Criminal Code to make it so that an organisation such as a university would be liable for the failure of its employee, such as a professor, to use pronouns and other terms preferred by an individual on the basis of their self-declared gender identity or expression. He further stated that he would not comply with any law or policy aimed at compelling him against his will to use a divergent or gender-neutral pronoun.[11]

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[8] Paul Coleman, *Censored: How European "Hate Speech" Laws are Threatening Freedom of Speech*, Kairos Publications, 2016, 8-10.
[9] National Post, "Hate speech no longer part of Canada's Human Rights Act," 27th June 2013, available at: http://nationalpost.com/news/politics/hate-speech-no-longer-part-of-canadas-human-rights-act.
[10] Simona Chiose, *The Globe and Mail*, "University of Toronto professor defends right to use gender-specific pronouns," 19th November 2016, available at: https://www.theglobeandmail.com/news/national/university-of-toronto-professor-defends-right-to-use-gender-specific-pronouns/article32946675.
[11] Ibid.

28. Peterson was accused by critics of "helping to foster a climate for hate to thrive" and of creating an environment in which "transgender" students claimed to be receiving death threats on campus.[12] Peterson's response ran along the lines of a refusal to participate in what he termed "the ideological hijacking of language and belief" and in being "a puppet of the radical left."[13] In response, he was sent two letters of warning from the university effectively stating that the exercise of free speech is to be subject to human rights legislation, and that an anti-discrimination case could potentially be made against him for refusing to use preferred pronouns of university students and staff if asked.[14] Nevertheless, he has been permitted to continue to teach for the time being, despite fearing that disciplinary action was imminent.

29. Despite a pervasive and broad anti-discrimination and anti-"hate speech" legal regime, these laws have reportedly been deployed selectively in order to particularly silence Christians and conservatives. A National Post article drew attention to the fact that Christian pastors had been successfully prosecuted and ordered to cease publishing under the former section 13 of the Human Rights Act for allegedly "homophobic" statements, but that far more severe and harsh publications by Muslim imam Abou Hammad Sulaiman al-Hayiti about infidels (explicitly including homosexuals, Jews, Christians, and non-Muslim women) were not judged to have met the criteria for promoting hatred against an identifiable group.[15]

30. This led to the conclusion that while commissions charged with protecting human rights in Canada claimed to fight all instances of "hate," the only alleged "hatemonger" upon which they focus are "the right-winger accused of homophobia, anti-Muslim bias or some other thoughtcrime. The more unvarnished and explicitly murderous forms of hatred made manifest in the publications of, say, Jew-hating Muslims and Hindu-hating Sikhs are of no interest to the thought police."[16]

31. Also emerging from Ontario is the controversial Bill 89, *Supporting Children, Youth and Families Act 2017*, legislation which potentially allows authorities to remove children from families in which the parents do not accept the child's stated "gender identity." The Act requires social service officers and judges to take into account a number of characteristics, including "sexual orientation, gender identity and gender expression."[17]

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[12] Patty Winsa, *The Star*, "He says freedom, they say hate. The pronoun fight is back," 15th January 2017, available at: https://www.thestar.com/news/insight/2017/01/15/he-says-freedom-they-say-hate-the-pronoun-fight-is-back.html.

[13] Jordan B. Peterson, *National Post*, "The right to be politically incorrect," 8th November 2016, available at: http://news.nationalpost.com/full-comment/jordan-peterson-the-right-to-be-politically-incorrect.

[14] Patty Winsa, *The Star*, "He says freedom, they say hate. The pronoun fight is back," 15th January 2017, available at: https://www.thestar.com/news/insight/2017/01/15/he-says-freedom-they-say-hate-the-pronoun-fight-is-back.html.

[15] National Post, "Two-tiered thought police," 19th December 2008, available at: https://archive.is/20081225020249/http://www.nationalpost.com/opinion/story.html?id=1095061&p=1 (archived from the original).

[16] Ibid.

[17] Legislative Assembly of Ontario, "Bill 89, Supporting Children, Youth and Families Act, 2017," last accessed 5th October 2017, available at: http://www.ontla.on.ca/web/bills/bills_detail.do?locale=en&BillID=4479; Anugrah Kumar, *The Christian Post*, "Ontario passes law allowing gov't to seize children form parents who oppose gender transition,"

32. Child and Family Services Minister Michael Cotaeu stated, "I would consider it a form of abuse, when a child identifies one way and a caregiver is saying no, you need to do this differently … If it's abuse, and it's within the definition, a child can be removed from that environment and placed into protection where the abuse stops."[18]

33. In doing this, Ontario may violate numerous rights, principally that which is enshrined under Article 18(4) of the ICCPR, which recognizes "the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions." It also offends the urgent duty of the State to protect the family, which logically excludes arbitrary and unjustifiable attempts to divide and dissolve it under the guise of preventing so-called "abuse."

(d) Recommendations

34. In light of the aforementioned, ADF International suggests the following recommendations be made to Canada:

    a. Recognize that the State has a duty and obligation to protect and defend the right to life under international law, and as such repeal all laws which allow assisted suicide or euthanasia, acknowledging that there is no right to death under international law and that such practices violate the right to life;

    b. Ensure that no person is forced to participate, either directly or indirectly, in assisted suicide when to do so would violate their right to freedom of conscience, including by forcing them to provide a referral to a medical practitioner who will perform such a procedure;

    c. Ensure that the rights to freedom of conscience and expression are fully protected, and in doing so repeal all legislation and regulations which criminalize or otherwise prohibit so-called "hate speech," guaranteeing that freedom of speech can flourish wherever it does not constitute incitement to violence; and

    d. Respect the right guaranteed under international law of parents to raise and educate their children in accordance with their moral and religious convictions, and repeal all laws which threaten to arbitrarily and unjustly deprive individuals of their parental rights and the integrity of their families on ideological grounds.

4th June 2017, available at: http://www.christianpost.com/news/ontario-passes-law-government-seize-children-parents-oppose-gender-transition-186332.

[18] Anugrah Kumar, *The Christian Post*, "Ontario passes law allowing gov't to seize children form parents who oppose gender transition," 4th June 2017, available at: http://www.christianpost.com/news/ontario-passes-law-government-seize-children-parents-oppose-gender-transition-186332.

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