

## Organ Donation after Medical Aid in Dying: A Critical Study of Clinical Processes and Legal Rules in Place

**Authors :** Louise Bernier

**Abstract :** Under some jurisdictions (including Canada), eligible patients can request and receive medical assistance in dying (MAiD) through lethal injections, inducing their cardiocirculatory death. Those same patients can also wish to donate their organs in the process. If they qualify as organ donors, a clinical and ethical rule called the 'dead donor rule' (DDR) requires the transplant teams to wait after cardiocirculatory death is confirmed, followed by a 'no touch' period (5 minutes in Canada) before they can proceed with organ removal. The medical procedures (lethal injections) as well as the delays associated with the DDR can damage organs (mostly thoracic organs) due to prolonged anoxia. Yet, strong scientific evidences demonstrate that operating differently and reconsidering the DDR would result in more organs of better quality available for transplant. This idea generates discomfort and resistance, but it is also worth considering, especially in a context of chronic shortage of available organs. One option that could be examined for MAiD' patients who wish and can be organ donors would be to remove vital organs while patients are still alive (and under sedation). This would imply accepting that patient's death would occur through organ donation instead of lethal injections required under MAiD' legal rules. It would also mean that patients requesting MAiD and wishing to be organ donors could aspire to donate better quality organs, including their heart, an altruistic gesture that carries important symbolic value for many donors and their families. Following a patient centered approach, our hypothesis is that preventing vital organ donation from a living donor in all circumstance is neither perfectly coherent with how legal mentalities have evolved lately in the field of fundamental rights nor compatible with the clinical and ethical frameworks that shape the landscape in which those complex medical decisions unfold. Through a study of the legal, ethical, and clinical rules in place, both at the national and international levels, this analysis raises questions on the numerous inconsistencies associated with respecting the DDR with patients who have chosen to die through MAiD. We will begin with an assessment of the erosion of certain national legal frameworks that pertain to the sacred nature of the right to life which now also includes the right to choose how one wishes to die. We will then study recent innovative clinical protocols tested in different countries to help address acute organ shortage problems in creative ways. We will conclude this analysis with an ethical assessment of the situation, referring to principles such as justice, autonomy, altruism, beneficence, and non-maleficence. This study will build a strong argument in favor of starting to allow vital organ donations from living donors in countries where MAiD is already permitted.

**Keywords :** altruism, autonomy, dead donor rule, medical assistance in dying, non-maleficence, organ donation

**Conference Title :** ICLM 2021 : International Conference on Legal Medicine

**Conference Location :** London, United Kingdom

**Conference Dates :** October 21-22, 2021