Medical Assistance in Dying

On December 10th of 2015, Quebec declared itself in favour of medical assistance in dying (MAD), and the bill on end-of-life care was adopted. This ambitious and progressive stance followed the Carter case deposited by the Canadian Supreme Court (*Carter c. Canada, Attorney General)*, which ruled that euthanasia for medical purposes is no longer a criminal offence for physicians practicing the act under specific circumstances. The Supreme Court also ordered the federal government to modify the Criminal Code before June 6th of 2016, in accordance to the Canadian Charter of Rights and Freedoms. Thus, Bill C-14 was deposited by the Trudeau government, and received royal assent on June 17th. Although disparities remain between the provincial and federal laws, these legislative changes will significantly transform the practice of palliative medicine in Quebec.

Quebec Law on End-of-Life Care

The Quebec law on end-of-life care describes precise regulations concerning the criteria of eligibility and the standards regarding medical assistance in dying. First, the law defines MAD as “care consisting of medication or substances administered by a doctor to a person at the end of their life, at their request, so as to relieve their suffering by death.” This differs from assisted suicide, which consists of aiding a person in ending their life by providing them with the means to commit suicide, the information on how to do so, or both, without being the one to formally commit the act. Assisted suicide is not included in the Quebec law, and thus remains a criminal offense. MAD must also be distinguished from existing measures such as palliative sedation, non-initiation or cessation of treatment, and the administration of treatment aimed to relieve symptoms at the risk of shortening life.

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According to Quebec law, the precise conditions of eligibility for MAD[1] (art. 26) are that the person must:

1. Be an insured person within the meaning of the Health Insurance Act;
2. Be of full age and capable of giving consent to care;
3. Be at the end of life;
4. Suffer from a serious and incurable illness;
5. Be in an advanced state of irreversible decline in capability; and
6. Experience constant and unbearable physical or psychological suffering, which cannot be relieved in a manner the patient deems tolerable.

The person must, in a free and informed manner, submit the MAD request form prescribed by the Minister. The form must be signed and dated by this person, in the presence of a healthcare or social services professional who then countersigns the form. If this professional is not the person's treating physician, then the form must be submitted to the latter.

A key criterion for MAD is the state of being at the end of life. However, the concept of end of life is difficult to clearly define. Therefore, the government of Quebec drew upon the definition provided by the Canadian Institute for Health Information, which considers that individuals at end of life are those whose "physical health is at a state of decline and are considered as terminally ill or likely to die in the foreseeable (near) future" (CIHI, 2011).[2] In exceptional cases where the MAD is requested by a patient whose death is not foreseeable in the short term, the doctor must proceed with caution and ensure that the patient's decision is both free and informed.

The Quebec law makes clear that the applicant for MAD must be at the end of life. Therefore, despite the sympathy elicited by those who are affected by significant disability (such as tetraplegia), it remains illegal to practice medical euthanasia on such patients (unless they are equally afflicted by a concomitant illness that will lead to death in the foreseeable future). The same conclusion applies to those at the early stages of a degenerative illness.

Cases of patients with psychiatric disorders or dementia (and who otherwise suit the criteria of the MAD) are particularly challenging. It is important to evaluate whether the disorder renders the patient inapt to make a decision concerning their end-of-life care. Therefore, a specialized consultation is required to evaluate the patient's aptitude.

It is essential that the patient him or herself applies for the MAD request. A physician may not submit a request without the demand and written permission of the patient.

[1] Each criterion must apply.
[2] Translated from French.

Substituted consent is prohibited, nor is it possible to request MAD as part of advanced medical directives. By law, the patient in question must be considered an adult apt to make medical decisions. Therefore, a minor at age 14 or older may not make use of MAD. It is the physician's responsibility to verify that the patient is apt, and that their decision is not affected by external pressure. Likewise, the physician must ascertain that the patient is informed of the prognostic of the illness, any therapeutic measures available, and their foreseeable impacts. Furthermore, the treating physician must ensure that the extent of the patient's suffering, as well as their desire to proceed with MAD, are constant in time, to be verified at multiple points in time between reasonable time intervals. At any moment, the patient may withdraw their consent to receive MAD.

Once the patient's request is made, a second physician must review the case in order to respect the criteria for MAD (Art. 26). This review must be objective and impartial, uninfluenced by the physician's personal beliefs in regards to MAD. The second physician must examine the patient's medical file, and attach his or her written opinion along with the file.

Only a physician licensed by the CMQ may proceed with MAD. Thereby, a student, a medical resident or clinical monitor cannot perform this act, even if under supervision. A physician may refuse to participate in MAD, through conscientious objection, should such an act be at odds with his or her personal convictions. However, it is his or her duty to ensure continuity of care, by transferring the patient to another physician who will agree to the request.

MAD is an exceptional intervention, requiring interdisciplinary involvement among the treating physician, the pharmacist, nurses, and other members of the healthcare team. The act must be considered with solemnity, and direct the serious attention of all caregivers involved. The physician he or herself must administer the injection. (Only the intravenous route of administration is accepted for MAD). At any time during the intervention, the patient may still withdraw consent and terminate the process. MAD is administered in three steps: first, an anxiolytic (benzodiazepines) is given, followed by the induction of artificial coma (propofol or barbiturate, accompanied by an analgesic), and lastly the administration of a neuromuscular blocker (atracurium) to induce respiratory arrest, cardiac arrest, and death.

The legislation on end of life care regulates access to medical assistance in dying with strictness and rigour, such that this serious and exceptional act should take place under the most humane and respectful conditions possible, all the while avoiding misuse. As of June 16, 166 Quebec citizens have obtained MAD since its enactment last December. Until now, these interventions have taken place with utmost respect for patient's last wishes. However, vigilance and continued surveillance are necessary to ensure that MAD is always carried out according to standards prescribed by law.

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Canadian Legislation on Medical Assistance in Dying (C-14)

Following the ultimatum of the Supreme Court, the Canadian government created a bill on medical assistance in dying, which became enacted into law on June 17, 2016. This law modifies the Criminal Code such that participation in medical euthanasia, or assisted suicide in a medical context, is now decriminalized for healthcare professionals. The Canadian legislation acknowledges the personal choice of individuals who are afflicted with intolerable suffering, and for whom death is reasonably foreseeable in the near future. In fact, it protects vulnerable individuals from being urged to die in moments of weakness and protects against negative perceptions about the quality of life of people who are old, sick, or handicapped.

To be eligible for medical assistance in dying according to federal law, one must meet all of the following criteria:

1. They are eligible for health services funded by a government in Canada;
2. They are at least 18 years of age and capable of making decisions with respect to their health;
3. They have a grievous and irremediable medical condition;
4. They have made a voluntary request for medical assistance in dying that was not made as a result of external pressure;
5. 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.

According to the legislation, a person is considered to have a grievous and irremediable medical condition only if they meet all of the following criteria:

1. They have a serious and incurable illness, disease or disability;
2. They are in an advanced state of irreversible decline in capability;
3. As a result, they suffer enduring physical or psychological suffering that is intolerable to them and that cannot be relieved under conditions that they consider acceptable;
4. 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.

Thus, according to Canadian law, it is not necessary to suffer from a lethal disease or terminal illness to be eligible for MAD. Indeed, the legislation defines a “reasonably foreseeable natural death” as the potential for the patient's death to occur in the upcoming future. It is up to the physician or nurse practitioner to judge whether the patient's condition will inexorably lead to their death, even if in the absence of a clear

and precise prognosis. Regardless, death, should be expected in the not too distant future. Thus, the criteria of federal law are meant to be larger than those of the Quebec law by not imposing the criterion of end of life.

Individuals with mental illness are eligible for MAD, as long as they meet all the conditions listed. However, they are not considered eligible if they only suffer from mental illness, if their death is not reasonably foreseeable, or if their psychiatric disorder prevents them from making an informed decision.

The application procedure for MAD aims to guarantee protective measures to ensure that those who receive medical assistance in dying are indeed eligible, are capable of giving informed consent, and voluntarily make the request for assistance to die.

The patient must voluntarily provide a written request, in the absence of external pressure. This application must be signed by two independent, adult witnesses who do not in any way benefit from the death of the patient, who are not owners or operators of a healthcare facility where the patient receives care, and who do not directly participate in providing health or personal care to the patient. The physician or nurse must then verify that the patient meets all of the eligibility criteria. A second physician or nurse practitioner, who has no connection with either the attending team or the patient, must produce a written report confirming the patient's eligibility. A mandatory 10-day wait period must separate the date of the written request and MAD, to ensure that the patient remains certain of their decision. At any time, the person may withdraw the request for MAD. It is equally required by law that, immediately prior to administering MAD, the physician or practitioner nurse must offer the patient the opportunity to withdraw their application, while furthermore confirming the patient's explicit consent in receiving MAD.

The federal government has committed itself to implementing a monitoring process for access to MAD in collaboration with the provinces, and will report on the subject. The federal government has equally facilitated access to end-of-life palliative care, investing $3 billion over four years in home (and palliative) care services. In addition, the government is bound to initiate, within 180 days after the bill's royal sanction, at least one independent review that will study issues specific to mature minors, those with only mental illness, and advance medical directives - all currently unaddressed by the current legislation.

Differences between the two legislations

Several differences exist between federal and Quebec legislations.
First, federal amendments to the Criminal Code allow both voluntary euthanasia (in which MAD is performed by a physician) and assisted suicide (in which MAD is administered by the patient themselves). Quebec law only permits voluntary euthanasia.

Those who are eligible for MAD also differ between the legislative texts. At the federal level, intolerable suffering must be caused by a medical condition, although this is not a strict requirement under Quebec law. Moreover, Quebec requires that the patient be at the end of their life. This greatly contrasts with Canadian law, which states that MAD can be provided to a person whose death is "reasonably foreseeable," with no requirement of a specific time period before death is anticipated to occur.

Finally, the medical professionals who may provide MAD differ between the jurisdictions. At the federal level, both physicians and nurse practitioners can administer MAD. In Quebec, the act may be performed by physicians only.

As the harmonization of the two legislations pends, the Collège des Médecins du Québec (CMQ) recommends its members to follow Quebec law. The CMQ reminds physicians that they must be able to justify the decisions made for and with their patients, from both a professional and legal perspective.

Concerns about pharmaceuticals

Concerns have been raised regarding access to medications that are used for MAD, and which pharmaceutical companies will provide them. In the past, various major pharmaceutical companies have adopted stringent control measures in the United States to prevent association with the execution of the death penalty. However, companies that do provide products used for MAD (Pfizer, Sandoz, Fresenius Kabi) have not yet commented on the issue. According to Dr. Yves Robert, secretary of the CMQ, the College has not yet encountered any complaints or problems with accessing medications in relation to pharmaceutical companies from since the legislation was enacted. He was skeptical that drug companies would deny access to medication in the context of MAD, given the population's acceptance of voluntary euthanasia.

In a media interview, the director of Dying With Dignity Canada, Shanaaz Gokool, commented that "pharmaceutical companies do not need to take a stance on the use of their drugs in such a context. If the law is passed, [medical assistance in dying] will

become an authorized medical intervention, and pharmaceutical companies only need to provide the drugs required. They have no reason not to."[3]

Thus, it is unlikely that pharmaceutical companies would limit access to medication in the context of MAD, given the clear guidelines established by the two governments and the favorable popular opinion regarding MAD.

Conclusion

Medical assistance in dying is a serious procedure that physicians must perform with respect, sensibleness and compassion. Such an act will never be considered trivial in nature. As a student, you will not perform such an act yourself. However, you will in all likelihoods be exposed to its consequences. This medical intervention may not only challenge our personal beliefs and values, but also cause us to question the role of the physician in the face of death.

Allowing death with dignity is a choice that we, as a society, have made. We must ensure, however, that voluntary euthanasia never becomes an expected norm, and that vulnerable or “unproductive” individuals are never persuaded to die due to a lack of resources. A competent organization must be established to monitor and analyze the requests submitted for medical assistance in dying. However, above all, we must continue to improve access to palliative care throughout Quebec, such that all patients may benefit. Then, those who truly wish to leave us may choose to do so at the moment that is right for them.

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[3] Translated from French

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