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Bill 107

**An Act to amend various statutes with respect to
the removal and use of tissue from a human body
for therapeutic purposes, medical education or scientific research**

Ms F. Gélinas

Private Member's Bill

1st Reading March 29, 2022

2nd Reading

3rd Reading

Royal Assent



EXPLANATORY NOTE

The *Gift of Life Act* currently requires that consent be obtained before tissue can be removed from a human body and used for therapeutic purposes, medical education or scientific research. Under the proposed amendments, consent is no longer required except from parents or guardians on behalf of children under 16 years of age. A person may object to the removal and use of the tissue prior to the person's death or a substitute may object on the person's behalf after the death has occurred. If an objection is made or there is no consent on behalf of a child under 16 years of age, no tissue shall be removed from the body. Part II of the Act sets out the manner and circumstances in which an objection or a consent may be made by or on behalf of a person. Obligations are placed on facilities designated under the Act (including hospitals and other health facilities) to notify Ontario Health when a patient dies or if death is imminent.

Proposed amendments are also made to the *Connecting Care Act, 2019*. The objects of Ontario Health are amended to provide for the planning, co-ordinating, undertaking, supporting and promoting of activities relating to the removal, donation and use of human tissue, including the co-ordinating and supporting of designated facilities in connection with the removal and use of human tissue for transplant. The Act is also amended to provide that Ontario Health shall establish and maintain a registry of objections and consents made by a person, the person's substitute or the parent or guardian of a child who is under 16 years of age to the removal and use of tissue from the person's body after the person's death.

**An Act to amend various statutes with respect to
the removal and use of tissue from a human body
for therapeutic purposes, medical education or scientific research**

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Gift of Life Act

1 (1) The definition of “consent” in section 1 of the *Gift of Life Act* is repealed.

(2) The definition of “writing” in section 1 of the Act is repealed.

2 The heading to Part II of the Act is repealed and the following substituted:

**PART II
POST MORTEM TRANSPLANTS AND OTHER USES OF TISSUE**

3 Sections 4 and 5 of the Act are repealed and the following substituted:

Post mortem use of tissue

4 (1) Subject to subsection (2), if a person dies, tissue from the person’s body may be removed and used after the person’s death for therapeutic purposes, medical education or scientific research, including transplant.

Exception

(2) Subsection (1) does not apply to,

- (a) a person who has objected in the manner specified in subsection (3) to tissue from the person’s body being removed and used after the person’s death or on whose behalf such an objection has been made under subsection 5 (4); or
- (b) a parent or guardian of a child who is under 16 years of age who has not consented in the manner specified in subsection (5).

Objection

(3) Any person who is 16 years of age or more may object, at any time prior to the person’s death or during the person’s last illness, to tissue from the person’s body being removed and used and the person shall make the objection,

- (a) in writing, and the person shall sign the objection;
- (b) orally, in the presence of at least two witnesses; or
- (c) by email, recorded telephonic message or other recorded message.

Communication of objection

(4) An objection made under subsection (3) shall be communicated to an attending physician or to the Agency.

Minors, consent

(5) At any time prior to the death of a child who is under 16 years of age, the parent or guardian of the child shall consent on the child’s behalf to tissue from the child’s body being removed and used after the child’s death and the consent shall be communicated to an attending physician or to the Agency.

Objection by other persons

5 (1) A person listed in subsection (2) may object to tissue from another person’s body being removed and used after that person’s death if,

- (a) the other person dies without making an objection in accordance with subsection 4 (3); or
- (b) the other person’s death is imminent and, in the opinion of a physician, the person is incapable by reason of injury or disease of making an objection in accordance with subsection 4 (3).

Who may object

(2) Subject to subsection (6), the persons who may object to tissue from another person's body being removed and used after the other person's death are,

- (a) the person's spouse;
- (b) if the person has no spouse or if the person's spouse is not available, any one of the person's children;
- (c) if the person has no spouse or children or if none are available, either one of the person's parents;
- (d) if the person does not have any of the relatives mentioned in clause (a), (b) or (c) or if none of them are available, any one of the person's siblings;
- (e) if the person does not have any of the relatives mentioned in clause (a), (b), (c) or (d) or if none of them are available, any other of the person's next of kin; and
- (f) if the person does not have any of the relatives mentioned in clause (a), (b), (c), (d) or (e) or if none of them are available, the person lawfully in possession of the body other than a person referred to in subsection (3).

Person lawfully in possession of body, exception

(3) The following are the persons mentioned in clause (2) (f):

- 1. The administrative head of the hospital where the person has died.
- 2. The Chief Coroner or a coroner in possession of the body for the purposes of the *Coroners Act*.
- 3. The Public Guardian and Trustee in possession of the body for the purpose of its burial under the *Crown Administration of Estates Act*.
- 4. An embalmer or funeral director in possession of the body for the purposes of its burial, cremation or other disposition.
- 5. The superintendent of a crematorium in possession of the body for the purposes of its cremation.

Form of objection

(4) A person making an objection under this section shall make the objection,

- (a) in writing, and the person shall sign the objection;
- (b) orally, in the presence of at least two witnesses; or
- (c) by email, recorded telephonic message or other recorded message.

Communication of objection

(5) An objection made under subsection (4) shall be communicated to an attending physician or to the Agency.

Prohibition

(6) No person shall make an objection under this section to tissue from another person's body being removed and used after that person's death if the person has reason to believe that the person who died or whose death is imminent would not have objected to the removal or use.

Definition

(7) In this section,

"spouse" means a person,

- (a) to whom the person is married, or
- (b) with whom the person is living or, immediately before the person's death, was living in a conjugal relationship outside marriage, if the two persons,
 - (i) cohabitated for at least one year,
 - (ii) are together the parents of a child, or
 - (iii) together entered into a cohabitation agreement under section 53 of the *Family Law Act*.

4 Section 6 of the Act is amended by striking out "and a consent under this Part has been obtained for a post mortem transplant of tissue from the body" and substituting "and no objection to a post mortem removal and use of tissue from the body has been made under this Part or a consent under this Part has been obtained for a post mortem transplant of tissue from the body in the case of a child who is under 16 years of age".

5 Section 8 of the Act is repealed.

6 The heading to Part II.1 of the Act is repealed and the following substituted:

PART II.1 OBLIGATIONS OF DESIGNATED FACILITIES

7 Subsections 8.1 (4) and (5) of the Act are repealed and the following substituted:

Determination

(4) When the designated facility gives notice to the Agency, the Agency shall determine whether the facility is required to contact the patient or the patient's substitute concerning the right of the patient or the substitute, as the case may be, to object or consent in the case of a child who is under 16 years of age to the removal and use of tissue from the body of the patient for transplant.

Same

(5) The Agency shall make the determination under subsection (4) in consultation with the designated facility.

Query about objection

(5.1) If the Agency advises the designated facility that it is required to contact the patient or the patient's substitute, the facility shall make reasonable efforts to ensure that,

- (a) the patient or the patient's substitute is contacted to determine whether there is an objection or a consent to tissue being removed from the body of the patient after death for transplant; and
- (b) the contact is made in a manner that meets the requirements of the Agency and by a person who meets such requirements as may be prescribed by the Minister.

8 Clauses 11 (1) (a) and (b) of the Act are repealed and the following substituted:

- (a) who has given or refused to give a consent under Part I or who has objected to tissue being removed and used from a human body under Part II;
- (b) with respect to whom a consent has been given or an objection has been made; or

9 Subsection 15 (4) of the Act is repealed.

Connecting Care Act, 2019

10 Clause 6 (c) of the *Connecting Care Act, 2019* is repealed and the following substituted:

- (c) to plan, co-ordinate, undertake, support and promote activities related to tissue removal, donation and transplantation and other uses in accordance with the *Gift of Life Act*, including co-ordinating and supporting the work of designated facilities as defined under that Act in connection with the removal and use of tissue from a human body for transplant;
- (c.1) to establish and maintain a registry of names in respect of persons who have sent to the Agency an objection to tissue from their body being removed and used after their death or on whose behalf such an objection, or a consent in the case of a child who is under 16 years of age, has been sent to the Agency;

11 The Act is amended by adding the following Part:

PART V.0.1 REGISTRY

Registry

43.0.1 (1) The Agency shall establish a registry of names of persons who have sent to the Agency an objection to tissue from their body being removed and used after their death or on whose behalf such an objection, or a consent in the case of a child who is under 16 years of age, has been sent to the Agency.

Same

(2) The Agency shall enter a name in the registry established under subsection (1) promptly on receiving an objection or consent made in accordance with the *Gift of Life Act*.

Same

(3) The registry shall indicate the name of the person in respect of whom the objection or consent is made and, if indicated by the person making the objection or providing the consent on behalf of a child who is under 16 years of age, whether the objection or the consent applies to all tissue or parts of the body or only to specified tissue or parts.

Commencement

12 This Act comes into force on the day it receives Royal Assent.

Short title

13 The short title of this Act is the *Peter Kormos Memorial Act (Saving Organs to Save Lives)*, 2022.