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Eligibility for organ donation: a medico-legal perspective on defining and determining death.

<https://arctichealth.org/en/permalink/ahliterature149821>

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Source: Can J Anaesth. 2009 Nov;56(11):851-63

Date: Nov-2009

Language: English

Publication Type: Article

Keywords: Canada

Death
Health Policy - legislation & jurisprudence
Heart Arrest - physiopathology
Humans
Legislation, Medical
Organ Transplantation - legislation & jurisprudence
Tissue Donors - legislation & jurisprudence
Tissue and Organ Procurement - legislation & jurisprudence

Abstract: In the context of post-mortem organ donation, there is an obvious need for certainty regarding the legal definition and determination of death, as individuals must be legally pronounced dead before organs may be procured for donation. Surprisingly then, the legal situation in Canada with regard to the definition and determination of death is uncertain. The purpose of this review is to provide anesthesiologists and critical care specialists with a medico-legal perspective regarding the definition and determination of death (particularly as it relates to non-heart-beating donor protocols) and to contribute to ongoing improvement in policies, protocols, and practices in this area.

The status quo with regard to the current legal definition of death is presented as well as the criteria for determining if and when death has occurred. A number of important problems with the status quo are described, followed by a series of recommendations to address these problems.

The legal deficiencies regarding the definition and determination of death in Canada may place health care providers at risk of civil or criminal liability, discourage potential organ donation, and frustrate the wishes of some individuals to donate their organs. The definition and criteria for the determination of death should be clearly set out in legislation. In addition, the current use of non-heart-beating donor protocols in Canada will remain inconsistent with Canadian law until more persuasive evidence on the potential return of cardiac function after cardiac arrest is gathered and made publicly available or until a concrete proposal to abandon the dead donor rule and amend Canadian law is adopted following a process of public debate and intense multidisciplinary review.

Notes: Comment In: Can J Anaesth. 2009 Nov;56(11):789-9219711143

PubMed ID: 19585180 [View in PubMed](#) 