

Navigating assisted death and end-of-life care

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Public discussion on assisted death has recently resurfaced in Canada. In 2009, the controversial Bill C-384, An Act to Amend the Criminal Code (Right to Die with Dignity) was introduced in the House of Commons. Although it was defeated on its second reading, Bill C-384 sought to amend the Criminal Code to permit assisted suicide or euthanasia for patients with terminal illnesses or severe pain (physical or mental) that showed no prospect of relief.¹ In the autumn of the same year, the Collège des médecins du Québec expressed its support for euthanasia as an option in appropriate end-of-life care.² In September 2010, the province of Quebec held public hearings to debate the issue of assisted death.³

Parallel to the debate over assisted death is a discussion concerning the state of end-of-life care in Canada; in particular, the discussion concerning the ongoing and substantial disparities in the delivery, content and accessibility of palliative care across the country. According to a 2010 report from the Canadian Senate, at least 70% of Canadians “do not have access to palliative care” and “of those that do have access, it is not equitable.”⁴ This is a particularly grim statistic when we consider that more than 25% of the Canadian population will be over the age of 65 by the year 2031.⁵ Seniors account for 75% of deaths per year in Canada, and “almost 4 out of 5 people over the age of 65 have one chronic disease and about 70% have two or more progressive, life-limiting conditions.”⁴

These two discussions overlap. On the continuum of care, the connections between unmet needs or untreated symptoms and the desire for hastened death are becoming increasingly clear.⁶ When a patient’s pain, suffering and distress are addressed, his or her sense of well-being improves.⁷ When a patient’s sense of well-being improves, he or she may often have a change of heart and show a strong will to live.^{8,9} This connection has helped highlight the importance of advancing integrated end-of-life care — care that addresses existential, psychological and social sources of distress in addition to physical sources of distress.¹⁰⁻¹²

Of key interest is the increasing evidence that

the worry of creating a burden for others is a factor that patients with life-threatening illnesses weigh in their decisions to hasten their own deaths.¹³⁻¹⁵ Logically then, feelings of being a burden will partly be a function of the availability, accessibility and content of end-of-life care. We must therefore ask ourselves at what point will we have fulfilled our duties with respect to the provision of end-of-life care that we may move into the realm of assisted death? Although there is no simple answer, based on the 70% figure cited in the Senate report, we can bluntly state that Canada is currently nowhere near such a threshold. The equalization of palliative care must occur before assisted suicide can be legalized. If this is not the case, there is a risk that a patient’s request for assisted death will lack consent because of the absence of meaningful choice with respect to the relief of pain and distress.¹⁶

From the perspective of the rights of the patient, the connection between these two issues is also reflected in the tension between a patient’s right to end-of-life care and his or her right to die. As argued by Frank Brennan, because there will always be a proportion of patients requesting euthanasia on the basis of unmet needs, “patients would be better served by asserting a right to palliative care” before “any discussion about euthanasia.”¹⁷

Brennan has explored the possibility of a human right to palliative care under existing international human rights agreements, particularly those concerning the rights to security, health and dignity. For example, a right to palliative care could be argued to fall under the United Nations’ Universal Declaration of Human Rights, specifically articles 1 and 25, which guarantee the right to security in the event of

Competing interests: None declared.

This article has been peer reviewed.

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CMAJ 2011. DOI:10.1503/cmaj.091845

KEY POINTS

- The issues of assisted death and access to palliative care can be discussed in the context of human rights.
- The right to palliative care would be supported by the right to enjoy the highest attainable standard of health.
- The right to enjoy the highest attainable standard of health requires that the scope of the Canadian palliative care system be fully optimized before assisted death is legalized.

sickness, disability or old age and recognize that all human beings are born free and equal in dignity and human rights.¹⁸

The international commitment that appears to provide the most direct recognition of a human right to palliative care is article 12 of the International Covenant on Economic, Social and Cultural Rights.^{19,20} It reads,

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for: ...
 - (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

Article 12 does not guarantee a right to the highest standard of health; instead, it recognizes only what is attainable by the particular state. Furthermore, although Canada is a signatory to this covenant, Canada relies on its existing legislation, policies and programs to fulfill its international commitments to human rights. Thus, enforcing a right to palliative care in Canada ultimately depends on recourse to domestic legal tools like the Canadian Charter of Rights and Freedoms.²¹ However, there is a presumption that Canadian law conforms to international law.²² Thus, if Canada wishes to legislatively sidestep its international commitments, it must do so explicitly.

To return to the initial question: What is the threshold that will allow us to move from end-of-life care towards assisted death? Legally, it would appear that this threshold must be ascertained with reference to Canada's commitment to realize the patient's right to enjoy the highest attainable standard of health. If assisted death is legalized without first addressing equalized access to palliative care for all Canadians, then assisted death will bypass the commitment to Canadians' right to the highest attainable standard of health and will pre-empt the opportunity for Canadians to realize that right.

The decisions surrounding our policies on health care must be considered in the broader

context of the express commitments and aspirations that we have made as a country. If our tax dollars fall short of providing integrated end-of-life care to all Canadians equally, then our legislators ought to acknowledge and incorporate that fact before moving forward with the legalization of assisted death.

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