



## Organ Donation By Douglas A.S. Paterson, Q.C.

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The Human Tissue Gift Act used to be called the Human Tissue Act. The name was changed to reflect the increased interest in and demand for transplant organs and tissue.

Anyone 18 years or older may “direct” his or her whole body or any specific part may be used after death for therapeutic (transplant), education, or research purposes. A person under 18 years may so direct where a parent or guardian consents.

Once a person dies, the health authorities who have the direction then take possession of the body or remove and use the tissues indicated in the direction. Health authorities must be careful not to proceed unless they are sure the direction has not been revoked, or if the deceased never fully understood the direction or if the body may be needed under the Fatality Inquiries Act.

If the deceased has not made a direction in any way, a proxy (named in a Living Will) or the deceased’s nearest relative may direct the body or specific

tissues to be used for therapeutic or medical education or research purposes.

Here again health authorities must be careful. If the proxy or nearest relative make a direction, the authorities should not act if it would be against the deceased’s religious beliefs or if it is known the deceased would have objected to the direction or if the body is needed under the Fatality Inquiries Act.

From a bureaucratic point of view where a body or tissues are gifted or about to be, the health authorities are to notify the appropriate “gift agency”, i.e. the eye bank of Manitoba, or the Winnipeg Regional Health Authority Tissue Bank and Organ Donation Program.

If no direction is found, the gift agency has to assess and decide if circumstances are appropriate to ask the dying person or nearest relative of a dying or deceased person whether they wish to direct a gift. The gift agency shall not ask, however, if the agency has reason to believe the person objected to any use of body or tissues after

death or if the person would have objected, if living, to such a gift or such a gift would be against that person’s religion.

Two independent physicians are needed to determine if brain death has occurred with blood circulation intact before organs can be removed for transplant use.

For a living person, if an independent physician certifies the person understands, that person may donate tissue from his or her own body if he or she is over 18 years and is mentally capable. This gift must be for medical education or research purposes if it is a regenerative tissue but only for therapeutic (transplant) purposes if it is non-regenerative tissue. A good example would be a kidney between relatives for transplant of a non-regenerative tissue. Of course, an independent physician must certify beforehand that the person has given informed consent.

Of course, no person can be paid or pay anyone for transplant tissues, bodies, or

body parts that are used for any purpose under this Act. The maximum fine is \$10,000.00 or one year in jail or both if convicted. Health care professionals can be paid for their required services though, including expenses.