

The Human Tissue Gift Act

being

Chapter H-15 of *The Revised Statutes of Saskatchewan, 1978* (effective February 26, 1979) as amended by the *Statutes of Saskatchewan, 1979-80, c.96; 1980-81, c.83; 1983, c.11 and 18; 1983-84, c.54; and 1999, c.C-38.01 and H-0.021.*

NOTE:

This consolidation is not official. Amendments have been incorporated for convenience of reference and the original statutes and regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the original statutes and regulations, errors that may have appeared are reproduced in this consolidation.

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CHAPTER H-15

An Act to facilitate the Making of Inter Vivos and Post-Mortem Gifts of Human Tissue

Short title

1 This Act may be cited as *The Human Tissue Gift Act*.

Interpretation

2 In this Act:

- (a) “**consent**” means a consent given under this Act;
- (b) “**physician**” means a legally qualified medical practitioner;
- (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 section 5 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.

R.S.S. 1978, c.H-15, s.2; 1980-81, c.83, s.21.

PART I

Inter Vivos Gifts for Transplants

Transplants under Act are lawful

3 A transplant from one living human body to another living human body may be done in accordance with this Act, but not otherwise.

R.S.S. 1978, c.H-15, s.3.

Consent for transplant

4(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.

c. H-15**HUMAN TISSUE GIFT****Consent of person under age, etc.**

(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.

Consent is full authority to proceed

- (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.

Stale consent void

(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.

R.S.S. 1978, c.H-15, s.4; 1979-80, c.96, s.7.

PART II**Post-Mortem Gifts for Transplant and Other Uses****Consent by person for use of his body after death**

5(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.

Where donor under age

(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.

Consent is full authority, exception

(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.

R.S.S. 1978, c.H-15, s.5; 1980-81, c.83, s.21.

Consent by spouse, etc., for use of body after death

6(1) Where a person of any age who has not given a consent under section 5 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 unless immediately prior to the death or injury or illness of the person, that person and his spouse were living separate and apart from each other; or
- (b) if none, or if his spouse does not qualify under clause (a) or 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 a 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;
- (j) by a telephonic message received and heard by two persons from the spouse, relative or other person where the two persons subsequently record in writing the nature and contents of the consent;

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.

Prohibition

(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.

Consent is full authority, exceptions

(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 7, 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.

Persons lawfully in possession of body, exceptions

(4) In subsection (1), “**person lawfully in possession of the body**” does not include:

- (a) the coroner in possession of the body for the purposes of *The Coroners Act, 1999*;
- (b) the Minister of Justice 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.

R.S.S. 1978, c.H-15, s.6; 1983, c.11, s.35; 1999, c.C-38.01, s.70.

Coroner’s direction

7 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 sections 7 to 10 of *The Coroners Act, 1999* 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 restricting the removal of such tissue after the death of the person.

R.S.S. 1978, c.H-15, s.7; 1999, c.C-38.01, s.70.

Determination of death

8(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.

Prohibition

(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.

Same

(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.

Exception

(4) Nothing in this section in any way affects a physician in the removal of eyes for cornea transplants.

R.S.S. 1978, c.H-15, s.8.

Where specified use fails

9 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.

R.S.S. 1978, c.H-15, s.9.

PART III
General

Civil liability

10 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.

R.S.S. 1978, c.H-15, s.10.

Sale, etc., of tissue prohibited

11 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.

R.S.S. 1978, c.H-15, s.11; 1983-84, c.54, s.10.

12 Repealed. 1999, c.H-0.021, s.67.

Lawful dealings not affected, exception

13 Any dealing with a body or part or parts thereof that was lawful before this Act came into force shall, except as provided in this Act, continue to be lawful.

R.S.S. 1978, c.H-15, s.13.

Offence and penalty

14 Every person who knowingly contravenes any provision of this Act is guilty of an offence and on summary 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.

R.S.S. 1978, c.H-15 s.14.

R.S.S. 1978, C-38 not affected

15 Except as provided in section 7, nothing in this Act affects the operation of *The Coroners Act, 1999*.

R.S.S. 1978, c.H-15, s.15; 1999, c.C-38.01, s.70.

1968, C-32 not affected

16 A direction or authorization given under *The Human Tissue Act, 1968*, before this Act came into force may be acted upon in accordance with that Act notwithstanding the repeal of that Act.

R.S.S. 1978, c.H-15, s.16.

