

NOTES AND COMMENTS

EUTHANASIA, AIDING SUICIDE AND CESSATION OF TREATMENT — COMMENT ON PUBLICATION OF LAW REFORM COMMISSION OF CANADA

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In April 1975, a 21-year-old woman fell into a coma. Her name was Karen Quinlan, and the case that bears her name has continued to pose perplexing questions in the hazy area wherein law, medicine, religion, and public policy converge. Since 1976, when the New Jersey Supreme Court ruled that her mechanical respirator could be disconnected in the expectation that this would mercifully terminate her life (which, contrary to expert medical opinion, it did not, so that to this day she remains in a persistent vegetative state), the issues surrounding the practice of passive euthanasia have been litigated in a number of American courts. Furthermore, beginning with California in the same year as the *Quinlan* decision, an increasing cluster of state legislatures have enacted *Natural Death Acts*. Such acts have legalized the so-called 'living will', which is a written directive forbidding the use of artificial life supports in the event that the signatory suffers a terminal illness.

In Canada, such judicial and legislative developments have not occurred; and it is for this reason that the publication of *Euthanasia, Aiding Suicide and Cessation of Treatment*, a working paper in its Protection of Life series by the National Law Reform Commission, is most welcome. The report does not pretend to offer an exhaustive examination of the subject matter. Rather, as noted in the foreword, its focus addresses fundamental questions of social policy and is designed "to promote open dialogue of the problem between specialists in the field and members of the Canadian public." In its 71-page report (75 pages in the French edition), the authors accomplish that task in commendable fashion. With respect to legislative policy recommendations, the most significant proposal relates to the question of cessation of treatment in terminal cases. In that regard, the Commission suggests an amendment to the Criminal Code stipulating that no physician shall be required "to continue to administer or to undertake medical treatment, when such treatment is medically useless and is not in the best interests of the (patient)"

The complexities of the cessation-of-treatment issue preclude examination in a brief review, although it is enough to comment that the report's proposals present a well-reasoned and pragmatic approach to the complex policy questions that arise in this context. This reviewer must admit to one minor quibble, which relates to the Commission's refusal to recommend adoption of legislation comparable to the American *Natural Death Acts*. Its reasoning is that such legislation "risk(s) the reversal of the already-established rule that there should be no duty to initiate or maintain treatment when it is useless to do so." Granted that the objective behind a *Natural Death Act* is compatible with the common law on patients' rights. However, if the law were that clear-cut, then presumably the aforementioned Criminal Code proposal would not be necessary. One may also submit that the value to a *Natural Death Act* lies in its affirmation of patient autonomy. The Commission's proposal

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addresses the concern of the physician who wishes to terminate useless treatment. It says nothing about its obverse: the continued maintenance of treatment which not only is useless but also is quite possibly contrary to the previously expressed wishes of the patient himself.

In summary, this reviewer is pleased to recommend this volume as a valuable addition to the medico-legal literature on the subject of euthanasia.