

McMaster University

Undergraduate Journal of Law & Politics



May 2025

Exploring the Ethical Implications of Organ Viability Challenges in Medical Assistance with Dying (MAiD) in Canada

Ali Razaq

Introduction

Medical Assistance in Dying (MAiD) is a legal process in Canada that allows for patients to request a doctor or nurse to end their life using medication in specific circumstances. MAiD presents several ethical, procedural and emotional challenges. The decision to undergo the procedure often represents a compassionate end to suffering. Organ donation for MAiD recipients can serve as a meaningful final gesture. However, the criteria used to determine eligibility can also result in most cases yielding organs unsuitable for transplantation. This can change with the expansion of MAiD for mental illnesses. Beyond health factors, there are several ethical, religious and moral criteria surrounding the donated organs. Subsequently, the inability to use donated organs can lead to a second loss for the donor's loved ones and potential recipients.

Medical and Ethical Challenges of Organ Viability in MAiD

Evaluating organ viability in MAiD cases must factor in the physical conditions of the donors and the physiological impact of the

dying process. Patients opting for MAiD suffer from terminal conditions which often indicate a possible compromise in the viability of their organs. In a recent study conducted by Weiss et al., Transplant Quebec received 245 referrals for donation after MAiD, but the conversation rate to donors was fewer than one third.^[1] The 2021 revision of the law changed MAiD's criteria, removing the requirement for a person's natural death to be 'reasonable foreseeability.'^[2] To qualify, individuals must be over 18, eligible for public healthcare, provide consent, have a serious and incurable illness, and be in an advanced state of irreversible decline with intolerable suffering.^[3] Due to these standards, MAiD recipients have serious illnesses, such as advanced cancers, neurodegenerative disorders, and other severe health issues which significantly deteriorate organ function. These illnesses can render donor's ineligible somewhere along the screening and donation process. Beyond the prior health condition of the donor, the procedure involved in MAiD can contribute to organ viability issues. Some procedures can reduce

^[1] Matthew J Weiss et al., "Organ Donation after Medical Assistance in Dying: A Descriptive Study from 2018 to 2022 in Quebec," *Canadian Medical Association Journal* 196, no. 3 (January 28, 2024): E79–84, <https://doi.org/10.1503/cmaj.230883>.

^[2] Government of Canada, "Canada's New Medical Assistance in Dying (MAiD) Law," www.justice.gc.ca, March 17, 2021, <https://www.justice.gc.ca/eng/cj-jp/ad-am/bk-di.html#s1>.

^[3] Government of Canada, "Canada's New Medical Assistance in Dying (MAiD) Law".

oxygen flow or cause anoxic stress. This can compromise the organs' health. A study conducted in the Netherlands, mentions how the environmental and procedural steps, such as monitoring the patient using an arterial line, can help prevent ischemic damage to the organs.^[4] Taking precautionary steps to prevent damage can promote turnover rates.^[5] Majority of the organs donated lack viability, making MAiD donations unlikely to solve the organ shortage issues facing Canadians.^[6] However, the introduction of MAiD for mental illnesses raises the question of whether it could help address the organ shortage while upholding individuals' autonomy over their bodies.

Impact on Donor Families and Psychological Considerations

MaiD can be difficult for individuals and families to navigate. It marks an end of a battle with physical and/or mental illnesses. Within this challenging period, organ donation can serve as a sense of purpose and closure. For some, it can serve as a final gift to the world. However, if organs from a MAiD donor are deemed unsuitable for transplant, families can experience a second loss. This only causes further feelings of grief as the final gift of donation is unfulfilled.

The inability to carry out a loved one's last wish can leave families with lingering emotions of disappointment and distress.

Legal Framework Governing MAiD and Organ Donation

As discussed, many current MAiD recipients are ineligible to donate, due to pre-existing physical conditions. This raises the question on whether MAiD should be extended to individuals with mental illnesses. In the absence of physical illnesses, their organs may be more viable for donation. However, allowing individuals with mental illnesses to access MAiD raises ethical concerns regarding. As per section 7 of The Canadian Charter of Rights and Freedoms.^[7] However, mental illnesses can impair judgment and decision-making capacity. Section 241.2 of the Criminal Code of Canada.^[8] This requires balancing an individual's constitutional rights, with determining what is in the patient's best interest. Vulnerable individuals may feel pressured to opt for MAiD due to societal stigmas surrounding mental illnesses or a perceived burden on their families.

^[4] Nathalie van Dijk et al., "Organ Donation after Euthanasia in Patients Suffering from Psychiatric Disorders: 10-Years of Preliminary Experiences in the Netherlands," *Transplant International* 36 (February 9, 2023), <https://doi.org/10.3389/ti.2023.10934>.

^[5] Ibid.

^[6] Ibid.

^[7] Legislative Services Branch, "Constitution Acts, 1867 to 1982," Justice.gc.ca, 1982, <https://laws-lois.justice.gc.ca/eng/Const/page-15.html>.

^[8] Government of Canada, "Criminal Code," Justice.gc.ca (Government of Canada, 1985), <https://laws-lois.justice.gc.ca/eng/acts/C-46/>.

Cognitive and Decision-Making Capacity in MAiD Requests

A study conducted by Van Vurren et al., with 8,499 participants found that while some individuals who experience suicidal thoughts and behaviors (STBs) may see their condition worsen over a period of two years; the majority (about 70%) no longer reported STBs at follow-up.^[9] This suggests that suicidal thoughts may be temporary, and some individuals can move away from them over time.^[10] It's a reminder of the importance of support and compassionate care for those navigating mental health challenges. Ensuring that their decisions are genuinely voluntary and in good conscience presents a complex ethical challenge requiring revisions in the legislature.

Assessing capacity in an individual with a mental illness can be difficult. Mental health conditions may potentially affect cognitive ability, leaving patients in a state where they may not truly grasp the consequences of their actions. Research conducted by Benke et al. found that some individuals who suffer from schizophrenia or depression have deficits in their ability to make decisions.^[11] These impairments are

linked to cognitive inflexibility and emotional dysregulation, which can cause poor judgment and impulsive behaviour.^[12] For instance, the study highlights that patients with schizophrenia are often myopic, seeking immediate rewards, unforeseen long term consequences.^[13] An analogous impairment can be seen for patients with depression, where they are likely to avoid decision-making entirely, due to chronic pessimism and a lack of motivation.^[14] This raises concerns about their eligibility.

Policy and Safeguards

The process of determining whether an individual can make a rational decision regarding MAiD must be robust, involving mental health professionals and legal safeguards, to prevent premature decisions during acute episodes. As mentioned in a review paper written in Canada, it is difficult to predict whether mental illnesses can be irremediable.^[15] Potential requirements for MAiD for mental illnesses may include two comprehensive psychiatric evaluations, a cognitive function assessment, an assessment of suffering, risk assessment for coercion,

^[9] Cornelia Leontine van Vuuren et al., "Are Suicidal Thoughts and Behaviors a Temporary Phenomenon in Early Adolescence?," *Crisis*, March 31, 2020, 1–4, <https://doi.org/10.1027/0227-5910/a000680>.

^[10] *Ibid.*, 1-4

^[11] Theresa Benke et al., "Decision Making under Risk in Patients Suffering from Schizophrenia or Depression," *Brain Sciences* 11, no. 9 (September 7, 2021): 1178, <https://doi.org/10.3390/brainsci11091178>.

^[12] *Ibid.*

^[13] *Ibid.*

^[14] *Ibid.*

^[15] Justine Dembo, Udo Schuklenk, and Jonathan Reggler, "'For Their Own Good': A Response to Popular Arguments against Permitting Medical Assistance in Dying (MAiD) Where Mental Illness Is the Sole Underlying Condition," *The Canadian Journal of Psychiatry* 63, no. 7 (April 10, 2018): 451–56, <https://doi.org/10.1177/0706743718766055>.

and clear written directions.^[16] An issue that arises with imposing various conditions to become eligible for MAiD is that individuals may end their lives without meeting established criteria.^[17] This situation would not only undermine the safeguards intended to protect the interests of patients but also eliminate the possibility of organ and tissue donation. Ultimately, this would lead to unnecessary loss of life and a failure of the healthcare system.

Societal and Systemic Impacts of Expanding MAiD

Seemingly allowing individuals with mental illnesses to access MAiD and then donate their organs can address suffering and enhance organ availability. As of December 31, 2023, over 3,427 Canadians were on waitlists seeking organ transplants.^[18] MAiD for mental illnesses could save multiple lives for others. The ability to donate organs can also provide individuals with a sense of purpose and dignity. It may also serve as closure to family members.

Conclusion

Whether MAiD for mental illnesses would be in the best interest of Canadians, hinges on underlying values with regards to life and preventing suffering. Some people may argue that alleviating intolerable

suffering is a compassionate response. Others may see it as a dangerous precedent that devalues life. Ultimately, integrating MAiD or mental illnesses may shift societal attitudes towards mental health and can create harmful stereotypes. It can also lead to decreased support and demand for mental health resources and treatment. Since access to mental health care varies widely across different regions and populations in Canada, adapting MAiD can fuel social inequalities. Affluent regions and well-funded urban areas have greater mental health support, while economically disadvantaged communities may lack these resources. This leaves vulnerable individuals with fewer alternatives, increasing their likelihood of seeking MAiD. Beyond individual circumstances, the broader implications include shifts in the perception of the healthcare system and the government. Perception of a lack of priorities and fear can create more harm than good, especially for the organ donation system. Building a system that is transparent, has strong safeguards and always has alternative treatments is vital. Recent advancements in telemedicine, online therapy, and artificial intelligence-based therapy models must be thoroughly explored and implemented prior to continuing the expansion of MAiD.

[16] Justine Dembo, Udo Schuklenk, and Jonathan Reggler, "Decision Making under Risk in Patients Suffering from Schizophrenia or Depression," 451–56.

[17] Justine Dembo, Udo Schuklenk, and Jonathan Reggler, 451–56.

[18] Canadian Institute for Health Information, "Summary Statistics on Organ Transplants, Wait-Lists and Donors | CIHI," [www.cihi.ca](https://www.cihi.ca/en/summary-statistics-on-organ-transplants-wait-lists-and-donors), June 15, 2023, <https://www.cihi.ca/en/summary-statistics-on-organ-transplants-wait-lists-and-donors>.

Bibliography

Benke, Theresa, Josef Marksteiner, Beatrix Ruepp, Elisabeth M. Weiss, and Laura Zamarian. "Decision Making under Risk in Patients Suffering from Schizophrenia or Depression." *Brain Sciences* 11, no. 9 (September 7, 2021): 1178. <https://doi.org/10.3390/brainsci11091178>.

Canadian Institute for Health Information. "Summary Statistics on Organ Transplants, Wait-Lists and Donors | CIHI." www.cihi.ca, June 15, 2023. <https://www.cihi.ca/en/summary-statistics-on-organ-transplants-wait-lists-and-donors>.

Dembo, Justine, Udo Schuklenk, and Jonathan Reggler. "'For Their Own Good': A Response to Popular Arguments against Permitting Medical Assistance in Dying (MAID) Where Mental Illness Is the Sole Underlying Condition." *The Canadian Journal of Psychiatry* 63, no. 7 (April 10, 2018): 451–56. <https://doi.org/10.1177/0706743718766055>.

Dijk, Nathalie van, Paulan Stärcke, Wim de Jongh, Nichon Jansen, David Shaw, Jan Bollen, and Walther van Mook. "Organ Donation after Euthanasia in Patients Suffering from Psychiatric Disorders: 10-Years of Preliminary Experiences in the Netherlands." *Transplant International* 36 (February 9, 2023). <https://doi.org/10.3389/ti.2023.10934>.

Government of Canada. "Canada's New Medical Assistance in Dying (MAID) Law." www.justice.gc.ca, March 17, 2021. <https://www.justice.gc.ca/eng/cj-jp/ad-am/bk-di.html#s1>.

———. "Criminal Code." Justice.gc.ca. Government of Canada, 1985. <https://laws-lois.justice.gc.ca/eng/acts/C-46/>.

Legislative Services Branch. "Constitution Acts, 1867 to 1982." Justice.gc.ca, 1982. <https://laws-lois.justice.gc.ca/eng/Const/page-15.html>.

Vuuren, Cornelia Leontine van, Marcel Franciscus van der Wal, Pim Cuijpers, and Mai Jeanette Maily Chinapaw. "Are Suicidal Thoughts and Behaviors a Temporary Phenomenon in Early Adolescence?" *Crisis*, March 31, 2020, 1–4. <https://doi.org/10.1027/0227-5910/a000680>.

Weiss, Matthew J, Mathilde Dupras-Langlais, Marie-Josée Lavigne, Sylvain Lavigne, Annie-Carole Martel, and Prosanto Chaudhury. "Organ Donation after Medical Assistance in Dying: A Descriptive Study from 2018 to 2022 in Quebec." *Canadian Medical Association Journal* 196, no. 3 (January 28, 2024): E79–84. <https://doi.org/10.1503/cmaj.230883>.



MUJLP