

MAID UPDATE 2019

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Bridgepoint

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Circle of Care

OUTLINE

- Brief overview of MAiD legislation
- MAiD Statistics in Ontario/Canada
- Conscientious Objection
- Challenges to “Reasonably Foreseeable”
 - Lamb v. Canada
 - Truchon & Gladu v. Quebec and Canada
- Review of Reporting Requirements
- MAiD and Organ Donation
- MAiD and Dementia

MEDICAL ASSISTANCE IN DYING

Carter v. Canada (SCC 2015)

- SCC struck down s. 241(b) and s. 14, citing Section 7 of the Charter.
- Section 7: Everyone has the right to life, liberty and security of the person

MEDICAL ASSISTANCE IN DYING

BILL C-14

Eligibility

- 18 years of age and older & eligible for OHIP
- Voluntary request that is not the result of external pressure
- Give informed consent, to receive MAID after having been informed of the means that are available to relieve their suffering, including palliative care.
- Grievous and irremediable condition
 - Serious, incurable illness, disease or disability
 - Advanced state of irreversible decline in capability
 - That condition causes them enduring physical or psychological suffering that is intolerable and cannot be relieved under conditions they consider acceptable.
- Natural death has become reasonably foreseeable

MEDICAL ASSISTANCE IN DYING

BILL C-14

Medical Practitioner must ensure the following:

- person meets all criteria outlined above
- Signed and witnessed written request by two independent witnesses, after being informed of diagnosis
- second independent practitioner who provides a written opinion confirming that the patient meets criteria
- Person has been informed they can withdraw their request, including immediately prior to MAID, and elicit express consent.
- There are at least 10 clear days between the day on which the request is signed, and the intervention.

MAID Statistics



Office of the Chief Coroner/Ontario Forensic Pathology Service MAiD Data

Statistics as of September 30, 2019:

- Total number of cases completed in Ontario: 3,822
- Sex:
 - Female: 50%
 - Male: 50%
- Type:
 - Clinician-administered: 3,821
 - Patient-administered: 1
- Age:
 - Average Age: 75
 - Youngest: 22
 - Oldest: 106
- Setting of death:
 - Hospital: 47%
 - Private Residence: 44%
 - Retirement Home/Seniors Residence/Other: 5%
 - LTC Facility/Nursing Home: 4%
- Underlying conditions:
 - Cancer-Related: 63%
 - Circulatory/Respiratory: 17%
 - Neurodegenerative: 11%
 - Other: 9%
- Number of Unique MAiD Providers:
 - Clinicians: 470
 - Physicians: 438
 - Nurse Practitioners: 32
 - Hospitals: 130
- Total number of cases with organ donation: 30

Fourth Interim Report on
**MEDICAL
ASSISTANCE
IN DYING
IN CANADA**

Table 1. Number of Medically Assisted Deaths in Canada

Number of medically assisted deaths in Canada provided between January 1 and October 31, 2018 <i>(not including Quebec, NWT, YK, and NU)</i>	2,614
Number of medically assisted deaths in Quebec between December 10, 2015 and March 31, 2018 ⁱ	1,664
Total number of medically assisted deaths in Canada since legislative enactment (between December 10, 2015 and October 31, 2018) <i>including available data for Quebecⁱ (not including NWT, YK, and NU)</i>	6,749

- i On April 3, 2019, the Minister of Health and Social Services of Quebec tabled a new report by the Commission on End-of-Life Care about the state of end-of-life care in Quebec which includes more comprehensive data on MAID in Quebec.
- ii Quebec's data in this calculation represents 1,664 MAID deaths between December 10, 2015 and March 31, 2018, as reported by the Commission on End-of-Life Care. Approximately 7 months of Quebec's MAID data is unavailable which will result in an under-reporting of the total MAID deaths in Canada.

MAiD in Canada

- Trend: the number of MAiD deaths in Canada has increased over the most recent reporting period.
- 93% by physician, 7% by NPs
- MAiD accounted for 1.12% of total deaths in Canada during this reporting period (up from 1.07%).
- Location of death: continues to be divided between hospital (44%) and home (42%).
 - LTC 5%
 - Hospice 4%
 - Unknown 4%

Conscientious Objection





THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO

POLICY STATEMENT #4-16

Where a physician declines to provide medical assistance in dying for reasons of conscience or religion, the physicians must not abandon the patient. An effective referral must be provided. An effective referral means a referral made in good faith, to a non-objecting, available, and accessible physician, nurse practitioner or agency.

CPSO on Conscientious Objection

Physicians who decline to provide MAiD due to conscientious objection:

- Must do so in a manner that respects patient dignity
- Must not impede access to MAiD
- Must communicate their objection to the patient directly, informing the patient the the objection is for personal not clinical reasons.
- Must not express moral judgements
- Must provide patients with information about all options of care, and must not withhold information.
- Must not abandon the patient
- Must provide effective referral in a timely way.

Conscientious Objection

- How to provide an effective referral:

All effective referrals involve the following steps:

1 The physician takes positive action to connect a patient with another physician, healthcare provider or agency.

The physician can make the referral him/herself OR assign the task to another. The physician must ensure the designate complies with the CPSO expectations for an effective referral.

2 Referrals must be made to non-objecting physicians, healthcare providers or agencies that are accessible and available to the patient.

The physician, healthcare provider or agency must be accepting patients/open, must not share the same religious or conscience objections as the referring physician and must be in a location that is reasonably accessible to the patient or via telemedicine where appropriate.

3 Referrals must be made in a timely manner, so that the patient will not experience an adverse clinical outcome due to a delayed referral.

A patient would be considered to suffer an adverse outcome due to a delay if their untreated pain or suffering is prolonged, their clinical condition deteriorates, or the delay results in the patient no longer being able to access care (e.g. for time sensitive matters such as emergency contraception, an abortion or when a patient wishes to explore medical assistance in dying.)

Conscientious Objection

- MOHLTC has established a Care Coordination Service (CCS) to allow clinicians, patients, caregivers to access information about MAiD, and to request referrals for MAiD
- Clinicians seeking assistance in making a referral can call the CCS

1-866-286-4023

Christian doctors challenge Ontario's assisted-death referral requirement



Ontario court says though requirement for a referral limits doctors' religious freedom the breach is justified

The Canadian Press · Posted: Jan 31, 2018 3:45 PM ET | Last Updated: January 31



In a decision released Wednesday, Ontario Justice Herman Wilton-Siegel ruled the benefits to the public outweigh the cost to doctors.

Conscientious Objection

- Did the Policies unduly infringe the Charter rights and freedoms of the applicants?
- Court: “The requirements impair the individual applicants’ right of religious freedom as little as possible in order to achieve the goal. The alternatives proposed would compromise the goals of ensuring access to health care in many situations, often involving vulnerable members of our society at the time of requesting medical services.”



[Home](#) / [Blog](#) / Court challenge against Ontario assisted dying policy goes to appeal

Court challenge against Ontario assisted dying policy goes to appeal

Toronto

Ontario's highest court rules doctors must give referrals for services they oppose



Requirement part of policy surrounding assisted dying, abortion

[Paola Loriggio](#) · The Canadian Press ·

Posted: May 15, 2019 5:55 AM ET | Last Updated: May 15



Challenges in “Reasonably Foreseeable”



REASONABLY FORESEEABLE

- “their natural death has become reasonably foreseeable, taking into account their medical circumstances, without a prognosis necessarily having been made as to the specific length of time that they have remaining.”

- Criminal code as amended by Bill C-14

REASONABLY FORESEEABLE

- AB v. AG Canada and AG Ontario (June 2017)
 - 79 year old woman with advanced OA who requested MAiD.
 - One of the physicians assessing her felt that her natural death as NOT reasonably foreseeable, so she could not get MAiD.
 - She applied to the court for clarification.
- The court ruled that
 - AB's natural death has become reasonably foreseeable.
 - “person-specific medical question to be made without necessarily making, but not necessarily precluding, a prognosis of the remaining life-span”
- Federal Government did not appeal the decision.

REASONABLY FORESEEABLE

IRPP REPORT

March 2018

Interpreting Canada's Medical Assistance in Dying Legislation

Jocelyn Downie and Jennifer A. Chandler

REASONABLY FORESEEABLE

- Temporal proximity can be sufficient (but not necessary)
 - Indeed, not necessary for prognosis to be made.
- Predictable cause of death can also be a sufficient condition (but not necessary)

“Natural death will become reasonably if either condition exists-- a predicted death in a “period that is not too remote”, or a predictable cause of natural death-- but it is not necessary for both conditions to exist for the patient to meet this criterion.”

'My biggest fear is I will become trapped': Woman, 25, goes to court to overturn assisted- dying restrictions

'The government's new law will force me to suffer,' says spinal muscular atrophy patient who has filed legal challenge in B.C. Supreme Court



B.C. woman drops challenge of MAID law after learning she qualifies for assisted dying

KELLY GRANT > HEALTH REPORTER
PUBLISHED SEPTEMBER 18, 2019

10 COMMENTS SHARE



Lamb vs. Canada

- Was scheduled to go to trial Nov 2019
- In Sept 2019, cancelled because one of Canada's lead witnesses opined that some providers in Canada might find her eligible.
- Ms. Lamb withdrew her case, as she felt it was a victory for her to know that MAID would be available to her.
 - Although government lawyers made no pronouncements on the proper interpretation of the eligibility criteria.

2 Montrealers with degenerative diseases challenge medically assisted dying law

Plaintiffs say federal and provincial laws don't respect 2015 Supreme Court ruling

By Verity Stevenson, [CBC News](#) | Posted: Jun 14, 2017 12:00 PM ET | Last Updated: Jun 14, 2017 3:51 PM ET



Nicole Gladu, 71, and Jean Truchon, 49, are the latest people to challenge Canadian law that restricts access to medically assisted dying to those for whom death is 'reasonably foreseeable.' (Charles Contant/CBC)

Montreal

Quebec judge overturns parts of federal, provincial laws on medically assisted dying



Superior Court rules sections unconstitutional because they're too restrictive



[Steve Rukavina](#) · CBC News · Posted: Sep 11, 2019 12:31 PM ET | Last Updated: September 11





CBC Montreal 
@CBCMontreal



"It's up to people ... like us to decide if we prefer the quality of life to the quantity of life," said Nicole Gladu.

She says yesterday's decision that parts of Quebec's assisted dying law are unconstitutional has given her that freedom. [#polqc](#)
[#cdnpoli](#)



OPINION

Medically assisted dying laws are changing, and it's about time



ANDRÉ PICARD >

PUBLISHED SEPTEMBER 11, 2019

People who are mentally competent should have the right to determine how they live and how they die – full stop. No asterisk in the law is justified for those with a disability or a debilitating chronic illness.

This law's death was 'reasonably foreseeable.' What Ottawa needs to do now

But Ottawa should be wary of simply eliminating the clause, because it is also reasonably foreseeable that too lax a regime could result in a tragic error of the kind the government imagined back in 2016.

But neither should the state patronize people who know their own minds and have suffered long enough. Ottawa was right to be cautious in drafting the law, but the next government needs to strike a better balance.



CANADIAN ASSOCIATION
FOR COMMUNITY LIVING

ASSOCIATION CANADIENNE POUR
L'INTÉGRATION COMMUNAUTAIRE




Council of Canadians
with Disabilities

Conseil des Canadiens
avec déficiences

TORONTO, ON – Over 65 disability allied organizations throughout the country **have signed an open letter** to Attorney General, Minister David Lametti, urging an appeal of the September 11 decision of the Quebec Superior Court in the case of Truchon and Gladu.

1. **It fails to respect Parliament's authority to balance the interests of individuals with the interests of society^[9], effectively limiting Parliament's capacity to pursue social targets such as substantive equality and inclusion.**
- **Without the end-of-life criterion in place, Canada's medical assistance in dying legislation will further violate article 10 of the United Nations' Convention on the Rights of Persons with Disabilities (CRPD).**
- **The decision will entrench stereotypes and exacerbate stigma for Canadians with disabilities, contributing to the adversity and oppression experienced by this vulnerable group.**

A scenic landscape photograph of a large, calm lake. The sky is filled with large, white, puffy clouds against a bright blue background. The far shore of the lake is lined with a dense forest of green trees. In the foreground, the dark green, needle-covered branches of evergreen trees frame the left and right sides of the image, partially obscuring the view of the water.

Reporting Requirements

Reporting as required by the Regulations for the Monitoring of Medical Assistance in Dying

You must report if:

You provided MAID.

OR

You received a **written** request* and one of the following non-MAID outcomes occurs on or before the 90th day after the day you receive the written request:

- ▶ you referred the patient, or transferred their care as a result of their request, or
- ▶ you found the patient ineligible, or
- ▶ the patient withdrew their request, or
- ▶ the patient died of a cause other than MAID.

You are not required to report more than once for the same written request unless you later provide MAID.

*** Note: to trigger the obligation to report, a patient's written request may take any form. It does not have to be in the format required by the *Criminal Code* as a safeguard for MAID to be provided.**

REPORTING REQUIREMENTS

- How to report:

<https://surveys-enquetes.statcan.gc.ca/goc-gdc/en/login-connexion/load-charger/eqgs84a0a9515d574a0f9b1e7d1e62ea3a8d>

OR

maidreporting.ca

Organ and Tissue Donation



Deceased organ and tissue donation after medical assistance in dying and other conscious and competent donors: guidance for policy

KEY POINTS

- First-person consent for organ donation after medical assistance in dying (MAiD) or withdrawal of life-sustaining measures (WLSM) should be an option in jurisdictions that allow MAiD or WLSM and donation after circulatory determination of death.
- The most important ethical concern — that the decision for MAiD or WLSM is being driven by a desire to donate organs — should be managed by ensuring that any discussion about organ donation takes place only after the decision for MAiD or WLSM is made.
- If indications for MAiD change, this guidance for policies and the practice of organ donation after MAiD should be reviewed to ensure that the changes have not created new ethical or practical concerns.

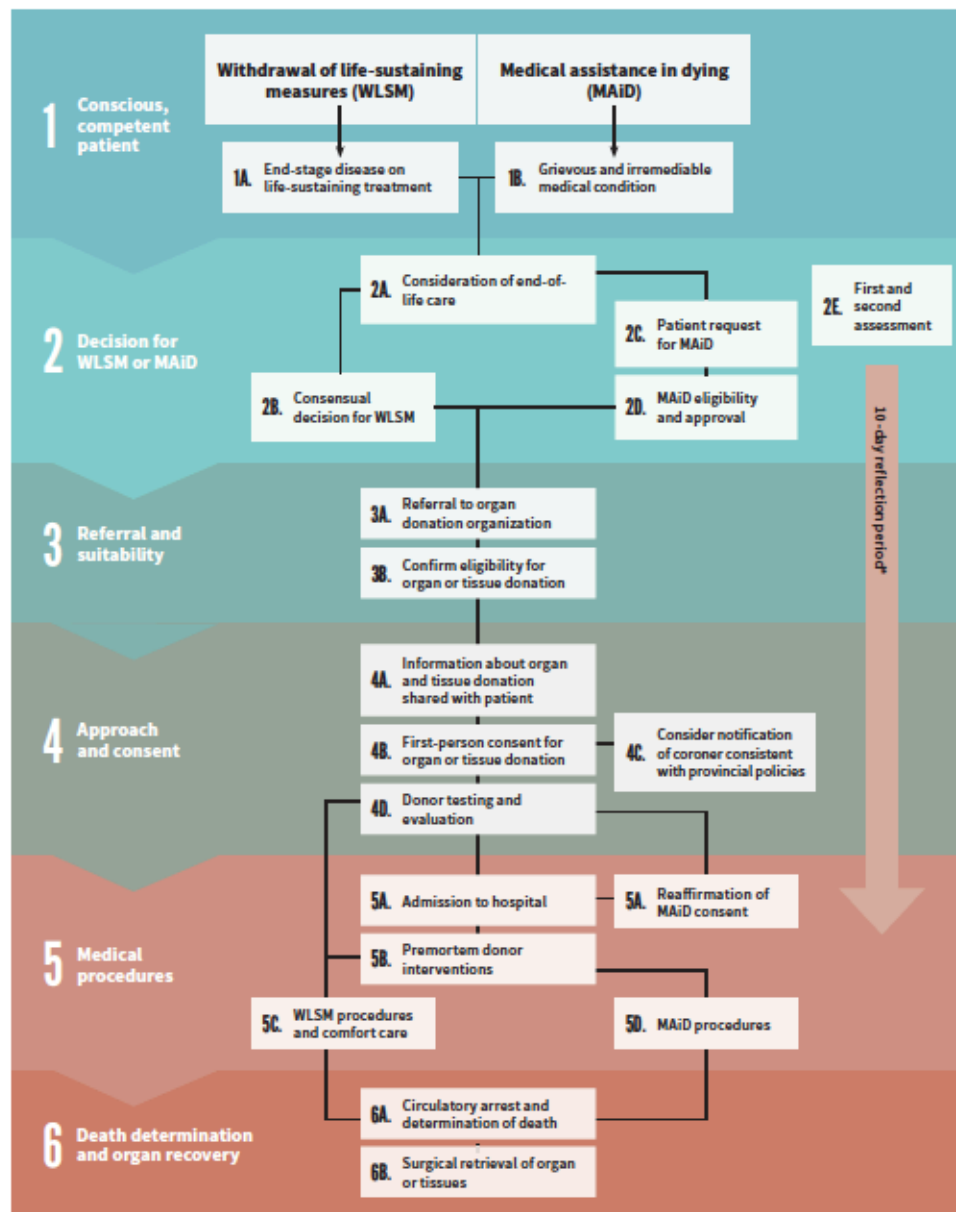


Figure 1: Clinical pathway for organ donation in conscious, competent patients in Canada. Note: MAiD = medical assistance in dying, WLSM = withdrawal of life-sustaining measures. *The 10-day reflection period begins from the day that the patient signs their written request, which should be after the first assessment of eligibility. This reflection period can be shortened if both assessors agree that the patient appears likely to die or lose capacity.

MAID and Organ Donation

- Medically suitable, conscious and competent patients should provide first-person consent, should be given the opportunity to donate organs and tissues.
- The decision to proceed with MAID must be separate from, and must precede, the decision to donate.
- Providers assessing eligibility for MAID should not be involved in donation discussions.
- Clinicians should be cognizant of the risk of coercion or undue influence on patients
- Individual should be informed and understand that they may withdraw consent for MAID or donation at any time.

MAiD and Dementia



From dementia to medically assisted death: A Canadian woman's journey, and the dilemma of the doctors who helped

To give Alzheimer's patient Mary Wilson the death she sought, her physicians had to make a tough decision in a short time – and risked going to prison if they got it wrong. Now they've been cleared of wrongdoing in a decision that could have wide-reaching implications for tens of thousands of Canadians

MAiD in Dementia

- 73 year old woman in Victoria
- Alzheimer's Disease
- Assessors felt that she was grievously ill enough to qualify for an assisted death, but still retained capacity.
- Had MAiD Oct 2017
- Coroner flagged case to CPSBC who investigated, and found no evidence of wrong-doing.



Medical Assistance in Dying (MAiD) in Dementia

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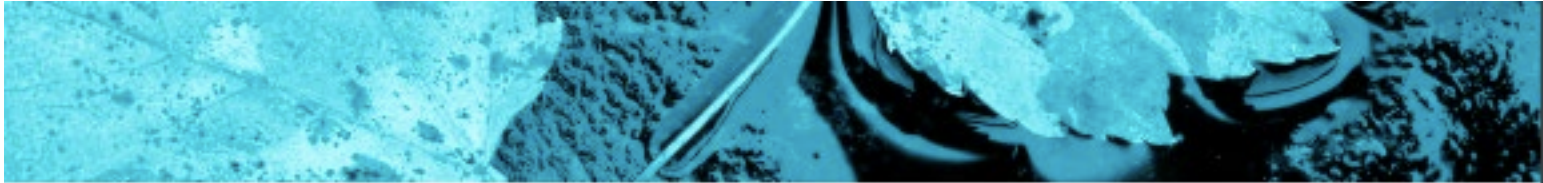
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⁵Fort St. John, BC, Canada

⁶McMaster University, Hamilton, Ontario, Canada

- CAMAP Guideline, published in 2018.
- Discusses natural history, guides decisions on determining at what point those with dementia might qualify for MAiD.
- Provides guidance in assessment of capacity in dementia



THE STATE OF KNOWLEDGE ON ADVANCE REQUESTS FOR MEDICAL ASSISTANCE IN DYING

The Expert Panel Working Group on
Advance Requests for MAID



Thank you for your attention

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Mount Sinai Hospital

Bridgepoint

Lunenfeld-Tanenbaum Research Institute

Circle of Care