



## Gifts of Human Tissue by Doug 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. These uses must be consistent with the uses mentioned in the direction itself. Health authorities must be careful not to proceed unless they are sure the direction has not been revoked, or if the deceased never fully understood the direction or if the body may be needed under the Fatality Inquiries Act.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.

It is important to note here that where a person is near death and no direction has been made by that person, a physician can decide that death is imminent and inevitable. If that is the status, then a proxy or nearest relative may make a direction for use of the body or tissues. If the person is under 16 years old, only the nearest relative may make such a direction.

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. Even where the health authorities receive a dead body and no other information about gifting is available, the gift agency is to be notified. It must then take reasonable efforts to determine if the deceased or dying person made a gift direction.

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.

The gift agency may request the health authorities to ask for a gift direction and the health authorities must make reasonable efforts to ask for a direction.

Where a person's body or tissues are gifted but there is no known use for them or any reasonable possibility of a timely use, as set out in the direction itself, the body or tissues will be handled as if no gift direction existed. The same process is followed where only certain tissues are to be used but not the whole body – the rest of the body is dealt with as if no direction existed.

Even if no gift direction exists, any pathologist doing a post mortem may remove the pituitary gland and cause it to be used in the treatment of persons with a growth hormone deficiency, unless it would be against the deceased's religion or the nearest relative objects.

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.

A living person between 16 and 18 years of age can gift tissue provided his or her parent consents and provided the recipient of the tissue is a member of the immediate family of the donor.

If a living person under 16 years wishes to give tissue, there are several complex conditions to be met, including an Order from the Court of Queens Bench.

The form of the direction or consent need not be written. It can be a recorded message, or orally with two witnesses present, or by phone to at least two witnesses.

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 \$10,00.00 or one year in jail or both if convicted. Health care professionals can be paid for their required services though, including expenses.

Donors or families can received repayment of reasonable expenses incurred during a donation process.