

In The Valley of the Shadow of Death: An Evaluation of Canada's Bill C-7's Balance of Autonomy and Protection of the Vulnerable



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Introduction

Medical assistance in dying (MAID) denotes the "process that allows someone who is found eligible to be able to receive assistance from a medical practitioner in ending their life." [1] At the intersection of medicine and law and with a complex history in the courts, the subject culminated in 2021's Bill C-7, which has received substantial praise and opposition, specifically for its potential impacts on vulnerable persons. Amidst this controversy, the federal government has explicitly stated its commitment to "supporting the autonomy of eligible persons to seek MAID while protecting vulnerable individuals and the equality rights of all Canadians," [2] the question remains: has such a balance been found?

Research Question: *To what extent does Canada's Bill C-7 MAID framework balance patient autonomy with the sufficient protection of the most vulnerable individuals in the nation?*

- Analyze Rodriguez, Carter and Truchon by quantifying and analyzing** the presence of key words pertaining to the advocacy or opposition of the advancement of MAID laws to define correlations between contextualized terms and the results of each case.
- Evaluate** the 2023 annual report of Canada's MAID regime to identify potential abuses and compare the frameworks of Canada, the Netherlands, and the U.S. state of California to evaluate the effectiveness of different levels of permissiveness.
- Outline** a response to the question of whether a jurisdiction can be determined to have "balanced" autonomy by the proposal of a social theory.

Methodologies

Court Case Analysis

A manual sentiment analysis of MAID-relevant court cases was completed to identify trends in the court's interpretation of assisted dying. This analysis considered 8 terms.

Advocacy terms: (In)Equal(ity), Choice, Autonomy, Discriminat(ion)(e)(ing)

Caution terms: Vulnerab(ile)(ility), Protection, Slippery Slope, Safeguard(s)

For each case, all instances of these terms were identified, categorized as **advocacy** or **caution**, tallied, and compared. Results were then compared against the court's ruling to evaluate whether verdicts aligned with the dominant sentiment expressed.

Comparative Analysis

2023 Canada MAID Report Deep-Dive: Analyze 10 key parameters (6 regarding general access and 4 focusing on Track 2) to determine if risks exist pertaining to the vulnerable's unjustified access to MAID.

Age, Gender, Requests Deemed Ineligible, Duration of Illness, Nature of Suffering, Indigenous Peoples, Self-Report Disability, Neighbourhood-Income Quintiles, Neighbourhood Marginalization Quintiles, Place of Residence

Compare the laws and government data of Canada, Belgium, and California to determine the impacts of permissiveness, explain what inspired differences in results, and identify potential gaps in service.

Gender, Ethnicity, Median Age, Percentage of Total National Deaths, Increase from 2022

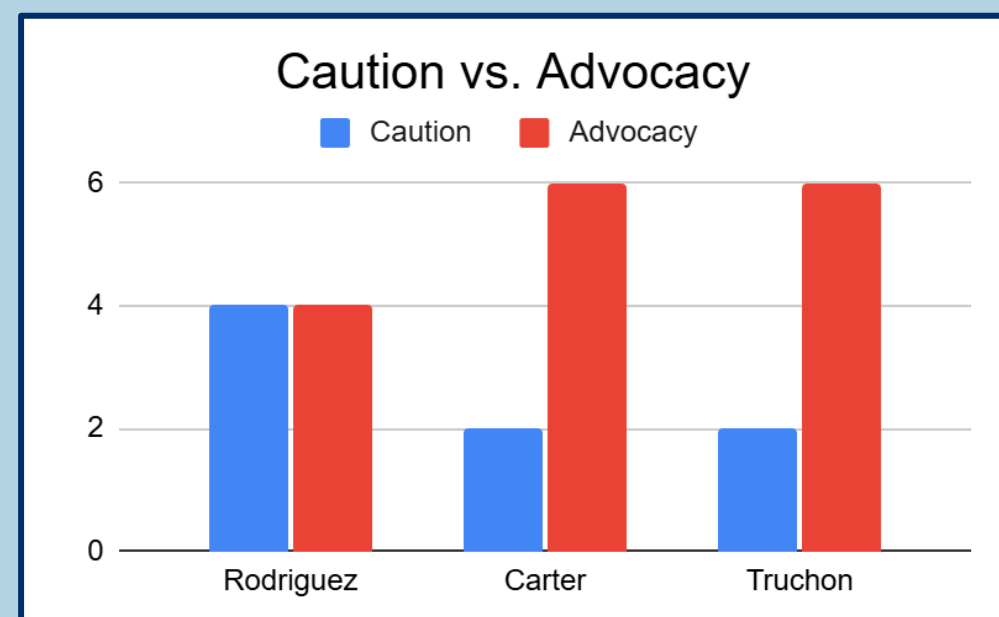
Explore the extreme permissions of Belgium to identify risks and/or lessons

Rank the nations based on their balance of autonomy and protection to determine which legal approach breeds the best consideration of both interests.

Quality of Oversight, Face of Laws, % of National Deaths, Increase in Deaths from 2022, Allowance of Unforeseeable Deaths, Further Permissions

Court Case Analysis

Analysis of Rodriguez, Carter and Truchon court cases shows that court sentiment reflects the final verdicts as advocacy increases from Rodriguez to Truchon.



This visual compares the dominance of caution and advocacy for the key terms. E.g. In Rodriguez, caution dominated 4 of the terms while advocacy dominated the other 4. This evolved in Carter and Truchon, where advocacy dominated 6, compared to caution's 2.

Despite ultimately ruling against assisted-dying, why were caution and advocacy equally present in Rodriguez? [3]

The decision was extremely narrow (5-4), which meant that nearly the majority was advocating. Moreover, the minority's statements took up twice the number of pages as the majority – resulting in the strong presence of dissenting opinions.

This correlation was confirmed by calculating what percentage of the majority and minority's statements were cautious and advocating, respectively. This revealed that indeed, justices' opinions were deeply connected to the context and language they used.

Carter [4] & Truchon [5]

The two most recent cases both saw a strong advocacy majority, which aligns with expectations as both saw the expansion of assisted-dying laws. Both cases were equal in their ratio, which can be explained partly by how both sought expansion and proposed one opinion.

Shifting Social Opinion: What drove legal shifts over time?

This can be explained by the court's natural and patient inclination towards reflecting public opinion. While Rodriguez's split court reflected a growing acceptance of assisted-dying, Carter occurred when opinion had substantially shifted, as evidenced by a 2010 poll in which 63% of Canadians generally supported legal euthanasia. [6]

Potential for Harm

Truchon inspired federal policy despite only being relevant for Quebec. Applying provincial precedent to federal law could have been a policy mis-step, as Quebec was the nation's leading supporter for MAID. However, such sentiment did not apply to all provinces, such as Alberta, which offered the lowest support.

Canada's 2023 MAID Report Breakdown

Showed No Definitive Signs of Undermining Protection: Age, Gender, Requests Deemed Ineligible, Indigenous Peoples, Self-Reported Disability [7]

Showed Some Signs of Undermining Protection: Duration of Illness, Nature of Suffering, Neighbourhood Income & Marginalization Quintiles, Place of Residence

59.7% The percentage of Track 1 MAID recipients aged 75 or older, compared to Track 2's 50.2%

17% The difference between men and women who access Track 2 MAID, compared to the 2.4% for Track 1.

23.9% The percentage of total requests deemed ineligible that were from Track 2, which made up 4.1% of all MAID requests.

36% The percentage of Track 2 MAID users who accessed MAID between 1 and 5 years from the onset of their illness.

26% The difference in the percentages of Track 1 and 2 MAID users who named "isolation and loneliness" as their nature of suffering.

0.000295% The percentage of the population of First Nations, Inuit, or Métis people who accessed Track 2 MAID.

58.3% The percentage of Track 2 recipients (from 57.9% of all T2 users) who self-reported having a disability.

18.1% The difference sum for all Females who accessed Track 2 MAID across all neighbourhood income quintiles.

40.7 The total added differences for all Track 2 income quintile differences, compared to Track 1's 20.4.

Income Quintile	Economic Dependency		Residential Instability		Situational Vulnerability	
	Average (T1, T2)	All deaths	Average (T1, T2)	All deaths	Average (T1, T2)	All deaths
5	8.4	30.6	34.75	27.8	15.5	20.5
4	18.35	20.9	21.9	22.5	17.9	19.7
3	21.9	18.4	18.3	19	19.75	19.7
2	25.8	16	14.3	16.7	20.4	19
1	25.5	14	10.75	13.9	26.45	21.1

34.75% The average percentage of Track 1 and 2 users who belong to the most deprived neighbourhood marginalization quintile for the category of Residential Instability.

35.7% The added differences for Track 2 users for Residential Instability.

30.5% The percentage of Track 2 users who lived alone.

Comparative Analysis

	Canada	California [8]	Belgium [9]
Total deaths	15,343	884	3,423
Percentage of total national deaths	4.7% (326571)	0.3% (290511)	3.1% (111,255) [38]
Inc. from 2022	15.8	0.67% decrease	15%
Median age	77.6	78	70-79
Caucasian (% in juris.)	95.8 (61.75%)	85.4 (34.09%)	(≥83.7%)
Male v female	51.2/48.8	50.1/49.9	48.6/51.4
Foreseeable	95.9% (14721)	100%	79.2% (2710)
Unforeseeable	4.1% (622)	0%	20.8% (713)

% of Total National Deaths: What is Canada's standing in terms of access? [10]

15x Increase 2016-2023 (Highest)

Belgium: 3.1%
California: 0.3%
1,018 to 15,343 Cases

13x Increase First 6 Years

Belgium: 3.4
Switzerland: 1.5x
Netherlands: 1.4x

4th Leading Cause of Death

After Cancer, Heart Disease & Accidents

95.9% of Cases Involve Foreseeable Death

AKA Under Track 1 of MAID

Zooming in On Belgium

5x Unforeseeable Death Rate

6.1% Unforeseeable Deaths in Belgium in 1 year

0.6%, 0.029%, 1.4%

Belgium to Canada
Canada: 4.1% in 7 Years
Advanced Directives, Minors, Psychiatric

Jurisdiction Rankings

Category	Autonomy			Protection		
	Canada	Belg.	Cali.	Canada	Belg.	Cali.
Oversight	3	1	2	3	1	2
Face of Laws	2	3	1	2	1	3
% of National Deaths	3	2	1	1	2	3
Increase in Deaths from 2022	2	3	1	2	1	3
Allowance of Unfore. Deaths	2	3	1	2	1	3
Further Permissions	2	3	1	2	1	3
Totals	14	15	7	12	7	17
Country	Canada	25				
Totals	Belgium	23				
	California	24				

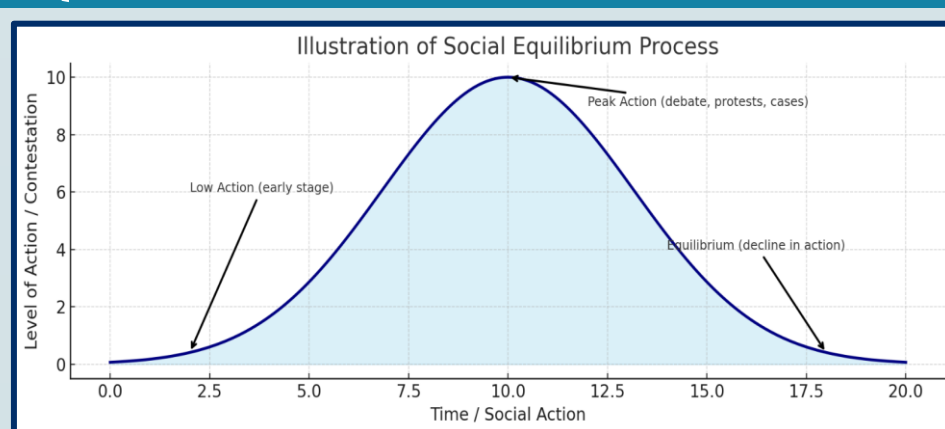
Social Judicial Equilibrium

Definition: The alignment of a jurisdiction's laws with its populace's majority sentiment.

Given that each jurisdiction has its own values, this equilibrium will vary, meaning that countries cannot be judged on the same plane.

For certain states, namely Canada and the U.S., there is a process of realizing this equilibrium that is demarcated by the rise of "action": social, legal, cultural or political movement intending to alter or preserve a law.

"Equilibrium can be a theory in certain states which are extremely polarized. However, this does not apply to inherently moral laws.



The achievement of equilibrium will result in a reduction in action, although it will undoubtedly remain, especially for contentious issues. Ultimately, if truly in equilibrium, such ideals will be propagated through vehicles like education, to shift values over time.

Conclusion

While Canada's MAID framework is commendable, specifically in its granting of autonomy to patients and in its attempt to enforce strong protections through limitations of access and oversight, its application contains gaps that represent significant risks to vulnerable populations.

- Court Case analysis shows that autonomy has been established as the overarching priority that has guided the permissiveness of Canada's MAID regime.
- Data and Comparative analyses show that despite protections, there is evidence that vulnerable populations are unjustifiably accessing MAID.
- Canada's MAID developments reflect a shift toward social-judicial equilibrium; however, the current prevalence of action indicates that Canada has not yet found the optimal balance of autonomy and protection.

Recommendations

- Strengthen, even further, the vetting process of MAID applicants by increasing the number of experts who review MAID applications to ensure medical decline is the **only** reason MAID is being considered
- Develop social systems to reduce the prevalence of social determinants that may inspire justified MAID access, especially to repel claims that Canada is "euthanizing its poor." Consider mandating that MAID is only introduced by practitioners after every other medical response is exhausting
- Given this study's finding of potential gaps in service, heavily increase discussion and research regarding allowing MAID for the mentally ill, especially given literature's exploration of its risks.

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