The Canadian DONATION and TRANSPLANTATION Research Program
Programme de recherche en DON et TRANSPLANTATION du Canada

CONTENT: MARCH 2022

FAST FACTS

MEDICAL ASSISTANCE IN DYING (MAID) AND ORGAN DONATION

MAID AND ORGAN DONATION

Organ donation may be possible for those who choose to receive medical assistance in dying (MAID). [1] Organ donation following MAID is offered across Canada, although many patients are surprised to learn that they may be eligible to donate their organs.

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WHAT IS MAID? WHO IS ELIGIBLE?

The term "MAID" stands for medical assistance in dying. Canada's original medical assistance in dying legislation was passed in 2016. The initial law included the eligibility requirement that natural death be reasonably foreseeable. Following challenges to the law in 2021, this requirement has now been removed. This broadens the scope of who is eligible for MAID if they wish to have it.

As of March 17, 2021, persons who wish to receive MAID must satisfy the following **eligibility criteria**: [2]

- Be 18 years of age or older and have decision-making capacity;
- Be eligible for publicly funded health care services;
- Make a voluntary request that is not the result of external pressure
- give informed consent to receive MAID, meaning that the person has consented to receiving MAID after they have received all information needed to make this decision;
- Have a serious and incurable illness, disease or disability (excluding a mental illness until March 17, 2023);
- Mental Illness: Canadians whose only medical condition is a mental illness, and who otherwise meet all eligibility criteria, will not be eligible for MAID until March 17, 2023. This includes conditions that are primarily within the domain of psychiatry, such as depression and personality disorders.
- Be in an advanced state of irreversible decline in capability; and
- Have enduring and intolerable physical or psychological suffering that cannot be alleviated under conditions the person considers acceptable.

MAID AND ORGAN DONATION: CONVERSATIONS AND PROCESSES

MAID and organ donation must be separate conversations. The decision to receive MAID must be made prior to the initiation of any discussions of organ donation by healthcare providers. It is essential to maintain a clear separation between the processes for MAID and for organ donation. [3] This separation is meant to ensure that the decision to seek MAID is not influenced by the potential for organ donation. It is also meant to avoid the possibility that a person may feel pressured to consent to donation to secure approval for MAID.

Separation should be maintained between the end-of-life care, donation, and transplant teams. Surgical recovery and transplant teams should not be involved in the patient's end-of-life care or MAID procedure. [4] Society and law makers should be careful to avoid inadvertently creating pressure on patients with respect to their decisions regarding MAID and organ donation. The dead donor rule must always be respected and applied: in other words, the donor must be dead before essential organs can be removed. [5]

MAID brings new challenges and opportunities for organ donation, but the trust and integrity of the Canadian donation system must be protected.

FIRST PERSON CONSENT

The patient must have the ability to provide first person consent to MAID, as well as to organ donation. [6] The patient should be informed that they may withdraw consent for MAID or donation at any time. Withdrawing consent for organ donation should not affect their consent for, or access to MAID. [7]

The ability of donors to give first person consent for MAID and organ donation creates emotional and moral challenges for healthcare professionals. [8] MAID patients will be competent immediately before death and donation and will therefore be able to give first-person informed consent to donate organs. [9] Healthcare professionals may experience a greater emotional burden with organ donation following MAID.

BENEFITS FROM ORGAN DONATION FOLLOWING MAID

After a MAID patient decides to donate their organs, various parties in the process will experience benefits. Donors receive a psychological benefit prior to their death, knowing they will be donating their organs and helping others. The donor also receives the legacy of saving a life. The family members of the donors will similarly experience a "legacy for the family member" and may feel comforted knowing their family member's wish to donate was respected. Family members may further receive a psychological benefit of knowing their family member helped others. The organ recipients and their families receive the medical benefits of organ transplantation.

CONCERNS SURROUNDING ORGAN DONATION FOLLOWING MAID

- Donor motivation for choosing MAID: the primary motivation for a patient choosing MAID should not be organ donation, but rather ending their suffering.
- Balancing concerns about donor coercion, while also respecting patient autonomy. If organ donation is not offered because of the fear of donor coercion, then we are denying the autonomous wish of those who want the legacy of saving a life.
- Patients might find it hard to change their minds and feel pressure to follow through with MAID after deciding to donate their organs.
- Societal pressures: concerns that a patient might consent to organ donation because they did not want to let their MAID provider down (if they perceived the MAID provider to favour donation), or they may feel there is an underlying duty to donate following MAID. Patients may feel that MAID may be in vain if they do not donate their organs.

BARRIERS TO ORGAN DONATION FOLLOWING THE DECISION TO USE MAID

Increased medicalization of death: when patients agree to donate their organs, there is a need for additional testing related to the organ donation (e.g. bloodwork, additional testing or imaging). This can be a deterrent to opting for organ donation after MAID as many patients do not want to complete additional tests or spend additional time at a hospital.

Impact on plans for medically assisted death:

- **Location:** hospital vs home – many MAID patients prefer to die at home rather than a hospital and this may impact their decision to donate their organs;
- **Timing:** there may be a potential delay in the MAID process to accommodate organ donation.

Some healthcare providers could refuse to participate in organ donation following MAID as they are opposed to MAID. [10]

ARE ORGAN RECIPIENTS INFORMED THAT THEIR DONORS DIED THROUGH MAID?

Only increased medical risks associated with a particular organ must be disclosed to recipients, such as an increased risk of contracting an infectious disease. Medically irrelevant factors are not disclosed; these are unrelated to increased medical risk and these include: race, religion, or manner of death. They are not disclosed since these factors will not impact the recipient's health and may disclose the donor's identity. [11]

RESOURCES

ONTARIO

Trillium Gift of Life, Donation FAQ, "Is organ and/or tissue donation still an option if I opt for MAID?"
ACCES THE WEBSITE

QUÉBEC

Organ and Tissue Donation: Eligibility
ACCESS THE WEBSITE

NOVA SCOTIA

Medical Assistance in Dying and Donation
ACCES THE WEBSITE

CANADIAN MAID LEGISLATION

ACCESS THE WEBSITE

HEALTH CANADA

Information on Access to MAID and How it is Delivered in Canada - **ACCESS THE WEBSITE**

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REFERENCES

[1]Trillium Gift of Life. Is Organ and/or Tissue Donation Still an Option if I Opt for MAID? Frequently Asked Questions https://www.giftoflife.on.ca/en/faq.htm
[2] Government of Canada. Changes to eligibility criteria. Canada's New Medical Assistance in Dying Law. https://www.justice.gc.ca/eng/cj-jp/ad-am/bk-di.html#s1
[3] Bollen, J. et al. (2022). Dividing Line Between Organ Donation and Euthanasia in a Combined Procedure. J Med Ethics, 48(3), 196-197.
[4] Downar, J. et al. (2019). Deceased Organ and Tissue Donation After Medical Assistance in Dying and Other Conscious and Competent Donors: Guidance for Policy. CMAJ, 191(22) E604-13.
[5] See note 4 at 609.
[6] See note 4 at e609.
[7] See above.
[8] See above at e604
[9] Yazdani, S. et al. (2018). Organ Donation and Medical Assistance in Dying: Ethical and Legal Issues Facing Canada. *McGill Journal of Law and Health*, *11*(2), 59-86 at 63.
[10] Allard, J. et al. (2021). Quebec Healthcare Professionals Perspectives on Organ Donation After Medical Assistance in Dying. (2021) BMC Medical Ethics, 22 1-12 at 4.
[11] See note 9 at 81.