

Medical Assistance in Dying (MAID) and Advance Care Planning (ACP)

In Ontario, Advance Care Planning (ACP) is an interactive process that involves:

- a) Identifying the substitute decision maker (SDM) who will make decisions on behalf of the patient should they become incapable, AND
- b) Discussing a person's wishes, values and beliefs, and more generally their preferences for how they would like to be cared for in the event of incapacity to give or refuse consent

Engaging in advance care planning discussions with family, friends and future SDM(s) allows for a capable individual to express **wishes** about future health and personal care in the absence of a specific health context. The ACP process is about sharing wishes and what is important in terms of values and beliefs and is not about decisional readiness. When the person has a specific health context reflected in health care discussions then conversations are medically oriented and involve specific treatment or care **decisions required based on informed consent**.

According to the Supreme Court of Canada ruling, medical assistance in dying can be requested by a competent adult where

1. The person affected clearly consents to the termination of life
2. The person has a grievous/very serious and irremediable/incurable medical condition (including an illness, disease or disability) that creates enduring suffering that is intolerable to the individual in the circumstances of his or her condition

The wording used specifies that medical assistance in dying will require consent from the competent person affected and that there is a serious medical condition creating enduring suffering. Advance care planning is not consent to treatment. As outlined in the Health Care Consent Act, any treatment proposed by a health care provider requires **informed consent** from either a capable person, or their substitute decision maker. Even if a person has participated in advance care planning, this will not be able to serve as informed consent for Medical Assistance in Dying. The main purpose of Advance Care Planning is to provide the substitute decision maker with information that will prepare them to make the best decision on behalf of an incapable person by understanding and respecting their values and beliefs.

Key Concern: Given the consent requirements as outlined in the Supreme Court Ruling and the Ontario Health Care Consent Act, Medical Assistance in Dying must not be linked to Advance Care Planning.

Recommendations:

- i) All materials or resources developed for MAID should include a clear definition of MAID, and should not include advance care planning language, tools or references.
- ii) All materials, resources, frameworks developed for MAID should clearly reflect the **legal** framework related to physician assisted dying as determined by the Government of Canada and the Province of Ontario with the focus on informed consent as determined by the Ontario Health Care Consent Act.
- iii) Tools that are specific to ACP in Ontario should be aligned to the Ontario legal framework (i.e. consistent with the Health Care Consent Act).

Hospice Palliative Care Ontario's Health Care Consent Advance Care Planning Community of Practice is actively engaged in reviewing, supporting and promoting work related to ACP and HCC within the Ontario legal framework. If you are interested in learning more, scheduling a formal review of your HCC ACP resources for use within Ontario, or if you have questions please contact Julie Darnay at jdarnay@hpcoco.ca, or 1-800-349-3111 ext. 30 or 416-304-1477 ext. 30.