

The Human Tissue Gift Act, 2015

being

Chapter H-15.1* of *The Statutes of Saskatchewan, 2015* (effective July 16, 2018) as amended by the *Statutes of Saskatchewan, 2020, c.3*.

***NOTE:** Pursuant to subsection 33(1) of *The Interpretation Act, 1995*, the Consequential Amendment sections, schedules and/or tables within this Act have been removed. Upon coming into force, the consequential amendments contained in those sections became part of the enactment(s) that they amend, and have thereby been incorporated into the corresponding Acts. Please refer to the Separate Chapter to obtain consequential amendment details and specifics.

NOTE:

This consolidation is not official and is subject to House amendments and Law Clerk and Parliamentary Counsel changes to Separate Chapters that may be incorporated up until the publication of the annual bound volume. Amendments have been incorporated for convenience of reference and the official Statutes and Regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the official Statutes and Regulations, errors that may have appeared are reproduced in this consolidation.

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CHAPTER H-15.1

An Act to Facilitate the Donation of Certain Tissues from One Living Person to Another for Transplantation and to Facilitate the Donation, after Death, of Tissues, Bodies or Body Parts for Transplantation, Medical or Scientific Purposes and to make a consequential amendment to *The Adult Guardianship and Co-decision-making Act*

PART I Preliminary Matters

Short title

1 This Act may be cited as *The Human Tissue Gift Act, 2015*.

Interpretation

2 In this Act:

- (a) **“consent”** means a consent given pursuant to this Act;
- (b) **“minister”** means the member of the Executive Council to whom for the time being the administration of this Act is assigned;
- (c) **“organ”** means a perfusable human organ for use in a transplant, whether whole or in parts, and whose specific function is intended to return after revascularization and reperfusion, and includes any adjunct vessels that are retrieved with the organ for use in the organ transplant;
- (d) **“organ procurement organization”** means a person, a partnership or an unincorporated body that is registered with Health Canada in accordance with regulations made pursuant to the *Food and Drugs Act* (Canada) respecting the importation, processing, distribution and transplantation of tissue or other body parts;
- (e) **“personal health information”** means personal health information as defined in *The Health Information Protection Act*;
- (f) **“personal information”** means personal information as defined in *The Freedom of Information and Protection of Privacy Act*;
- (g) **“physician”** means a duly qualified medical practitioner;
- (h) **“tissue”** includes an organ, but does not include:
 - (i) any skin, bone, tendon, blood, blood constituent, or other tissue that is replaceable by natural processes of repair; and
 - (ii) spermatozoa, ova, embryos and fetuses;

- (i) **“transplant”** means:
- (i) the removal of tissue from a human body, whether living or dead; or
 - (ii) the removal of a part of a human body that is dead;
- and its implantation to a living human body;
- (j) **“writing”** for the purposes of sections 7 and 8 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.

2015, c.H-15.1, s.2.

Crown bound

3 The Crown is bound by this Act.

2015, c.H-15.1, s.3.

Responsibilities of the minister

4 The minister is responsible for the system of tissue donation and transplant services in Saskatchewan and for that purpose may coordinate, develop, implement, evaluate and promote provincial policies with respect to:

- (a) the education of the public and health services personnel about matters related to the donation and use of tissue for transplant; and
- (b) the promotion, development and support of:
 - (i) activities related to the donation and use of tissue for transplant; and
 - (ii) the work of organ procurement organizations in managing the system of tissue donation and transplant services in Saskatchewan.

2015, c.H-15.1, s.4.

PART II

Gifts for Transplants During Life

Transplants under Act are lawful

5 Any transplant from one living human body to another living human body must be done in accordance with this Act.

2015, c.H-15.1, s.5.

Consent for transplant

6(1) Any adult who has the capacity to consent and who is able to make a free and informed decision may, in writing signed by him or her, consent to the removal from his or her body of the tissue specified in the consent and its implantation to the body of another living person.

- (2) Notwithstanding subsection (1), a consent given by a person who had not attained the age of majority, who lacked the capacity to consent or who was not able to make a free and informed decision is valid for the purposes of this Act if the person who acted on that consent had no reason to believe that the person who gave it had not attained the age of majority, did not have the capacity to consent or was not able to make a free and informed decision.
- (3) A consent given pursuant to this section is full authority for any physician:
- (a) to make any examination necessary to assure medical acceptability of the tissue specified in the consent; and
 - (b) to remove the tissue from the body of the person who gave the consent.
- (4) No person shall remove any tissue specified in a consent mentioned in subsection (1) in circumstances other than the circumstances to which the consent relates.
- (5) No person shall act on a consent given pursuant to this section if he or she has reason to believe that the consent was subsequently withdrawn.

2015, c.H-15.1, s.6.

PART III

Gifts for Transplant and Other Uses After Death

Consent by person for use of body after death

- 7(1) Any adult who has the capacity to consent and who is able to make a free and informed decision may consent, in any of the following manners, to his or her body or the part of his or her body specified in the consent being used after his or her death for the purposes of transplant, medical education or scientific research:
- (a) in writing signed and dated by him or her at any time;
 - (b) orally in the presence of at least two witnesses during his or her last illness;
 - (c) in a manner prescribed in the regulations.
- (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 on the consent had no reason to believe that the person who gave it had not attained the age of majority.
- (3) Subject to subsection (4), on the death of a person who has given a consent pursuant to 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 for the purpose specified.
- (4) No person shall act on a consent given pursuant to this section if he or she has reason to believe that the consent was subsequently withdrawn.

2015, c.H-15.1, s.7.

Revocation of consent

8 A person who has given a consent pursuant to section 7 may revoke that consent:

- (a) orally in the presence of a witness;
- (b) in writing signed and dated by him or her;
- (c) by destroying the consent if it was made in writing;
- (d) by giving a new consent in accordance with section 7; or
- (e) in a manner prescribed in the regulations.

2015, c.H-15.1, s.8.

Consent by other persons for use of body after death

9(1) If a person of any age who has not given a consent pursuant to section 7 dies, or in the opinion of a physician is incapable of giving a consent by reason of injury or disease and the person's death is imminent, a person mentioned in section 10 or 11 may consent to the body or the part of the body specified in the consent being used after death for the purposes of transplant, medical education or scientific research.

(2) A consent pursuant to subsection (1) is to be given in one of the following manners:

- (a) in writing;
- (b) orally in the presence of at least two witnesses;
- (c) by telephone or other means of electronic communication, where the person who received the communication subsequently records the nature and contents of the consent;
- (d) in a manner prescribed in the regulations.

(3) No person shall give a consent pursuant to this section if he or she has reason to believe that the person who died or whose death is imminent would have objected to the giving of consent.

(4) Subject to subsection (5), on the death of a person with respect to whom a consent was given pursuant to this section, the consent is binding and is, subject to sections 10 and 11, full authority for the use of the body or for the removal and use of the specified part for the purpose specified.

(5) No person shall act on a consent given pursuant to this section if he or she has actual knowledge of an objection to the consent by the person with respect to whom the consent was given.

2015, c.H-15.1, s.9.

Consent by nearest relative

10(1) Subject to subsections (2) and (3), a nearest relative is, with respect to a person who has not given consent or is incapable of giving consent for the reason given in section 9, the person first described in the following clauses who has capacity and is available:

- (a) the legally married spouse of the person or a person with whom the person cohabits and has cohabited as a spouse in a relationship of some permanence, unless immediately before the death or injury or illness of the person, that person and his or her spouse were living separate and apart from each other;
 - (b) an adult son or daughter;
 - (c) a parent or legal custodian;
 - (d) an adult brother or sister;
 - (e) a grandparent;
 - (f) an adult grandchild;
 - (g) an adult uncle or aunt;
 - (h) an adult nephew or niece.
- (2) For the purposes of subsection (1):
- (a) if the person who has not given consent for the reason given in section 9 is not an adult, the decision of the child's legal decision-maker, as defined in *The Children's Law Act, 2020*, is preferred to the decision of a parent who does not have decision-making responsibility for the child in accordance with that Act;
 - (b) the decision of a relative of the whole blood is preferred to the decision of a relative of the same description of the half blood; and
 - (c) the decision of the elder or eldest of two or more relatives listed in each clause of subsection (1) is preferred to the decision of the other or others of those relatives.
- (3) No person shall act on a consent given pursuant to this section if he or she has actual knowledge of an objection to the consent by a nearest relative who has a relationship to the person with respect to whom the consent was given that is the same as or closer than the relationship of the relative who gave the consent.

2015, c.H-15.1, s.10; 2020, c3, s.4.

Consent by person lawfully in possession of the body

11(1) For the purposes of this section, "**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) an embalmer or funeral director in possession of the body for the purpose of its burial, cremation or other disposition; or
- (c) the superintendent of a crematorium in possession of the body for the purpose of its cremation.

(2) If a person has not given consent or is incapable of giving consent for the reason given in section 9 and if there is no nearest relative, or if none is readily available, the person lawfully in possession of the body other than, if the person died in a hospital, the administrative head of the hospital may, subject to subsections 9(3) and (5), give consent for the purposes of that section.

2015, c.H-15.1, s.11.

Coroner's direction

12(1) This section applies in circumstances where:

- (a) in the opinion of a physician, the death of a person is imminent by reason of injury or disease;
 - (b) the physician mentioned in clause (a) has reason to believe that sections 7 to 10 of *The Coroners Act, 1999* may apply when death does occur; and
 - (c) a consent pursuant to this Part has been obtained for a transplant after death of tissue or part of a body from the body.
- (2) In the circumstances mentioned in subsection (1) and notwithstanding that death has not yet occurred, a coroner having jurisdiction may give any directions he or she considers appropriate restricting the removal of the tissue or part of the body after the death of the person.

2015, c.H-15.1, s.12.

Determination of death

13(1) Subject to subsection (2), for the purposes of a transplant after death, the fact of death must be determined in accordance with accepted health care provider practice.

- (2) For the purpose of a transplant after death of organs, the fact of death must be determined by at least two physicians in accordance with accepted medical practice.
- (3) No physician who has had any association with the proposed recipient that might influence the physician's judgment shall take any part in the determination of the fact of death of the donor.
- (4) 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.
- (5) This section does not apply to a physician who will remove a donor's eyes for corneal transplantation.

2015, c.H-15.1, s.13.

If specified use fails

14 If a gift pursuant to this Part cannot for any reason be used for any of the purposes specified in the consent, the tissue or part of the body and the body to which it belongs must be dealt with and disposed of as if no consent had been given.

2015, c.H-15.1, s.14.

PART IV
General

Immunity

15(1) No action or other proceeding lies or shall be commenced against any person acting pursuant to the authority of this Act or the regulations for anything in good faith done, caused, permitted or authorized to be done, attempted to be done or omitted to be done pursuant to or in the exercise or supposed exercise of any power conferred by this Act or the regulations or in the carrying out or supposed carrying out of any responsibility imposed by this Act or the regulations.

(2) Subject to subsection (1), no person has any rights or remedies and no action or other proceeding lies or shall be commenced against any other person with respect to any act or omission of that other person done or omitted in compliance with and not in contravention of this Act or the regulations or any direction, decision, order, ruling or other requirement made or given pursuant to this Act or the regulations.

2015, c.H-15.1, s.15.

Sharing of information

16 An organ procurement organization may share any information that it has obtained pursuant to this Act, including personal information and personal health information, with a person or another organ procurement organization if the sharing of that information is reasonably necessary to facilitate the process of transplantation, or for the purposes of transplant, medical education or scientific research.

2015, c.H-15.1, s.16.

Sale, etc., of tissue prohibited

17 Subject to the regulations, 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 of a body other than blood or a blood constituent, for the purposes of transplant, medical education or scientific research.

2015, c.H-15.1, s.17.

Offence and penalty

18(1) Every person who contravenes any provision of this Act is guilty of an offence and on summary conviction is liable to a fine of not more than \$100,000 or to imprisonment for a term of not more than six months, or to both.

(2) If a corporation commits an offence pursuant to this Act, any officer or director of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is guilty of the offence and liable on summary conviction to the penalties mentioned in this section whether or not the corporation has been prosecuted or convicted.

2015, c.H-15.1, s.18.

Limitation of prosecution

19 No prosecution for a contravention of this Act or the regulations is to be commenced more than two years after the facts on which the alleged contravention is based first came to the knowledge of the minister.

2015, c.H-15.1, s.19.

Report to minister

20 The minister may require reports to be submitted by an organ procurement organization or any other person involved in the importation, processing, distribution or transplantation of tissue or other body parts respecting any matter that the minister has inquired about within the time set by the minister.

2015, c.H-15.1, s.20.

S.S.1999, c.C-38.01 not affected

21 Except as provided in section 12, nothing in this Act affects the operation of *The Coroners Act, 1999*.

2015, c.H-15.1, s.21.

Regulations

22 The Lieutenant Governor in Council may make regulations:

- (a) defining, enlarging or restricting the meaning of any word or expression used in this Act but not defined in this Act;
- (b) establishing standards, practices, conditions, protocols or procedures related to the donation, removal and storage of tissue and bodies or parts of bodies for the purposes of transplant, medical education or scientific research;
- (c) respecting the sharing and protection from unauthorized disclosure and use of personal information and personal health information for the purposes of the donation of tissue and bodies or parts of bodies;
- (d) prescribing the manner in which consent:
 - (i) may be given for the purposes of section 7; and
 - (ii) may be revoked for the purposes of section 8;
- (e) prescribing the manner in which consent may be given for the purposes of section 9;
- (f) for the purposes of section 17:
 - (i) prescribing exemptions from the prohibition against the purchase, sale or other dealings with respect to:
 - (A) tissue; and
 - (B) bodies or parts of bodies;

- (ii) prescribing persons or classes of persons that are exempt from that section and prescribing any terms and conditions to which the exemption may be subject; and
- (iii) prescribing circumstances of a purchase, sale or other dealing with respect to tissue, bodies or parts of bodies that make the purchase, sale or other dealing exempt from that section;
- (g) with respect to any matter governed by this Act:
 - (i) adopting, as amended from time to time or otherwise, all or any part of any relevant code or standard;
 - (ii) amending for the purposes of this Act or the regulations any code or standard adopted pursuant to subclause (i);
 - (iii) requiring compliance with a code or standard adopted pursuant to subclause (i);
- (h) prescribing any other matter or thing that is required or authorized by this Act to be prescribed in the regulations;
- (i) respecting any other matter or thing that the Lieutenant Governor in Council considers necessary to carry out the intent of this Act.

2015, c.H-15.1, s.22.

PART V

Repeal, Transitional, Consequential and Coming into Force

R.S.S. 1978, c.H-15 repealed

23 *The Human Tissue Gift Act* is repealed.

2015, c.H-15.1, s.23.

Transitional – lawful dealings not affected, exception

24(1) In this section, “**former Act**” means *The Human Tissue Gift Act*, as that Act existed before the coming into force of this Act.

(2) Any dealing with a body or part of a body that was lawful pursuant to the former Act, except as provided in this Act, continues to be lawful.

(3) A direction or authorization given pursuant to the former Act, except as provided in this Act, may be acted on in accordance with that Act notwithstanding the repeal of that Act.

2015, c.H-15.1, s.24.

25 **Dispensed.** This section makes consequential amendments to another Act. The amendments have been incorporated into the corresponding Act.

Coming into force

26 This Act comes into force on proclamation.

2015, c.H-15.1, s.26.

