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ANALYSIS: QUÉBEC SUPERIOR COURT DECISION IGNORES DISABILITY DISCRIMINATION, FOLLOWS MEDICAL MODEL

The recent decision of the Quebec Superior Court in the Truchon/Gladu case blatantly disregards the effect of disability discrimination in shaping the quality of life of the plaintiffs, said Amy Hasbrouck, director of Toujours Vivant-Not Dead Yet, a project of the Council of Canadians with Disabilities.

“The judge’s description of the plaintiff’s situation invoked pity, but ignored the role of discriminatory public policy in depriving M. Truchon and Mme. Gladu of choice in where and how they live.”

“The court erroneously blames M. Truchon’s lack of independence on his disability. But the fact is that he could live independently but for policies that favour institutional care over consumer-directed community-based services.”

Hasbrouck also pointed to the court’s confidence in the ability of physicians to assess not just medical eligibility, but also decision-making capacity and the presence of social or economic pressure that might influence the MAiD request. She says this reliance on the “medical model” of disability, which sites the “problem” of disability with the individual while ignoring society’s responsibility to accommodate the full range of humanity, is a setback for the disability rights movement.

Dr. Heidi Janz, Chair of the Council of Canadians with Disabilities Ending-of-Life Ethics Committee, concurred with Hasbrouck’s assessment. “This decision at once mirrors and amplifies the persistent and growing ableism that we see in Canadian society in general, and in the medical profession in particular.”

Janz explains that studies consistently show that physicians routinely equate the presence of disability with a low quality of life. “Thus, as we’ve seen in this case, it is the disability itself, rather than the lack of supports which would enable people with disabilities to live independently and flourish, that is considered a fate worse than death.”

The decision of the court was rendered in the case of two people with life-long disabilities who challenged eligibility criteria in the Québec and federal MAiD laws requiring the person to be at the “end of life” (Québec) or that their natural death be “reasonably foreseeable” (federal). Jean Truchon and Nicole Gladu had been deemed ineligible for euthanasia In Québec because they were not at the “end of life” nor were their deaths “reasonably foreseeable.” The Superior Court decision was released on September 11, and found the challenged eligibility criteria unconstitutional. The court suspended its judgment for six months to give Parliament and Québec’s National Assembly time to modify the statutes, but allowed an exception to permit M. Truchon and Mme. Gladu to be euthanized.

The court failed to question why pain management techniques were ineffective for the plaintiffs, nor the fact that palliative care is often unavailable or inadequate.

The Court applies the “presumption of competence” to the plaintiffs’ request for euthanasia, whereas in general, the wish to die expressed by a non-disabled person is proof of suicidality, if not incompetence. TVNDY believes this is a discriminatory double standard that limits access to suicide prevention services for people with disabilities.

The court distinguishes the plaintiffs by their physical limitations, poorly-managed pain, and their dependance. Though all of these factors are directly related to disability, they are caused by inadequate medical care, discriminatory social policies, and negative views of disability.

Toujours Vivant-Not Dead Yet is a project of the Council of Canadians with Disabilities that focuses on ending-of-life issues.

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