

(This draft Act includes changes made by the Uniform Law Conference at Yellowknife, N.W.T. on August 14, 1989.)

1. In this Act,

Definitions

“common law spouse” means [insert provincial definition]; (“conjoint de fait”)

“common law spouse”

“death” includes brain death as determined by generally accepted medical criteria; (“mort”)

“death”

“non-regenerative tissue” means tissue other than regenerative tissue; (“tissu non susceptible de regeneration”)

“non-regenerative tissue”

“regenerative tissue”, in a living human body, means tissue that, on injury or removal, replaces itself; (“tissue susceptible de regeneration”)

“regenerative tissue”

“spouse” includes a common law spouse; (“epoux; ex-pouse”)

“spouse”

“tissue” means a part of a living or dead human body, but does not include

“tissue”

(a) spermatozoa or ova,

(b) an embryo or fetus, or

(c) blood or blood constituents; (“tissu”)

“transplant” means the removal of tissue from a human body and the implantation of the tissue in the living human body of another. (“transplantation”)

“transplant”

2. A consent to the removal of tissue may be given in accordance with this Act, but not otherwise.

Compliance with Act

3.(1) A person who is [16] years of age or over and understands the nature and consequences of transplanting tissue from his or her body after death may consent to the removal of the tissue specified in the consent from his or her body after death for the purpose of implanting the tissue in a living human body.

Consent to transplant after death

(2) Notwithstanding subsection (1), a consent given by a person who did not understand the nature and conse-

quences of transplanting tissue from his or her body after death is valid for the purposes of this section if the person who acts on it has no reason to believe that the person who gave it did not understand the nature and consequences of transplanting tissue from his or her body after death.

*Substituted
consent*

4.(1) After the death of a person who has not given a consent under section 3, who is under [16] years of age or who did not understand the nature and consequences of transplanting tissue from his or her body after death, a person referred to in subsection (2) may consent to the removal of the tissue specified in the consent from the body of the deceased

(a) for the purpose of implanting the tissue in a living human body, or

(b) for the purposes referred to in section 12(1).

(2) A consent referred to in subsection (1) may be given by any one of the following:

(a) a guardian of the person of the deceased before death;

(b) the spouse of the deceased;

(c) a child of the deceased;

(d) a parent of the deceased;

(e) a brother or sister of the deceased;

(f) any other relative of the deceased;

(g) a person, other than a spouse, who shared a residence with the deceased immediately before the deceased died and has knowledge of the wishes of the deceased.

(3) In the event of a dispute between persons in 2 or more of the classes of persons referred to in subsection (2), the dispute shall be decided in accordance with the order in which those classes are listed in subsection (2).

(4) If no consent is provided under subsection (1) and the [Coroner], after making reasonable efforts, is unable to locate any of the persons listed in subsection (2), the [Coroner] may be given a consent referred to in subsection (1).

(5) No consent may be given under this section by a person who

- (a) is under [16] years of age,
- (b) does not understand the nature and consequences of transplanting tissue from the body of the deceased after death, or
- (c) has reason to believe that the deceased would have objected to the consent.

5.(1) A person who is [16] years of age or over and understands the nature and consequences of transplanting tissue from his or her body during his or her life may consent to the removal of the tissue specified in the consent from his or her body during his or her life for the purpose of implanting the tissue in another living human body.

*Consent to
transplant
during life.*

(2) If there is reason to believe that a person who gives a consent under this section may not understand the nature and consequences of transplanting tissue from his or her body during his or her life, no transplant may be carried out pursuant to that consent unless the results of an independent assessment conducted in accordance with section 7 indicate that the transplant should be carried out.

(3) No transplant of non-regenerative tissue may be carried out pursuant to this section unless the results of an independent assessment conducted in accordance with section 7 indicate that the transplant should be carried out.

6.(1) A person who is under [16] years of age and understands the nature and consequences of transplanting tissue from his or her body during his or her life may consent to the removal of the regenerative tissue specified in the consent from his or her body during his or her life for the purpose of implanting the tissue in another living human body.

*Transplant
during life re
person under 16*

(2) Notwithstanding subsection (1), bone marrow may be removed from a person who is under [16] years of age and does not understand the nature and consequences of transplanting tissue from his or her body during his or her life for the purpose of implanting the bone marrow in a biological brother or biological sister of the donor.

(3) No transplant may be carried out

- (a) pursuant to subsection (1), unless a parent or guardian of the donor also consents to the transplant, or

(b) pursuant to subsection (2), unless a parent or guardian of the donor consents to the transplant on behalf of the donor.

(4) No transplant may be carried out pursuant to subsection (1) or (2) unless the results of an independent assessment conducted in accordance with section 7 indicate that the transplant should be carried out.

*Independent
assessment*

7.(1) If an independent assessment is required pursuant to this Act, it shall be conducted in accordance with this section and the regulations.

(2) An independent assessment shall be conducted by not fewer than 3 persons, of whom one shall be a physician.

(3) No person who has or has ever had an association with the donor of tissue in respect of whom an independent assessment is conducted or with the proposed recipient of the tissue shall conduct the independent assessment.

(4) The persons conducting an independent assessment shall provide notice of the date, time and place of the independent assessment to

(a) the donor of the tissue,

(b) if the donor is under [16] years of age, the parent or guardian of the donor and the [Official Guardian], and

(c) if the donor is (16) years of age or over and there is reason to believe that the donor may not understand the nature and consequences of transplanting tissue from his or her body during his or her life, the parent or guardian of the person of the donor and the [Official Guardian].

(5) On receiving a notice under subsection (4), the [Official Guardian] shall represent the donor at the independent assessment unless the [Official Guardian] is satisfied that another person in addition to the parent or guardian of the person of the donor will represent the donor.

(6) The persons conducting an independent assessment shall consider the following:

(a) whether the transplant is the medical treatment of choice;

- (b) with respect to a transplant under section 6, whether all other members of the immediate family of the donor have been eliminated, for medical or other reasons, as potential donors;
 - (c) whether coercion has been exerted on the donor for the purpose of obtaining his or her consent to the transplant;
 - (d) whether the removal of the tissue from the body of the donor will create a substantial health or other risk to the donor;
 - (e) whether this Act and the regulations, as they relate to that transplant, have been complied with.
- (7) The persons conducting an independent assessment shall, in the manner and within the time period prescribed in the regulations,

- (a) make a decision as to whether a transplant that has been proposed pursuant to section 5 or 6 should be carried out,
- (b) provide written reasons for the decision, and
- (c) provide notice of that decision and the reasons for the decision to the persons who received notice of the independent assessment under subsection (4).

8.(1) A person may, within [3 days] after a decision has been made under section 7(7), appeal to the [Supreme Court] the decision of the persons who conducted an independent assessment. *Appeal*

- (2) On Hearing an appeal, the Court may
- (a) quash, vary or confirm the decision of the persons who conducted the independent assessment, or
 - (b) refer the matter back to the persons who conducted the independent assessment for further action in accordance with the directions of the Court.
- (3) On hearing an appeal to which section 6(2) applies, the Court may make an order authorizing a parent or guardian of the donor to consent to the transplant on behalf of the donor.

(4) No transplant in respect of which an appeal has been commenced under subsection (1) shall be carried out until the appeal has been concluded.

*Effect of
Consent*

9.(1) A consent that complies with this Act is binding and is authority for a physician

(a) to make an examination necessary to assure medical acceptability of the tissue specified in the consent, and

(b) to remove the tissue specified in the consent in accordance with the consent.

(2) Notwithstanding subsection (1), no person shall act on a consent if the person has reason to believe that

(a) in the case of a consent under section 3, 5, 6 or 12, the person who gave the consent subsequently withdrew or would have objected to the consent, or

(b) in the case of a consent under section 4, the person on whose behalf the consent was given would have objected to the consent.

*Coroner's
direction*

10. If, 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 ... of the [Coroners Act] may apply when death does occur and a consent under section 3 has been obtained for a transplant of tissue from the body after death, a [Coroner] having jurisdiction, notwithstanding that death has not yet occurred, may give directions he or she thinks proper respecting the removal of the tissue after the death of the person, and that direction has the same force and effect as if it had been made after death under section ... of the [Coroners Act].

*Determination
of death*

11.(1) The fact of death of a donor of tissue shall be determined by at least 2 physicians in accordance with accepted medical practice.

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

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

(4) Subsections (2) and (3) do not apply to a physician in the removal of eyes for cornea transplants.

12.(1) Notwithstanding anything in this Act, a person who is [16] years of age or over may consent to the use after death of his or her body or the parts of his or her body specified in the consent for therapeutic purposes, medical education or scientific research. *Consent for other purposes*

(2) If tissue that has been removed pursuant to a consent given under section 3, 4, 5, or 6 cannot for any reason be implanted in a living human body, the tissue shall be disposed of as if no consent relating to the tissue had been given, unless the donor has consented to the use of the tissue for therapeutic purposes, medical education or scientific research.

13.(1) Except where required by law, no person shall disclose or give to another person any information or document whereby the public may learn the identify of a person *Disclosure of information*

(a) who has given or refused to give a consent to the removal of tissue,

(b) with respect to whom a consent to the removal of tissue has been given or refused, or

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

(2) Notwithstanding subsection (1),

(a) a donor of tissue may disclose or authorize another person to disclose information relating only to the donor that the donor has authorized for disclosure,

(b) a recipient of tissue may disclose or authorize another person to disclose information relating only to the recipient that the recipient has authorized for disclosure, and

(c) a person who gave a consent under section 4 on behalf of a deceased may disclose or authorize another person to disclose information relating only to the deceased that the person who gave the consent has authorized for disclosure.

Protection from liability

14. No person is liable for anything done or omitted to be done in good faith and without negligence in the exercise or intended exercise of an authority under this Act.

Commerce prohibited

15.(1) No person shall buy, sell or otherwise deal in, directly or indirectly, any tissue, body or body part for the purpose of a transplant or for a therapeutic purpose, medical education or scientific research.

(2) Any dealing in any tissue, body or body part that was lawful before this Act came into force shall continue to be lawful, provided this Act is complied with.

(3) A person who contravenes this section is guilty of an offence and liable on summary conviction to a fine of not more than \$100,000 or to imprisonment for not more than 1 year, or to both.

General offence

[16. A person who contravenes this Act, except section 15, is guilty of an offence and liable on summary conviction to a fine of not more than \$10,000 or to imprisonment for not more than 6 months, or to both.]

Regulations

17. The Lieutenant Governor in Council may make regulations

(a) respecting the establishment and operation of independent assessments;

(b) prescribing the manner and time period in which a decision under section 7(7), reasons for the decision and notice of the decision shall be given.

Repeal

18. The Uniform Human Tissue Gift Act is repealed.