

Legislative
Assembly
of Ontario



Assemblée
législative
de l'Ontario

1ST SESSION, 42ND LEGISLATURE, ONTARIO
68 ELIZABETH II, 2019

Bill 91

An Act to amend the Trillium Gift of Life Network Act

Ms F. Gélinas

Private Member's Bill

1st Reading March 28, 2019

2nd Reading

3rd Reading

Royal Assent



EXPLANATORY NOTE

Currently, the *Trillium Gift of Life Network Act* requires that consent be obtained before tissue can be removed from a human body. Under the proposed amendments, consent is no longer required, but a person may object to the removal of the tissue prior to his or her death or a substitute may object on his or her behalf after the death has occurred. If an objection is made, no tissue shall be removed from the body. Part II of the Act sets out the manner and circumstances in which an objection may be made by or on behalf of a person.

The Trillium Gift of Life Network continues in its role as planner, promoter and co-ordinator of activities relating to the donation, removal and use of tissue for transplant and for other uses. Obligations are placed on facilities designated under the Act (including hospitals and other health facilities) to notify the Network when a patient dies or if death is imminent. The Network co-ordinates the provision of information to the patient or his or her family with respect to the removal of tissue and the person's right to object. A person or the person's substitute may register with the Network an objection to the removal and use of tissue from the person's body after his or her death. The Network shall establish and maintain a registry of such objections.

An Act to amend the Trillium Gift of Life Network Act

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

1 (1) The definition of “consent” in section 1 of the *Trillium Gift of Life Network Act* is repealed.

(2) The definition of “substitute” in section 1 of the Act is amended by striking out “clause 5 (2) (a), (b), (c), (d), (e) or (f)” and substituting “paragraph 1, 2, 3, 4, 5 or 6 of subsection 5 (2)”.

(3) The definition of “writing” in section 1 of the Act is repealed.

2 The heading to Part II of the Act is repealed and the following substituted: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3 Sections 4 and 5 of the Act are repealed and the following substituted: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 his or her body may be removed and used after his or her death for medical education, scientific research or therapeutic purposes, including transplant.

Exception

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

- (a) who is a believer, a follower or a member of a prescribed religion, cult, association or group; or
- (b) who has objected in the manner specified in subsection (3) to tissue from his or her body being removed and used after his or her death or on whose behalf such an objection has been made under subsection 5 (1).

Objection

(3) Any person who is 16 years of age or more may object to tissue from his or her body being removed and used after his or her death by,

- (a) stating the objection in writing in a document signed by the person and, at any time prior to the person’s death,
 - (i) delivering the document to an attending physician, or
 - (ii) sending the document to the Network; or
- (b) stating the objection orally in the presence of at least two witnesses during the person’s last illness.

Minors

(4) At any time before the death of a child who is under 16 years of age, the parent or guardian of the child may, in a manner specified in subsection (3), object on the child’s behalf to tissue from the child’s body being removed and used after the child’s death.

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 following persons may object to tissue from another person’s body being removed and used after the other person’s death:

- 1. The person’s spouse.

2. If the person has no spouse or if the person's spouse is not available, any one of the person's children.
3. If the person has no spouse or children or if none are available, either one of the person's parents.
4. If the person does not have any of the relatives mentioned in paragraph 1, 2 or 3 or if none of them are available, any one of the person's brothers or sisters.
5. If the person does not have any of the relatives mentioned in paragraph 1, 2, 3 or 4 or if none of them are available, any other of the person's next of kin.
6. If the person does not have any of the relatives mentioned in paragraph 1, 2, 3, 4 or 5 or if none of them are available, the person lawfully in possession of the body other than a person referred to in subsection (4).

Definition

(3) In this subsection (2),

“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) have cohabitated for at least one year,
 - (ii) are together the parents of a child, or
 - (iii) have together entered into a cohabitation agreement under section 53 of the *Family Law Act*.

Person lawfully in possession of body, exception

(4) The following are the persons mentioned in paragraph 6 of subsection (2):

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

(5) 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 e-mail, recorded telephonic message or other recorded message.

Prohibition

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

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”.

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 Network, the Network 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 to the removal and use of tissue from the body of the patient for transplant.

Same

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

Query about objection

(5.1) If the Network 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 he or she objects 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 Network and by a person who meets such requirements as may be prescribed by the Minister.

8 (1) Paragraphs 1 and 2 of section 8.8 of the Act are repealed and the following substituted:

1. To plan, promote, co-ordinate and support activities relating to the donation of tissue for transplant under Part I.
2. To plan, promote, co-ordinate and support activities relating to the removal of tissue from a human body for transplant or activities relating to education or research under Part II.
- 2.1 To co-ordinate and support the work of designated facilities in connection with the removal of tissue from a human body for transplant under Part II.
- 2.2 To establish and maintain a registry of names in respect of persons who have sent to the Network an objection to tissue from their body being removed and used after their death or on whose behalf such an objection has been sent to the Network.

(2) Paragraph 5 of section 8.8 of the Act is amended by striking out "whether to consent to the donation of tissue" and substituting "whether to object to tissue from a body being removed and used after the person's death".

(3) Paragraph 6 of section 8.8 of the Act is amended by striking out "donation and use of tissue" and substituting "donation, removal and use of tissue".

(4) Paragraph 7 of section 8.8 of the Act is amended by striking out "donation and use of tissue" at the end and substituting "donation, removal and use of tissue".

(5) Paragraph 8 of section 8.8 of the Act is amended by striking out "the donation of tissue" at the end and substituting "the donation, removal and use of tissue".

9 The Act is amended by adding the following section:**Registry**

8.9.1 (1) The Network shall establish a registry of names of persons who have sent to the Network an objection to tissue from their body being removed and used after their death or on whose behalf such an objection has been sent to the Network.

Same

(2) The Network shall enter a name in the registry established under subsection (1) promptly on receiving an objection under subsection 4 (3) or 5 (1).

Same

(3) The registry shall indicate the name of the person in respect of whom the objection is made and, if indicated by the person making the objection, whether the objection applies to all tissue or parts of the body or only to specified tissue or parts.

10 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

11 Subsection 15 (4) of the Act is repealed.**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 (Trillium Gift of Life Network Amendment), 2019.*