

Medical assistance in dying through the lens of dementia

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Declaration of Conflict of Interest

DISCLOSURE OF FINANCIAL SUPPORT

- No external support

FACULTY/PRESENTER DISCLOSURE

- Faculty: Jocelyn Downie
- Relationships with financial sponsors
 - Not applicable (i.e., no relationships to disclose)

Road map

- Legal status of MAiD for people with dementia
- Possible pathways for law reform about MAiD for people with dementia
- Main features of the policy debate re: whether to change law re: MAiD for people with dementia

[Note: federal legislation only, not Quebec MAiD legislation]

Legal status of MAiD for persons with dementia

Legal status depends on when desired

- MAiD desired before loss of capacity
- MAiD desired after loss of capacity (“advance requests”)

MAiD desired **before** loss of capacity

Eligibility criteria

- Eligible for health services funded by government in Canada (or would be but for minimum period of residence or waiting period) ✓
- At least 18 years old ✓
- Capable of making decisions with respect to their health ✓
- Made a voluntary request ✓
- Gave informed consent to receive medical assistance in dying after having been informed of means available to relieve suffering, including palliative care ✓

Eligibility criteria

- Have a grievous and irremediable medical condition
 - they have a serious and **incurable** illness, disease or disability;
 - they are in an advanced state of irreversible **decline in capability**;
 - that illness, disease or disability or that state of decline causes them enduring **physical or psychological suffering** that is intolerable to them [subjective assessment] and that cannot be relieved under conditions that they consider acceptable;
 - 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.***

*** in flux given *Truchon and Gladu* but, for now, required

Serious and incurable

- dementia ✓

Natural death has become reasonably foreseeable

- after diagnosis with dementia
 - “not too remote” ✓
 - cause of death is predictable ✓

Advanced state of irreversible decline in capability

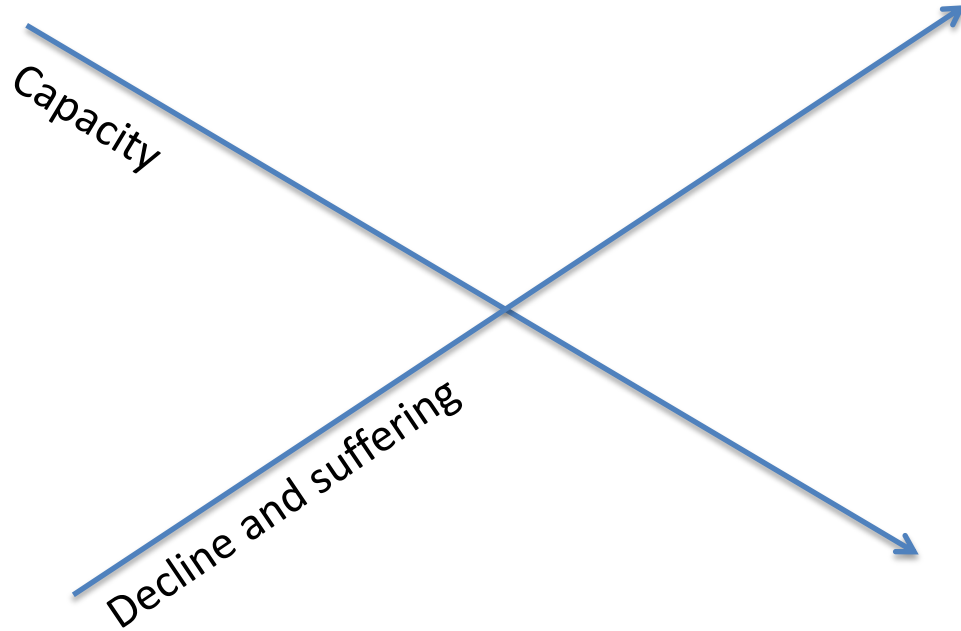
- irreversible ✓
- “advanced state” ✓
 - relative to person (can be advanced long before loss of decision-making capacity)
 - right before loss of decision-making capacity = advanced
- “capability” ✓
 - physical and/or cognitive decline

Enduring, intolerable, irremediable suffering*

- enduring ✓
- intolerable ✓
- irremediable ✓

*subjective

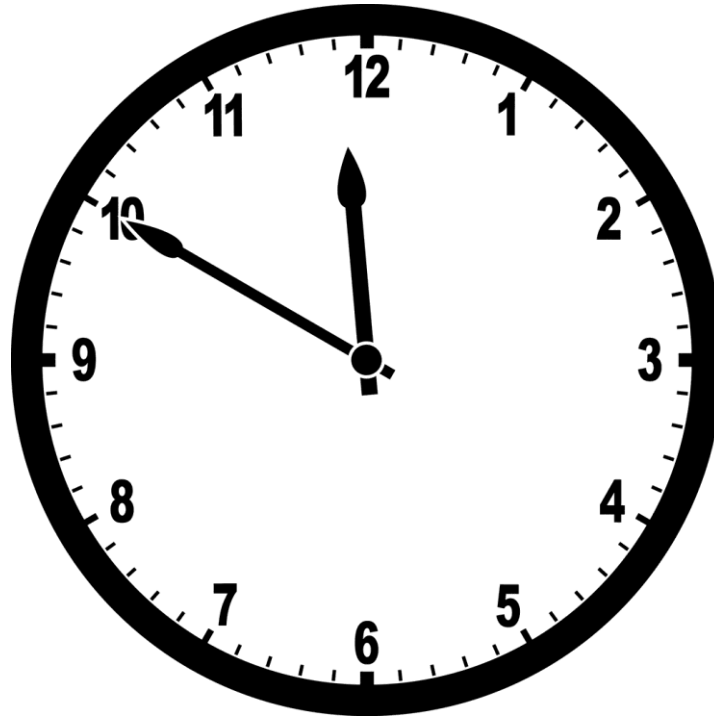
Problem



Would like to live as close to loss of capacity as possible but challenging to predict loss of capacity

Current solution

See camapcanada.ca

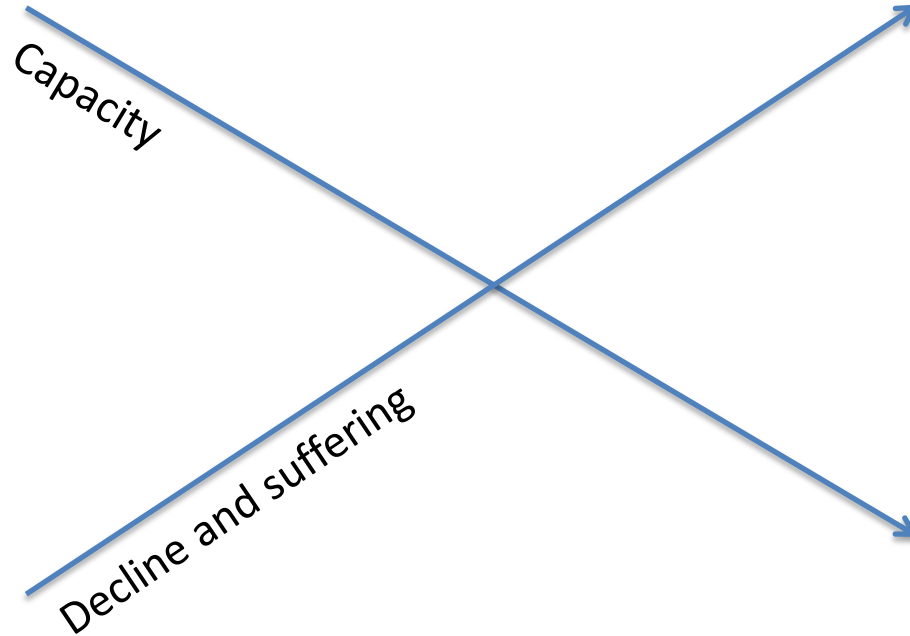


MAiD desired after loss of capacity

X because

reconfirmation of consent required
immediately before providing MAiD

Problems



Midnight is hard to predict

OR

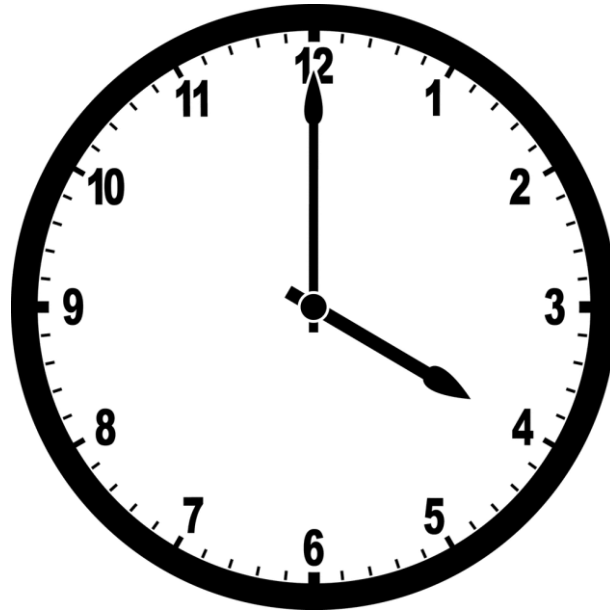
Would like to live past incapacity but not until natural death from dementia

Consequences

- Miss midnight so no MAiD
- Dying sooner than would like to ensure can get MAiD

Possible solution

Allow advance requests for MAiD



Pathways to law reform about MAiD for persons with dementia

Permit requests made in advance of
loss of capacity

- Legislative reform
 - persuade Parliament to remove requirement of consent “immediately prior to provision” and replace with “after having been diagnosed with a serious and incurable condition”
- Litigation (*Charter* challenge)
 - persuade courts to strike down requirement of consent immediately prior to provision

Main features of the policy debate
re: MAiD for people with dementia

Benefits

- Autonomy
- Suffering
- Consistency with withholding and withdrawal
- Comfort knowing it will be available
- Alternative is cruel (starvation and dehydration)
- Longer life

Concerns

- How know when suffering conditions met
- Disability paradox
- Different understandings of concepts of autonomy, identity, personhood
- Indifferent, expresses desire to live, actively resists MAiD
- Appearance of absence of suffering
- Moral distress care providers

Major reports

- Royal Society of Canada ✓
- Provincial/Territorial Expert Advisory Group ✓
- *Federal Expert Panel*
- Special Joint Committee House and Senate ✓
- *Canadian Council of Academies Expert Panel*

Civil society and public

- Alzheimer Society ✗ → ?
- Parkinson Canada ✓
- Dying with Dignity Canada ✓
- Canadian Association for Community Living ✗

- Public ✓

Take aways

MAiD before loss of capacity

- MAiD is permissible for dementia
 - until 11:50 pm

MAiD after loss of capacity

- MAiD is not permitted through advance request
 - ...yet?

Questions & Discussion

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