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Parliamentary delinquency on assisted suicide

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On Wednesday, the Supreme Court of Canada heard arguments in a Charter challenge to our ban on assisted suicide. Kay Carter and Gloria Taylor, the women afflicted with degenerative diseases at the case's origin, have ended their suffering. Some groups press on in their names, while others defend the law. Whatever the outcome, the case testifies that the House of Commons has ceased to be the place where Canadians debate what matters most to them.

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This wasn't the Supreme Court's first time considering the right to end one's life or to receive help in doing so. In 1993, a bare majority of five judges rejected Sue Rodriguez's claim and upheld the ban on assisted suicide. The only judge from that time still serving is Beverly McLachlin. Then a young judge, she was one of the dissenters.

Court watchers expect Chief Justice McLachlin to rally a majority around her view of autonomy and reverse the earlier decision. The case law under the Charter has evolved. Public opinion around assisted suicide has shifted. Legislative innovation in other jurisdictions offers examples of loosening the ban while establishing safeguards to protect the vulnerable.

But is this the kind of decision best left to the courts? By any standard, it's an extraordinarily complex, delicate question.

Determining policy on assisted suicide involves our fundamental commitments to the autonomy of the individual and the sanctity of life and entails interpreting those commitments in a secular, multicultural society. It calls for weighing the right to assistance ending one's life against the risk of abusing that right and exploiting the vulnerable. In our federation, it requires distinguishing the Parliament of Canada's exclusive power to define the criminal law from the provinces' power to

regulate health.

Judges elsewhere agree that this matter is primarily one for elected lawmakers. In June, the Supreme Court of the United Kingdom declined to declare a ban on assisted suicide incompatible with fundamental rights. The judges said that the proper next step was for Parliament to examine the question in the light of human rights. If Parliament failed to do so, the judges would hear further claims.

To be sure, our country's deliberative bodies haven't fully ignored the issue. In the mid-1990s, a special Senate committee examined euthanasia and assisted suicide. In 2011, the [Royal Society of Canada's Expert Panel on End-of-Life Decision Making](http://rsc-src.ca/en/node/83) [http://rsc-src.ca/en/node/83] issued a report. Several times in the past 20 years, individual members of Parliament have tried to put the question before the House of Commons for serious debate. In June, after extensive study, consultation, and debate, the Quebec legislature passed its act respecting end-of-life care.

Polls show that more than 80 per cent of Canadians support assisted dying. Of course, we don't legislate by polls. Polling may oversimplify a multifaceted question. Still, it's fair to say that on this issue, our representatives in the House of Commons are out of touch. By doing so little, they have essentially delegated a critical question of social and legal policy to the courts.

During Wednesday's hearing, the federal government's lawyers argued that assisted suicide raises matters of policy that only Parliament can decide. But justices took a dim view of the idea that interpreting fundamental Charter rights lay outside their remit.

They will give their answer, as they must. Case law confirms that they should not decline to decide a Charter case simply because it raises political issues. Still, that doesn't make it right for our elected representatives to have allowed the matter to reach them.

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