

1967 Bill 1

Fifth Session, 15th Legislature, 15 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 1

**An Act to Provide for the Disposition of Bodies and Parts
Thereof of Deceased Persons for Therapeutic
and Other ~~Purposes~~**

THE MINISTER OF HEALTH

First Reading

Second Reading

Third Reading

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An Act to Provide for the Disposition of Bodies and Parts
Thereof of Deceased Persons for Therapeutic
and Other Purposes

(Assented to _____, 1967)

HER MAJESTY, by and with the advice and consent of
the Legislative Assembly of the Province of Alberta,
enacts as follows:

1. This Act may be cited as *The Human Tissue Act*.

2. (1) A person 18 years of age or over may,

(a) in writing at any time, or

(b) orally in the presence of at least two witnesses
during his last illness,

direct that his body or any specified part or parts thereof be
used after his death for therapeutic purposes or for pur-
poses of medical education or for purposes of medical re-
search.

(2) Upon the death of the person, the direction is binding
and is full authority for the use of the body or for the
removal and use of the specified part or parts thereof for
the purposes specified in the direction, except that a person

(a) shall not act upon a direction if he has reason to
believe that the person who gave the direction sub-
sequently withdrew it, and

(b) shall not, except with the consent of a coroner, act
upon a direction if he has reason to believe that an
inquest may be required to be held upon the body.

(3) A direction given by a person under 18 years of age
is valid for the purposes of this section if the person who
acted upon it had no reason to believe that the person who
gave the direction was under 18 years of age at the time he
gave it.

3. (1) Where a person other than a person who has made
a direction under section 2 dies,

(a) his spouse, or

(b) if none, any one of his children 21 years of age or
over, or

(c) if none, either of his parents, or

Explanatory Note

General. This Bill is a model Act prepared by the Conference of Commissioners on Uniformity of Legislation in Canada. Its purpose is explained in the explanatory notes to clauses 2 and 3. Similar legislation presently exists in Ontario, Nova Scotia, the United Kingdom and many of the States of the United States of America.

2. Under the law as it presently exists no person can, by will or otherwise, give legally binding directions as to what is to be done, after his death, with his body or any part thereof (other than his eyes—see Clause 7 of this Bill). This section changes the law to enable any person 18 or over to make a binding disposition of his body or any part thereof for therapeutic or educational or research purposes.

3. Under the law no one actually owns the body of a deceased person but there is a duty on the executor, next of kin or person lawfully in possession of the body to see that it is decently disposed of. The authority for giving the body for medical purposes is presently found in section 53 of The Universities Act which reads:

53. A legal representative or other person having lawful possession of the body of any deceased person and not being an undertaker or other person entrusted with the body for the purpose only of interment may hand over or permit the handing over of the body of the deceased person to a university for anatomical purposes and for scientific instruction and research, unless

- (a) to the knowledge of the legal representative or other person, the deceased person had expressed his desire either in writing at any time during his life or orally in the presence of two or more witnesses during the illness of which he died that his body after death should not be used for such purposes, or
- (b) the surviving husband or wife or any known relative of the deceased person requires the body to be interred without being used for such purposes.

This provision of The Universities Act will be replaced by section 3 of this Bill. Section 3 only applies where the deceased person has not made a direction under section 2.

- (d) if none, any one of his brothers or sisters 21 years of age or over, or
- (e) if none, the person lawfully in possession of the body,

may direct that the body or any specified part or parts thereof may be used for therapeutic purposes or for purposes of medical education or for purposes of medical research.

(2) The direction is full authority for the use of the body or for the removal and use of the specified part or parts thereof for the purposes specified in the direction, except that a person

- (a) shall not act upon the direction if he has actual knowledge that another member of the same class of persons as the person who gave the direction objects thereto, and
- (b) shall not act upon the direction if he has reason to believe that the deceased person would, if living, have objected thereto, and
- (c) shall not, except with the consent of a coroner, act upon a direction if he has reason to believe that an inquest may be required to be held upon the body.

(3) In this section "person lawfully in possession of the body" does not include

- (a) a coroner in possession of a body for the purpose of investigation, or
- (b) an embalmer or funeral director in possession of a body for the purpose of its burial, cremation or other disposition, or
- (c) the Public Trustee.

4. Where a direction has been given under section 2 or 3 for the use of a deceased person's body for the purposes of medical research or for purposes of medical education and at the time of the death there is no request for the use of the body for either of those purposes,

- (a) if the body is lying in a hospital, the administrative head of the hospital, or
- (b) if the body is lying elsewhere than in a hospital, the person lawfully in possession of the body,

shall notify the nearest provincial university having a faculty of medicine which may thereupon take control of the body and, subject to section 57 of *The Universities Act*, use it for the purposes of medical education and research.

5. Nothing in this Act makes unlawful any dealing with the body of a deceased person or any part thereof that would be lawful if this Act had not been passed.

4. Bodies given for medical education or research may go to a provincial university. Section 57 of The Universities Act reads:

57. (1) A university shall keep a careful record of each body received by it in accordance with sections 53 to 55, and is at liberty to use such bodies for anatomical purposes and for scientific instruction and research.

(2) Every body handed over to a university for anatomical purposes shall, after undergoing anatomical examination, be decently interred by the university in some burial ground in use for persons of the religious persuasion to which the person whose body was so examined belonged.

(3) A certificate of the interment of the body shall be transmitted to the legal representative or other person who handed over the body, or permitted the body to be handed over, to a university for anatomical purposes.

5. Lawful dealings with a body are not affected by the passage of this Act.

- 6.** (1) *The Universities Act* is amended
- (a) by striking out section 53,
 - (b) as to section 57, subsection (1) by striking out the words “sections 53 to 55” and by substituting the words “this Act or *The Human Tissue Act*”.
- (2) *The Public Trustee Act* is amended
- (a) as to section 18, subsection (9) by striking out the words “sections 53 and” and by substituting the word “section”,
 - (b) as to section 25a by striking out the words “sections 53 and” and by substituting the word “section”.
- 7.** *The Corneal Transplant Act* is repealed.

8. This Act comes into force on the day upon which it is assented to.

6. (1) Consequential amendments—see notes to clauses 3 and 4 of this Bill.

(2) Cross-reference to section 53 of The Universities Act is removed.

7. The Corneal Transplant Act enacted by the Legislature in 1960 is similar in nature to this Bill, except that it is limited to the giving of eyes. It is being repealed as its subject matter will be covered by the broader terms of this Bill.