Medical Assistance in Dying: Reviewing the Statistics and Looking Forward

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It has been just over three years since parliament's medical assistance in dying (MAID) legislation came into force. The fourth and final interim report released by Health Canada in April 2019 reveals some interesting statistics about how, where, and when MAID has been implemented in Canada.

With the implementation of any new law, especially one as groundbreaking as MAID, there are bound to be complex questions and debate about what is to come. The judiciary and parliament have already begun grappling with these difficult questions.

Early Statistics on Implementation

Public reporting on MAID is a critical component to enhance trust and transparency regarding its use in Canada. Since the implementation of the legislation, provincial and territorial governments have provided Health Canada with information on MAID. Health Canada has released its final interim report on MAID and now that the regulations have come into force, the federal government will produce annual reports with nationally aggregated data for Canadians.

According to Health Canada's final report, at least 6,749 Canadians have received MAID since the legislation came into force. From January 1, 2018, to October 31, 2019, MAID accounted for 1.12 per cent of the estimated total deaths in Canada. This is a 0.42 per cent increase from the last Health Canada report, which found 1.07 per cent of deaths were attributable to MAID. The percentage of MAID deaths in Canada is well within the range of deaths attributed to MAID in other countries. That spectrum ranges from 0.4 per cent of the deaths in Oregon, U.S.A., to four per cent of the deaths in the Netherlands.

93 per cent of MAID deaths in Canada were provided by physicians, with a two per cent increase in nurse practitioner involvement over the last reporting period. When considering this statistic, it is important to note that Québec's MAID legislation only permits physicians to administer MAID. The setting where MAID occurs remains primarily divided between hospitals (44 per cent) and patient's homes (42 per cent) and MAID continues to be administered most frequently in urban settings (56 per cent).

The ages at which the majority of Canadians receive MAID is 56 to 90 years old. Interestingly enough though, British Columbia had 12 cases of MAID for those between the ages of 18-45 (the youngest cohort). This is the highest rate for this age range of all the reporting provinces. In fact, no one in Ontario between the ages of 18-45 received MAID.

In Canada, slightly more men (51per cent) than woman (49 per cent) are recipients of MAID. Of the reporting provinces, Saskatchewan saw the highest rate of female recipients (55 per cent) whereas the Atlantic Regions (NL, PEI, NS, NB) saw the highest rate of male recipients (57 per cent).

Finally, the most cited medical condition of MAID recipients is by far cancer-related illnesses.

Developments in the Case Law: Physicians Must Provide Referrals for MAID Services

The Ontario Court of Appeal recently found that physicians with religious objections to MAID are still required to provide patients with effective referrals for MAID services. The College of Physicians and Surgeons of Ontario's effective referral policies strike a reasonable balance between patients' interests and physicians' *Charter* protected religious freedom. This case was discussed in more detail in our June newsletter.

Next Steps for MAID

Three possible MAID requests currently fall outside the scope of the law and have attracted public debate. They are:

- MAID for people under the age of 18;
- Advance requests for MAID;
- MAID for people with a mental disorder as their sole medical condition.

The Council of Canadian Academies (CCA), at parliament's request, released an independent review of these MAID requests, outlining various recommendations.

Mature Minors and MAID

The CCA report highlighted the importance of protecting the vulnerability of minors while still valuing their decision-making capacity. In 2009, the Supreme Court recognized mature minors have the capacity to make their own health-care decision to refuse lifesaving treatments; however, the applicability of cases like this will depend on whether refusing treatment is the same or distinct from requesting MAID.

Moreover, mature minors in Belgium and the Netherlands can already access MAID, albeit request from this age cohort are extremely rare. In order to protect mature minors in Canada, the CCA proposed potential safeguards, such as involving not only the patient, but also their family and an interprofessional health-care team in any MAID decisions.

Advance Requests and MAID

Currently, the federal legislation requires medical professionals to obtain express consent from patients immediately before providing MAID; however, many who have requested MAID are fearful that they will lack the capacity to consent again on the day they wish to die. The CCA report recognized that advance requests would act to resolve this issue; however, they would require an amendment to the *Criminal Code* and it is unclear how their regulatory framework would differ from advance directives. Further, how would medical professionals assess the intolerable suffering of a patient when the patient can no longer communicate that to the professional?

Again, the CCA noted potential safeguards such as clinical practice guidelines and mechanisms for supporting families and physicians going through the advance request process; however, they differed on whether these safeguards would sufficiently reduce the risks associated with allowing advance requests for MAID.

Mental Disorders and MAID

The Supreme Court did not expressly prohibit people with mental health issues from accessing MAID. However, it is unlikely individuals whose sole medical condition is mental health-related will meet the criteria established in the legislation; particularly the requirement that their natural death is reasonably foreseeable. The CCA report explains how often the symptoms of mental illnesses include the desire to die, affecting the patient's capacity to consent. There is a risk that MAID could end the life of a person who could have regained the desire to live; on the other hand, there is a risk to denying MAID, as the patient's condition may never improve and they could continue to live in intolerable suffering. Ultimately, the CCA's conclusions about this request provided a variety of viewpoints that they hope aid future parliamentarians' discussions.

While there is no case law dealing with these complex MAID requests just yet, we expect to see developments. Further, parliamentarians are set to review the federal MAID legislation in June 2020 and may consider CCA's reports when making future policy decisions about MAID.

Key Takeaways

- Interim report from Health Canada provides statistics about the implementation of MAID. At least 6,749 people have received MAID since the legislation came into force.
- Regulations will now require the government to produce annual reports on the use of MAID in Canada.
- We are likely to see new developments in both parliament and the judiciary regarding requests for MAID that are currently outside the scope of the legislation: MAID for mature minors, advance requests for MAID and MAID for those with mental disorders as their sole medical condition.

By

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