Open Letter: A Blueprint for Leadership on Physician Assisted Dying

On February 6, 2015, the Supreme Court of Canada unanimously found that the Criminal Code's total prohibition on assisted dying is unconstitutional. The court ruled that competent adults with a grievous and irremediable medical condition that causes enduring suffering intolerable to them should have the option to obtain a physician's assistance to end their life with their informed consent.

The court stayed this decision for 12 months to allow federal and provincial authorities to regulate physician assisted dying, should they wish to do so. But in any event, the provision of physician assisted dying to persons who qualify under the terms of the court's declaration will be decriminalized in Canada on February 6, 2016.

Federal, provincial and territorial authorities, along with various regulatory agencies and professional associations, all help to shape Canada's health care system. They work diligently to make it effective and accessible. But the sheer number of independent stakeholders can sometimes lead to needless duplication and delay.

In their wish to consider all implications, risks and safeguards involved in regulating the right to die, many authorities are now engaged in extensive, virtually identical consultations on physician assisted dying. **Without a focused, coordinated approach, there may be no specific regulatory framework for physician assisted dying in place on February 6, 2016.**

We propose a path forward that invites all stakeholders to engage in their respective spheres of responsibility. Our suggestions balance the complexities involved with the practical realities of who is best suited to enact various components of a regulatory framework for physician assisted dying.

Every day, grievously and irremediably ill Canadians suffer unbearably. Some would choose an assisted death. A compassionate Canada would not make them wait a day longer than necessary to exercise their *Charter* rights. Nor does anything in the Supreme Court's decision contemplate any further delay.

Leadership and coordinated action are required *now* to ensure that there is sufficient clarity by February 6, 2016 given the essential rights and freedoms that are at stake. No person should be made to endure needless and unwanted suffering simply because various stakeholders allowed a year to pass without acting on the Supreme Court's decision.

Shared responsibility for health care

The responsibility to regulate physician assisted dying in Canada is shared between federal, provincial and territorial governments. The role of physicians and other regulated health professionals is currently governed by national and provincial professional associations and provincial licensing authorities. Extensive consultations are now being carried out by virtually all of these stakeholders. These consultations duplicate excellent work already done, and they are unlikely to shed new light on the issues that need to be addressed.

Quebec presents a particularly compelling model for regulating assistance to die. Its Bill 52: *An Act respecting end-of-life care* was passed in June 2014, following years of public hearings, consultations with experts in the fields of medicine, health care, law, ethics, sociology and psychology. Since then, stakeholders in Quebec have been preparing for the implementation of Bill 52, which is expected to come into effect on December 10, 2015.

The Quebec model offers a solid base upon which the other provinces, territories and various associations and regulatory bodies can build their own policies for physician assisted dying, leading to higher levels of compatibility among the various jurisdictions, and saving precious time when time is of the essence. In saying this, we note that aspects of the Quebec model, such as its restriction that physician assisted dying is only available for people with terminal illnesses, are at odds with the Supreme Court's ruling.

We propose for consideration by all stakeholders the following allocation of responsibilities to ensure that there is sufficient clarity by February 6, 2016.

Federal government

Federal involvement is desirable to avoid a patchwork of regulation across Canada. Amending the *Criminal Code* to reflect the court's ruling will provide clarity for other tiers of government, for physicians who provide assistance to die and for the many institutions and organizations that deal with persons suffering at end of life.

The collection of information about assisted dying will similarly involve a large number of stakeholders. National coordination is desirable to ensure that data collection occurs reliably and comprehensively in order to permit responsible oversight of physician assisted dying and to build public confidence in the system.

The federal government should:

1. Recognize and collaborate with the Provincial-Territorial Expert Advisory Group, whose consultations are now well underway, and solicit their recommendations for federal action.

2. Immediately thank and disband the three-member federal consultative panel, which was appointed by the previous government and is not scheduled to report back to Parliament for several months. There is no need for parallel consultations and overlapping reports when time is of the essence. Serious questions have been raised regarding the credibility of the panel and, by extension, the validity of its future report.

3. By February 6, 2016, amend the *Criminal Code* to legalize physician assisted dying for competent adults who meet the criteria specified by the Supreme Court of Canada; that is, those who have a grievous and irremediable medical condition that causes enduring suffering that is intolerable to the individual.

4. Ensure oversight bodies are in place to coordinate data collection and oversee the provision of physician assisted dying across Canada. These bodies should report findings to the public to ensure that all physician assisted deaths across Canada are fully compliant with applicable laws and regulations.

Provincial and territorial governments

The provinces and territories are responsible for delivering health care in Canada, and they have a particular responsibility to ensure their residents have effective access to health care, no matter where they live.

Issues of access fall outside the scope of the *Criminal Code* and must be legislated by the provinces: Individuals must be able to receive information about physician assisted dying in accordance with the best practices of informed consent; physicians must be able to refuse to provide assistance to die for reasons of conscience; individuals must be able to exercise their right to physician assisted dying no matter where in Canada they happen to reside. Balancing the various rights affected may be difficult, but it must be done to ensure that those who suffer intolerably and seek assisted death are not abandoned by the health care system.

The provinces and territories should:

1. Ensure informed consent and other provincial healthcare legislation is in line with federal legislation concerning physician assisted dying.

2. Create or amend legislation to ensure that physician assistance to die is accessible in or through all publicly funded health institutions (including hospitals, hospices, long-term care and assisted-living facilities) and to residents wherever they may reside.

3. Ensure that a system of effective referrals is put in place, so as not to abandon those patients whose physicians' personal beliefs render them unwilling to assist. This can be achieved by the creation of an independent agency, or agencies, responsible for providing referrals, or by assigning this task to existing authorities, institutions or other bodies.

Canadian Medical Association

The Canadian Medical Association has played a leadership role in consulting with its members and with Canadians at large in order to create guidelines for the implementation of physician assisted dying. The CMA has offered to provide training on assisted dying for physicians and should begin to do so.

The CMA should:

1. Be a training source for PAD for interested physicians prior to February 6, 2016.

Provincial medical associations

Provincial medical associations are responsible for negotiating fee guidelines for physicians. Assistance to die can be provided via prescriptions for life-ending medication, written for patients to take where and when they choose without a physician needing to be present (as in Oregon), or administered directly by a physician. The physician may remain with the patient until death occurs (as is required in Quebec). Fee codes must reflect these different scenarios.

Provincial medical associations should:

1. Work with their respective provincial and territorial governments to create fee codes for physician assisted dying.

Medical licensing authorities

Various colleges of physicians regulate the practice of medicine to protect and serve the public interest. All physicians must be members of a college in order to practise medicine.

These regulatory bodies should:

1. Issue guidelines requiring all physicians to provide information about assisted dying to their patients, in line with best practices of informed consent.

2. Issue guidelines requiring doctors who do not wish to participate in assisted dying to provide effective referrals.
3. Develop best practice guidelines and training modules relating to physician assisted dying.

Overarching Considerations

All stakeholders need to view physician assisted dying through a compassionate, patient-centred lens. A request for assisted death must be made by the patient. In assessing suffering, only the patient can assess whether their suffering is intolerable.

All government and regulatory bodies should recognize that:

1. Only the person seeking an assisted death can request it; and

2. Only the person seeking an assisted death can assess whether their suffering is intolerable.

We believe that the path to integrate legal physician assisted dying into the health care system is clearly marked. Levels of complexity must be addressed to mitigate risks and to ensure effective protection for everyone involved, including: suffering individuals who may choose a physician's assistance to end a life of intolerable suffering; the health care system that must accommodate Canadians' newly recognized right; the physicians who will play the most direct role in administering assistance to die; the many tiers of government and regulatory bodies that will develop the framework to clarify roles and responsibilities.

In making these recommendations, we note that the Supreme Court of Canada did not oblige Parliament and the provincial legislatures to enact legislation. If no action is taken, there will be no regulatory vacuum. Physician assisted dying will be regulated in the same manner as other health care matters. That is, the provincial and territorial laws that apply

to health care matters and the standards of the medical profession will govern physician assisted dying.

If we build on what has already been done, if we focus on the suffering individual in developing appropriate safeguards without onerous barriers, if we trust physicians and their colleagues in the health care system, if we respect the autonomy of individuals to determine when their suffering has become too great, and if the finality of death is preferable to a life of intolerable pain, then we can make this work in this country.

As the voice of the 84 per cent of Canadians who support physician assisted dying, we believe no person should be forced to live even one day of needless and unwanted suffering because others have failed to act responsibly.

Leadership is needed now.

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