1980

c 210 Human Tissue Gift Act

Ontario
CHAPTER 210

Human Tissue Gift Act

1. In this Act,

(a) "consent" means a consent given under this Act;

(b) "physician" means a person licensed under Part III of the Health Disciplines Act; R.S.O. 1980, c. 196

(c) "tissue" includes an organ, but does not include any skin, bone, blood, blood constituent or other tissue that is replaceable by natural processes of repair;

(d) "transplant" as a noun means the removal of tissue from a human body, whether living or dead, and its implantation in a living human body, and in its other forms it has corresponding meanings;

(e) "writing" for the purposes of Part II includes a will and any other testamentary instrument whether or not probate has been applied for or granted and whether or not the will or other testamentary instrument is valid. 1971, c. 83, s. 1.

PART I

INTER-VIVOS GIFTS FOR TRANSPLANTS

2. A transplant from one living human body to another living human body may be done in accordance with this Act, but not otherwise. 1971, c. 83, s. 2.

3.—(1) Any person who has attained the age of majority, is mentally competent to consent, and is able to make a free and informed decision may in a writing signed by him consent to the removal forthwith from his body of the tissue specified in the consent and its implantation in the body of another living person.
(2) Notwithstanding subsection (1), a consent given thereunder by a person who had not attained the age of majority, was not mentally competent to consent, or was not able to make a free and informed decision is valid for the purposes of this Act if the person who acted upon it had no reason to believe that the person who gave it had not attained the age of majority, was not mentally competent to consent, and was not able to make a free and informed decision, as the case may be.

(3) A consent given under this section is full authority for any physician,

(a) to make any examination necessary to assure medical acceptability of the tissue specified therein; and

(b) to remove forthwith such tissue from the body of the person who gave the consent.

(4) If for any reason the tissue specified in the consent is not removed in the circumstances to which the consent relates, the consent is void. 1971, c. 83, s. 3.

PART II

POST MORTEM GIFTS FOR TRANSPLANTS AND OTHER USES

4.—(1) Any person who has attained the age of majority may consent,

(a) in a writing signed by him at any time; or

(b) orally in the presence of at least two witnesses during his last illness,

that his body or the part or parts thereof specified in the consent be used after his death for therapeutic purposes, medical education or scientific research.

(2) Notwithstanding subsection (1), a consent given by a person who had not attained the age of majority is valid for the purposes of this Act if the person who acted upon it had no reason to believe that the person who gave it had not attained the age of majority.
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(3) Upon the death of a person who has given a consent under this section, the consent is binding and is full authority for the use of the body or the removal and use of the specified part or parts for the purpose specified, except that no person shall act upon a consent given under this section if he has reason to believe that it was subsequently withdrawn. 1971, c. 83, s. 4.

5.—(1) Where a person of any age who has not given a consent under section 4 dies, or in the opinion of a physician is incapable of giving a consent by reason of injury or disease and his death is imminent,

(a) his spouse of any age; or

(b) if none or if his spouse is not readily available, any one of his children who has attained the age of majority; or

(c) if none or if none is readily available, either of his parents; or

(d) if none or if neither is readily available, any one of his brothers or sisters who has attained the age of majority; or

(e) if none or if none is readily available, any other of his next of kin who has attained the age of majority; or

(f) if none or if none is readily available, the person lawfully in possession of the body other than, where he died in hospital, the administrative head of the hospital,

may consent,

(g) in a writing signed by the spouse, relative or other person; or

(h) orally by the spouse, relative or other person in the presence of at least two witnesses; or

(i) by the telegraphic, recorded telephonic, or other recorded message of the spouse, relative or other person,
to the body or the part or parts thereof specified in the consent being used after death for therapeutic purposes, medical education or scientific research.

(2) No person shall give a consent under this section if he has reason to believe that the person who died or whose death is imminent would have objected thereto.

(3) Upon the death of a person in respect of whom a consent was given under this section the consent is binding and is, subject to section 6, full authority for the use of the body or for the removal and use of the specified part or parts for the purpose specified except that no person shall act on a consent given under this section if he has actual knowledge of an objection thereto by the person in respect of whom the consent was given or by a person of the same or closer relationship to the person in respect of whom the consent was given than the person who gave the consent.

(4) In subsection (1), "person lawfully in possession of the body" does not include,

(a) the supervising coroner or a coroner in possession of the body for the purposes of the Coroners Act;

(b) the Public Trustee in possession of the body for the purpose of its burial under the Crown Administration of Estates Act;

(c) an embalmer or funeral director in possession of the body for the purpose of its burial, cremation or other disposition; or

(d) the superintendent of a crematorium in possession of the body for the purpose of its cremation. 1971, c. 83, s. 5.

6. Where, in the opinion of a physician, the death of a person is imminent by reason of injury or disease and the physician has reason to believe that section 10 of the Coroners Act may apply when death does occur and a consent under this Part has been obtained for a post mortem transplant of tissue from the body, a coroner having jurisdiction, notwithstanding that death has not yet occurred, may give such directions as he thinks proper respecting the removal of such tissue after the death of the person, and every such direction has the same force and effect as if it had been made after death under section 11 of the Coroners Act. 1971, c. 83, s. 6.
7.—(1) For the purposes of a post mortem transplant, the fact of death shall be determined by at least two physicians in accordance with accepted medical practice.

(2) No physician who has had any association with the proposed recipient that might influence his judgment shall take any part in the determination of the fact of death of the donor.

(3) No physician who took any part in the determination of the fact of death of the donor shall participate in any way in the transplant procedures.

(4) Nothing in this section in any way affects a physician in the removal of eyes for cornea transplants. 1971, c. 83, s. 7.

8. Where a gift under this Part cannot for any reason be used for any of the purposes specified in the consent, the subject-matter of the gift and the body to which it belongs shall be dealt with and disposed of as if no consent had been given. 1971, c. 83, s. 8.

PART III

GENERAL

9. No action or other proceeding for damages lies against any person for any act done in good faith and without negligence in the exercise or intended exercise of any authority conferred by this Act. 1971, c. 83, s. 9.

10. No person shall buy, sell or otherwise deal in directly or indirectly, for a valuable consideration, any tissue for a transplant, or any body or part or parts thereof other than blood or a blood constituent, for therapeutic purposes, medical education or scientific research, and any such dealing is invalid as being contrary to public policy. 1971, c. 83, s. 10.

11.—(1) Except where legally required, no person shall disclose or give to any other person any information or document whereby the identity of any person,

   (a) who has given or refused to give a consent;

   (b) with respect to whom a consent has been given; or

   (c) into whose body tissue has been, is being or may be transplanted,

may become known publicly.
Exception

(2) Where the information or document disclosed or given pertains only to the person who disclosed or gave the information or document, subsection (1) does not apply. 1971, c. 83, s. 11.

Offence

12. Every person who knowingly contravenes any provision of this Act is guilty of an offence and on conviction is liable to a fine of not more than $1,000 or to imprisonment for a term of not more than six months, or to both. 1971, c. 83, s. 13.

R.S.O. 1980, c. 93
not affected