Abortion Rights Coalition of Canada
Coalition pour le droit à l'avortement au Canada
Your Voice for Choice

Canada's only national political pro-choice advocacy group

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Position Paper #95 – Appendix

Canadian Policies and Laws on "Conscientious Objection" in Health Care

Please see Position Paper #95: *The Refusal to Provide Health Care in Canada*[1] for an overall discussion, including why so-called "conscientious objection" in health care is unethical and unworkable.

This Appendix describes and critiques the policies of the Canadian Medical Association (CMA) and each College of Physicians and Surgeons across Canada as they relate to the refusal to treat and obligation to refer[2], in particular for abortion care, but also medical assistance in dying (MAiD). The three territories do not have Colleges and their policies if any were not reviewed.

[1] http://www.arcc-cdac.ca/postionpapers/95-refusal-to-provide-healthcare.pdf
[2] For further information, also see the 2013 paper by Shaw and Downie: *Welcome to the Wild Wild North: Conscientious Objection Policies Governing Canada's Medical, Nursing, Pharmacy, and Dental Professions:* http://onlinelibrary.wiley.com/doi/10.1111/bioe.12057/abstract

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CMA Policy on Induced Abortion

The CMA policy on *Induced Abortion*[6] exempts doctors from providing abortions and from referring patients at all:

> There should be no delay in the provision of abortion services.
>
> A physician should not be compelled to participate in the termination of a pregnancy.
>
> A physician whose moral or religious beliefs prevent him or her from recommending or performing an abortion should inform the patient of this so that she may consult another physician.

CMA Code of Ethics

The CMA *Code of Ethics* [3] does not require doctors to either provide or refer for a service they object to for personal reasons. It only states:

> 12. Inform your patient when your personal values would influence the recommendation or practice of any medical procedure that the patient needs or wants.

[3] https://www.cma.ca/Assets/assets-library/document/en/advocacy/policy-research/CMA_Policy_Code_of_ethics_of_the_Canadian_Medical_Association_Update_2004_PD04-06-e.pdf

In 2007, law professors Sanda Rodgers and Jocelyn Downie published a commentary in the *CMAJ*[4] stating that doctors who refuse to do abortions have a duty to refer patients appropriately to someone who can provide the service. This stirred up an anti-choice hornet's nest, resulting in the CMA's ethics director publishing a "clarification"[5] of the CMA position, stating that doctors should indicate to patients that "because of your moral beliefs, you will not initiate a referral to another physician who is willing to provide this service (unless there is an emergency)."

This clarification violates the clause in the CMA's policy on *Induced Abortion*[6] requiring no delay in the provision of abortion services. The ethics director actually reminds doctors of that clause and says they "should not interfere in any way with this patient's right to obtain the abortion." But the refusal to treat under "CO" and referring to someone who cannot provide the service are both interferences.

All provincial Colleges of Physicians and Surgeons refer to or adapt the CMA *Code of Ethics*. A few also have their own separate code with something related to the refusal to treat, and all now have a separate MAiD standard or policy, including the CMA itself.

CMA Medical Assistance in Dying Policy

The CMA's *Medical Assistance in Dying* policy[7] supports "conscientious objection" to MAiD and does not require an effective referral. It states:

> Physicians who choose not to provide or otherwise participate in assistance in dying are:
>
> i. not required to provide it, or to otherwise participate in it, or to refer the patient to a physician or a medical administrator who will provide assistance in dying to the patient; but
> ii. are still required to fulfill their duty of non-abandonment by responding to a patient's request for assistance in dying.

[4] http://www.cmaj.ca/content/175/1/9.full
[5] http://www.cmaj.ca/content/176/9/1310.1.full
[6] http://policybase.cma.ca/dbtw-wpd/PolicyPDF/PD88-06.pdf
[7] https://www.cma.ca/Assets/assets-library/document/en/advocacy/policy-research/cma_policy_medical_assistance_in_dying_pd17-03-e.pdf

Newfoundland/Labrador College

The College adopts the CMA *Code of Ethics*. Refusers are not required to provide a referral.

The *Standard of Practice for Medical Assistance in Dying*[8] only "recommends" that refusers refer the patient to a physician who can provide MAiD (Section 6.3).

Nova Scotia College

The College adopts the CMA *Code of Ethics*. Refusers are not required to provide a referral.

The *Medical Assistance in Dying*[9] standard requires an "effective transfer of care" (Section 4.2).

New Brunswick College

Referral is required but not to a doctor who can provide the service, and only if denial or delay of treatment might "cause harm". But the denial or delay of treatment due to a doctor's personal values always has the potential to negatively impact the patient's emotional well-being, as well as risk the patient's physical health.

The College's *Code of Ethics*[10] adapts CMA's *Code of Ethics* with some differences:

> 12. Inform your patient when your personal values would influence the recommendation or practice of any medical procedure that the patient needs or wants.
>
> > If the denial or delay of treatment has the potential to cause harm, the physician is obligated to expedite access to another physician if possible. In any case, the physician cannot obstruct such access.

The *Moral Factors and Medical Care* policy[11] states:

> (1) A physician must communicate clearly and promptly about any treatments or procedures the physician chooses not to provide because of his or her moral or religious beliefs.
>
> (2) A physician must not withhold information about the existence of a procedure or treatment because providing that procedure or giving advice about it conflicts with their moral or religious beliefs.

[8] https://www.cpsnl.ca/web/files/2017-Mar-11%20-%20MAID.pdf
[9] https://cpsns.ns.ca/wp-content/uploads/2016/06/Professional-Standard-regarding-Medical-Assistance-in-Dying.pdf
[10] http://cpsnb.org/en/medical-act-regulations-and-guidelines/code-of-ethics
[11] http://www.cpsnb.org/english/Guidelines/MoralFactorsandMedicalCare.htm

> (3) A physician must not promote their own moral or religious beliefs when interacting with patients.
>
> (4) When moral or religious beliefs prevent a physician from providing or offering access to information about a legally available medical or surgical treatment or service, that physician must ensure that the patient who seeks such advice or medical care is offered timely access to another physician or resource that will provide accurate information about all available medical options.

The NB College said in 2015 that it has a preliminary MAiD guideline[12] but nothing could be found on the website. A CBC news story dated Dec 15, 2015[13] refers to the guidelines and cites one of them as: "A physician can decline to assist a patient in dying if the physician has a moral objection, but the doctor is required to refer the patient to another doctor." It's not clear if this doctor must be a MAiD physician.

Prince Edward Island College

The College's *Conscientious Objection to Provision of Service* policy[14] adopts and quotes the CMA *Code of Ethics,* but also states that a referral is required to someone who can provide "accurate information". This is not an effective referral.

> **Moral or Religious Beliefs Affecting Medical Care**
>
> 1. A physician must communicate clearly and promptly about any treatments or procedures the physician chooses not to provide because of his or her moral or religious beliefs.
> 2. A physician must not withhold information about the existence of a procedure or treatment because providing that procedure or giving advice about it conflicts with their moral or religious beliefs.
> 3. A physician must not promote their own moral or religious beliefs when interacting with patients.
> 4. When moral or religious beliefs prevent a physician from providing or offering access to information about a legally available medical or surgical treatment or service, that physician should ensure that the patient who seeks such advice or medical care is offered timely access to another physician or resource that will provide accurate information about all available medical options.

[12] http://cpsnb.org/en/bulletins/317-bulletin-december-2015?highlight=WyJhc3Npc3RhbmNlIiwiZHlpbmciXQ==
[13] http://www.cbc.ca/news/canada/new-brunswick/assisted-dying-physician-new-brunswick-guidelines-1.3365447
[14] http://cpspei.ca/wp-content/uploads/2016/03/Conscientious-Objection-to-Provision-of-Service-Feb-2916.pdf

> While physicians may make a personal choice not to provide a treatment or procedure based on their values and beliefs, the College expects them to provide patients with enough information and assistance to allow them to make informed choices for themselves. This includes advising patients that other physicians may be available to see them, or suggesting that the patient visit an alternate health-care provider. Where needed, physicians must offer assistance and must not abandon the patient.

According to the PE College's 2014 *Regulations*, failing to provide a patient with health care for personal reasons is not considered professional misconduct – only failing to tell them about your failure is! (XI, 1c, pg 11[15]):

> Failing to advise a patient that the medical practitioner's moral or religious convictions prevent the provision of medical treatment that may be appropriate for the patient and to advise the patient of the consequences of not receiving such a treatment;

The College's *Medical Assistance in Dying* policy[16] states that physicians can follow their conscience when deciding whether or not to provide medical assistance in dying. Doctors must make arrangements – which can be quite at arms-length – to enable access to another physician, nurse practitioner, or service. This is not an effective referral to a MAiD physician.

Quebec – Collège des médecins du Québec

The College has no explicit requirement for a physician to make a direct referral to someone who can provide the service, although it is implied in its *Code of Ethics of Physicians.* Unfortunately, the ambiguity may cause refusers to interpret the Code as not requiring an effective referral:[17]

> 24. A physician must, where his personal convictions prevent him from prescribing or providing professional services that may be appropriate, acquaint his patient with such convictions; he must also advise him of the possible consequences of not receiving such professional services. The physician must then offer to help the patient find another physician. (O.C. 1213-2002, s. 24.)

Some clarification is offered on the website of ALDO-Quebec, on behalf of the Collège, but this still does not make clear if a direct referral to a provider is required – maybe, but maybe not:[18]

> *Under review*
> While physicians must honor their obligation to come to the rescue and assistance of all patients who consult them, they are nonetheless citizens themselves with rights,

[15] http://cpspei.ca/wp-content/uploads/2015/08/REGULATIONS-FOR-PEI-Approved-Changes-as-of-May-12014.pdf
[16] http://cpspei.ca/wp-content/uploads/2018/04/Medical-Assistance-in-Dying-March-13-2017.pdf
[17] http://www.cmq.org/publications-pdf/p-6-2015-01-07-en-code-de-deontologie-des-medecins.pdf
[18] http://aldo.cmq.org/en/GrandsThemes/ConvictionsPerso/ObjectConsc.aspx

> notably the right to their own beliefs. When their convictions could influence the nature or quality of care provided to a patient, physicians must make sure that they fulfill their ethical obligations. In this regard, section 24 of the Code of Ethics is clear: … [see above] For example, a physician who is opposed to abortion or contraception is free to limit these interventions in a manner that takes into account his or her religious or moral convictions. However, the physician must inform patients of such when they consult for these kinds of professional services and assist them in finding the services requested.

The College's *Medical Aid in Dying*[19] is not available publicly, but Quebec has codified MAiD in law. Under the *Act Respecting End-of-Life Care,*[20] refusers must provide "continuity of care" (Section 50), and also must notify the executive director or delegated person of the institution of each refusal (Section 31), to enable the authority to find a non-objecting physician.[21] In other words, the Quebec MAiD legislation allows a delay in treatment via referral to a third party, instead of requiring physicians to make an effective referral to a physician or agency who can provide the service.

Ontario College

The College's Policy 2-15, *Professional Obligations and Human Rights,*[22] requires physicians to provide an "effective referral" to a doctor or agency who can provide the service:

> *ii. Ensuring Access to Care*
>
> Physicians must provide information about all clinical options that may be available or appropriate to meet patients' clinical needs or concerns. Physicians must not withhold information about the existence of any procedure or treatment because it conflicts with their conscience or religious beliefs.
>
> Where physicians are unwilling to provide certain elements of care for reasons of conscience or religion, an effective referral to another health-care provider must be provided to the patient. An effective referral means a referral made in good faith, to a non-objecting, available, and accessible physician, other health-care professional, or agency.[18] The referral must be made in a timely manner to allow patients to access care. Patients must not be exposed to adverse clinical outcomes due to a delayed referral. Physicians must not impede access to care for existing patients, or those seeking to become patients.
>
> The College expects physicians to proactively maintain an effective referral plan for the frequently requested services they are unwilling to provide.

[19] http://www.cmq.org/publications-pdf/p-1-2017-11-20-en-aide-medicale-a-mourir-2017.pdf?t=1528999421734
[20] http://legisquebec.gouv.qc.ca/en/ShowDoc/cs/S-32.0001
[21] http://www.cmq.org/nouvelle/fr/objection-de-conscience.aspx
[22] http://www.cpso.on.ca/Policies-Publications/Policy/Physicians-and-the-Ontario-Human-Rights-Code

The *Medical Assistance in Dying*[23] policy also requires an "effective referral", and Ontario has set up a MAiD Care Coordination Service.[24]

Manitoba College

Portions of the College's *Code of Conduct*[25] closely mirror the CMA's *Code of Ethics.* Refusers are not required to provide a referral*:*

> 8. Inform your patient when your personal morality would influence the recommendation or practise of any medical procedure that the patient needs or wants.

The *Medical Assistance in Dying*[26] bylaw (Schedule M of Bylaw 11) states that refusers must provide the patient with "timely access to a resource that will provide accurate information about MAID". That is not an effective referral.

Saskatchewan College

According to the College's *Conscientious Objection* policy, [27] objecting physicians must "make an arrangement" for the patient to receive information or care from another physician who can provide the information or care. However, providing "information" can be used as an escape clause by refusers. Information is not care, and the definition of "full and balanced health information" can mean different things to different physicians, especially for those who believe abortion is morally wrong and never acceptable. There is nothing to stop a doctor from providing false information or referring patients to an anti-abortion agency, for example.

Conscientious Objection policy (September 2015):[27]

> **5.2 Providing information to patients**
>
> Physicians must provide their patients with full and balanced health information required to make legally valid, informed choices about medical treatment (e.g., diagnosis, prognosis, and clinically appropriate treatment options, including the option of no treatment or treatment other than that recommended by the physician), even if

[23] http://www.cpso.on.ca/Policies-Publications/Policy/Medical-Assistance-in-Dying
[24] http://health.gov.on.ca/en/pro/programs/maid/
[25] http://cpsm.mb.ca/cjj39alckF30a/wp-content/uploads/Code-of-Conduct-2010.pdf
[26] http://cpsm.mb.ca/cjj39alckF30a/wp-content/uploads/PAD/MAIDschm.pdf
[27] http://www.cps.sk.ca/imis/CPSS/Legislation__ByLaws__Policies_and_Guidelines/Legislation_Content/Policies_and_Guidelines_Content/Conscientious_Objection.aspx

> the provision of such information conflicts with the physician's deeply held and considered moral or religious beliefs.
>
> The obligation to inform patients may be met by arranging for the patient to obtain the full and balanced health information required to make a legally valid, informed choice about medical treatment from another source, provided that arrangement is made in a timely fashion and the patient is able to obtain the information without undue delay. That obligation will generally be met by arranging for the patient to meet and discuss the choices of medical treatment with another physician or health care provider who is available and accessible and who can meet these requirements. The physician has the obligation to ensure that an arrangement which does not involve the patient meeting and discussing choices of medical treatment with another physician or health care provider is effective in providing the information required by this paragraph.

The *Conscientious Objection* policy appears to take precedence over the College's *Guideline: Unplanned Pregnancy,* even though the latter makes a stronger statement requiring the physician to tell the patient where she can access abortion services or to make the necessary referral:[28]

> Any physician who is unable to be involved in the further care and management of any patient when termination of the pregnancy might be contemplated should inform the patient and follow the requirements of the College's policy on Conscientious Objection.
>
> In accepting responsibility for medically evaluating and counseling a patient in circumstances in which termination of the pregnancy might be contemplated, the responsible physician:
>
> > 5) Will fully apprise the patient of the options she may pursue and provide her with accurate information relating to community agencies and services that may be of assistance to her in pursuing each option.
> >
> > > c) With reference to the option of termination of the pregnancy, the physician should apprise the patient of the availability of abortion services in the province, or elsewhere, in accordance with any current law or regulation governing such services, and should ensure that the patient has the information needed to access such services or make the necessary referral. The patient should be provided the information regarding the nature of termination options, to the best of the physician's ability.

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28 https://admin.cps.sk.ca/CPSS/Legislation__ByLaws__Policies_and_Guidelines/Legislation_Content/Policies_and_Guidelines_Content/Unplanned_Pregnancy.aspx

The Saskatchewan College's *Medical Assistance in Dying* policy[29] states that "physicians can follow their conscience when deciding whether or not to provide medical assistance in dying" and must arrange "timely access to another physician or resources" or offer the patient "information and advice about all the medical options available." This is not an effective referral directly to a MAiD physician.

Alberta College

The College adopts the CMA Code of Ethics, but also has a Conscientious Objection policy that requires objectors to refer patients to someone who can provide the service, *OR* to a resource that will provide accurate information on options. This means that no effective referral is required.

Code of Ethics:[30]

> A physician must comply with the [CMA] Code of Ethics adopted by the College in accordance with section 133 of the Health Professions Act and the College bylaws.

Conscientious Objection (June 2016):[31]

> 1. A regulated member must communicate promptly and respectfully about any treatments or procedures the regulated member declines to provide based on his/her Charter freedom of conscience and religion.
> 2. A regulated member must not withhold information about the existence of a procedure or treatment because providing that procedure or giving advice about it conflicts with his/her Charter freedom of conscience and religion.
> 3. A regulated member must not promote his/her own moral or religious beliefs when interacting with patients.
> 4. When Charter freedom of conscience and religion prevent a regulated member from providing or offering access to information about a legally available medical or surgical treatment or service, the regulated member must ensure that the patient who seeks such advice or medical care is offered timely access to:
>
> a) a regulated member who is willing to provide the medical treatment, service or information; or

[29] http://www.cps.sk.ca/iMIS/Documents/Legislation/Policies/POLICY%20-%20Medical%20Assistance%20in%20Dying.pdf
[30] http://www.cpsa.ab.ca/Resources/StandardsPractice/standardsofpractice.aspx
[31] http://www.cpsa.ca/standardspractice/conscientious-objection/

b) a resource that will provide accurate information about all available medical options.

The second option to refer to a "resource" that can provide "accurate information" can be used as an escape clause by refusers. Information is not care, and the definition of "accurate information" can mean something different to an anti-choice physician who is convinced that abortion harms women. However, this policy is a slight improvement over the previous 2014 policy, *Moral or Religious Beliefs Affecting Medical Care*, which is no longer online but stated:

1. A physician must communicate clearly and promptly about any treatments or procedures the physician chooses not to provide because of his or her moral or religious beliefs.
2. A physician must not withhold information about the existence of a procedure or treatment because providing that procedure or giving advice about it conflicts with their moral or religious beliefs.
3. A physician must not promote their own moral or religious beliefs when interacting with patients.
4. When moral or religious beliefs prevent a physician from providing or offering access to information about a legally available medical or surgical treatment or service, that physician must ensure that the patient who seeks such advice or medical care **is offered timely access to another physician or resource that will provide accurate information** about all available medical options.

The Alberta College's *Medical Assistance in Dying*[32] Standard of Practice states that refusers "**must** ensure that reasonable access to the Alberta Health Services medical assistance in dying care coordination service is provided to the patient without delay." This is basically an effective referral, although to a MAiD coordination agency[33] rather than a MAiD physician.

[32] http://www.cpsa.ca/standardspractice/medical-assistance-dying/
[33] https://www.albertahealthservices.ca/assets/info/hp/maid/if-hp-maid-coordination-service.pdf

British Columbia College

The College's Practice Standard, *Access to Medical Care,*[34] does not require physicians to refer except "if needed", which is highly ambiguous. Certainly, no referral is required to someone who can provide the objected-to service. Physicians are free to refer to anyone (or not), including inappropriate parties.

> **Conscientious Objection to Providing Care**
>
> Physicians are not obliged to provide treatments or procedures to patients which are medically unnecessary or deemed inappropriate based on scientific evidence and their own clinical expertise.
>
> While physicians may make a personal choice not to provide a treatment or procedure based on their values and beliefs, the College expects them to provide patients with enough information and assistance to allow them to make informed choices for themselves. This includes advising patients that other physicians may be available to see them, or suggesting that the patient visit an alternate health-care provider. Where needed, physicians must offer assistance and must not abandon the patient.
>
> Physicians in these situations should not discuss in detail their personal beliefs if not directly relevant and should not pressure patients to disclose or justify their own beliefs.
>
> In all cases, physicians must practice within the confines of the legal system, and provide compassionate, non-judgmental care according to the CMA Code of Ethics.

The *Medical Assistance in Dying*[35] Practice Standard has similar problematic language, but it does state that objectors are required to provide an "effective transfer of care" by:

> "…advising patients that other physicians may be available to see them, suggesting the patient visit an alternate physician or service…. Where needed, physicians must offer assistance to the patient and must not abandon the patient. While a physician is not required to make a formal referral on behalf of the patient, they do have a duty of care that must be continuous and non-discriminatory."

[34] https://www.cpsbc.ca/files/pdf/PSG-Access-to-Medical-Care.pdf
[35] https://www.cpsbc.ca/files/pdf/PSG-Medical-Assistance-in-Dying.pdf

College of Family Physicians of Canada

No statements could be found on the College's website regarding referrals when a physician refuses to provide a treatment, although the College delves into ethical and conscience issues in its *Guide for Reflection on Ethical Issues Concerning Assisted Suicide and Voluntary Euthanasia.*[36]

The College's *Ethics in Family Medicine: Faculty Handbook*[37] has an interesting section on page 129:

> In 2008, the Ontario Medical Association successfully lobbied the College of Physicians and Surgeons of Ontario to abandon its draft policy, in which physicians who prioritized their personal religious views over the wishes of their patients would be charged with professional misconduct.
>
> Even if provincial medical regulatory bodies choose to exclude such practices from their definitions of unprofessional conduct, physicians who prioritize issues of personal conscience might nonetheless face charges filed through provincial Human Rights Commissions.

Charges of professional misconduct would actually be an appropriate punishment for refusal to treat, since it is a violation of medical ethics and the professional duty to care for patients and is inherently harmful to patients. However, given the long-standing acceptance of "conscientious objection" in health care and the strength of the social conservative lobby, an incremental approach starting with less severe measures may be more feasible, such as financial penalties or regulations allowing health facilities to give preferential treatment to non-objectors.

It is not an answer to say that objectors could still face charges through provincial Human Rights Commissions, as that would require a very courageous and resourceful patient to pursue a formal complaint, make public statements, testify, etc.

[36] http://www.cfpc.ca/uploadedFiles/Health_Policy/_PDFs/Guidefor%20Euthanasia_EN_FInal.pdf

[37] http://www.cfpc.ca/uploadedFiles/Resources/Resource_Items/Health_Professionals/Faculty%20Handbook_Edited_FINAL_05Nov12.pdf

Royal College of Physicians and Surgeons of Canada

No statements could be found on the College's website regarding referrals when a physician objects to a treatment, except for MAiD.

The training document *Conscientious Objection to Medical Assistance in Dying (MAiD)*[38] contains exercises and discusses ethical and legal considerations around the refusal to assist with MAiD, including referrals. Near the end it states:

> [Besides Quebec] There are currently no other provincial or territorial MAiD legislation in Canada. Provincial medical regulatory Colleges outline provinces-specific guidelines for managing conscientious objections to MAiD (See Environment scan chart). To date, many of the guidelines require that physicians who object to assisting patients to die to provide patients with sufficient information and resources to enable informed choice and provide care options. More widely debated, however, is whether objecting physicians have an obligation to provide an effective referral or transfer of care to a willing provider. To address concerns about the availability of MAiD information and services, some provinces have set up referral of transfers of care hotlines and centralized bodies to provide MAiD information to patients.
>
> Some provinces and territories have also allowed faith-based healthcare institutions to refuse to provide MAiD on the basis of 'institutional conscience.'

[38] http://www.royalcollege.ca/rcsite/bioethics/cases/section-5/conscientious-objection-medical-assistance-e

Links to Medical Authorities and Colleges

Provincial and Territorial Medical Regulatory Authorities

Federation of Medical Regulatory Authorities of Canada
College of Physicians and Surgeons of Alberta
College of Physicians and Surgeons of British Columbia
College of Physicians and Surgeons of Manitoba
College of Physicians and Surgeons of New Brunswick
College of Physicians and Surgeons of Newfoundland
College of Physicians and Surgeons of Nova Scotia
College of Physicians and Surgeons of Ontario
College of Physicians and Surgeons of Prince Edward Island
Collège des Médecins du Québec
College of Physicians and Surgeons of Saskatchewan
Northwest Territories - Health and Social Services
Nunavut - Health and Social Services
Yukon Medical Council

National Certification

College of Family Physicians of Canada
Medical Council of Canada
Royal College of Physicians and Surgeons of Canada
Medical Identification Number for Canada (MINC)

Government of Canada

Health Canada (English)
Santé Canada (Français)
Public Health Agency of Canada (English)
Agence de la santé publique du Canada (Français)