

# FAST POLICY FACTS: INCENTIVES

## INTRODUCTION

The legal framework for organ donation is composed of human tissue gift acts unique to each individual province and a criminal code provision. This legal framework appears to have created a complete prohibition on the use of incentives to procure organs.

## VALUABLE CONSIDERATION

In most Canadian provinces it is illegal to offer or accept any sort of valuable consideration in exchange for organs or tissues<sup>1</sup>. While no Canadian court has addressed the definition of valuable consideration in the context of transplant legislation, the law generally views consideration as anything that is either a benefit or a detriment to either party involved<sup>2</sup>. Most commonly valuable consideration takes the form of the exchange of money, goods, or services.

The prohibition against consideration applies for both direct and indirect offers. The penalty for offering or accepting valuable consideration in exchange for organs or tissues is 6 months in prison, a fine (ranging from \$10 000 to \$100 000), or both.

The province of Alberta prohibits offering or accepting any reward or benefit for any tissue, organ or body for use in transplantation, medical education, or scientific research<sup>3</sup>; the province of Prince Edward Island prohibits the exchange of tissues and organs for remuneration or financial benefit<sup>4</sup>.

## COERCION AGAINST THE WILL OF THE DONOR

A person who induces another person to have their organs or tissues removed by means of coercion, threats of force, or deception will be subject to imprisonment for a term between 5 and 14 years<sup>5</sup>.

## CURRENT INCENTIVE PROGRAMS

Despite the prohibition on the exchange of valuable consideration for organs, some provinces and private groups have implemented living donor reimbursement programs to help remove financial disincentives associated with donation. Two such provincially-funded programs – and there are others – are Ontario's Program for Reimbursing Expenses of Living Organ Donation (PRELOD), and Quebec's Reimbursement Program for Living Donors (RPLD) program<sup>6</sup>. The Kidney Foundation's Living Donor Expense Reimbursement program (LODER) purports to help reimburse expenses incurred by living donors in every province<sup>7</sup>.

Considering the wide scope of what can be considered "valuable consideration" or a "benefit", current and future incentive systems should consider whether they comply with existing legislation.



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## PROPOSED INCENTIVE PROGRAMS

Academics and policy makers have explored the idea of using incentives to increase organ donations in ways that are ethically and morally responsible. Proposed incentive models include:

1. Non-financial incentive programs, such as reciprocal preferred access, which is a system where those who sign up to donate their organs are placed on a higher priority list should they need an organ later in life<sup>8</sup>;
2. indirect financial incentives, such as tax breaks or reimbursing funeral expenses (the current living donor reimbursement programs are often considered as a program that removed disincentives)<sup>9</sup>; and
3. direct financial incentives, which is the payment of money for organs directly<sup>10</sup>. Again, policy makers will need to carefully consider whether these incentive methods fit within the existing legal framework.

## CANADIAN PUBLIC OPINION

A recent public opinion poll showed that 71% of the general public support some form of financial incentive program to increase organ donation rates, with the most support being for regulated financial incentives. 45% of the general public supported monetary payment for organs.

Barnieh, L., Klarenback, S., Gill, J.S., Caulfield T, Manns, B. (2012) Attitudes Toward Strategies to Increase Organ Donation: Views of the General Public and Health Professionals. *Clin J Am Soc Nephrol* 7. (p 1956–1963)

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## EXAMPLES OF LEGISLATIVE PROVISIONS PROHIBITING THE USE OF INCENTIVES

- **Alberta Human Tissue and Organ Donation Act, SA 2006, c. H-14.5**
  - 3(2) No person shall offer, give or receive any reward or benefit for any tissue, organ or body for use in transplantation, medical education or scientific research.
- **British Columbia Human Tissue Gift Act, R.S.B.C. 1996, c. 211**
  - 10 A person must not buy, sell or otherwise deal in, directly or indirectly, for a valuable consideration, any tissue for a transplant, or any body or parts other than blood or a blood constituent, for therapeutic purposes, medical education or scientific research.
- **Prince Edward Island Human Tissue Donation Act, R.S.P.E.I. 1988, c. H-12.1**
  - 15(1) No person shall buy, sell or otherwise for remuneration or other financial benefit deal in, directly or indirectly, any tissue, body or body part.

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# REFERENCES

1. *British Columbia Human Tissue Gift Act*, R.S.B.C. 1996, c. 211, *Ontario Trillium Gift of Life Network Act*, R.S.O. 1990, c. H.20, *Saskatchewan The Human Tissue Gift Act*, R.S.S. 1978, c. H-15, *Manitoba The Human Tissue Gift Act*, C.C.S.M. c. H180, *New Brunswick Human Tissue Gift Act*, S.N.B. 2004, c. H-12.5, *Yukon Human Tissue Gift Act*, R.S.Y. 2002, c. 117, *Nova Scotia Human Tissue Gift Act*, R.S.N.S. 1989, c. 215, *Newfoundland and Labrador Human Tissue Act*, S.N.L. 1999, c. H-15
2. *Carlill v Carbolic Smoke Ball Co* [1893] 1 QB 256; 62 LJQB 257, *Currie v Misa* (1875), L.R. 10 Ex. 153, aff'd 1 App. Cas. 554.
3. *Alberta Human Tissue and Organ Donation Act*, SA 2006, c. H-14.5 s 3(2)
4. *Prince Edward Island Human Tissue Donation Act*, R.S.P.E.I. 1988, c. H-12.1 s 15(1)
5. *Criminal Code*, R.S.C. 1985, c. C-46, s 279.01, *Criminal Code*, R.S.C. 1985, c. C-46, s. 279.04
6. *Transplant Quebec Reimbursement Program for Living Donors (RPLD)* [http://transplantquebec.ca/sites/default/files/reimbursement\\_program\\_for\\_living\\_donors.pdf](http://transplantquebec.ca/sites/default/files/reimbursement_program_for_living_donors.pdf), *Trillium Gift of Life Network Program for Reimbursing Expenses of Living Organ Donors (PRELOD)* <http://www.giftoflife.on.ca/en/transplant.htm>,
7. *The Kidney Foundation Living Donor Expense Reimbursement program (LODER)* <http://www.kidney.ca/page.aspx?pid=396>
8. Sirico, L.J., (2012). Donating and Procuring Organs: An Annotated Bibliography. *Law Library Journal*. 104 (2); Berman E, Lipschutz J.M., Bloom R.D., Lipschutz J.H.(2008) The Bioethics and Utility of Selling Kidneys for Renal Transplantation. *Transplant Proc*. 40(5). (P 1264-1270); Laveea J., Ashkenazia T., Stoler A., Cohen J, Beyara R.(2013).Preliminary Marked Increase in the National Organ Donation Rate in Israel Following Implementation of a New Organ Transplantation Law. *American Journal of Transplantation*. 13. (p 780-786).
9. *Organ and Tissue Donation and Transplantation (Update 2000), CMA policy*; (2012) Incentives for Organ Donation: Proposed Standards for an Internationally Acceptable System. *Am J Transplant*. 2012 February ; 12(2): 306–312; Venkataramania A. S., Martinb E. G, Vijayanc A., Wellend J. R. (2012) The Impact of Tax Policies on Living Organ Donations in the United States. *American Journal of Transplanation*. 12. (p2133-2140)
10. Barnieh,L, Klarenback, S, Gill, J.S., Caulfield T, Manns, B. (2012) Attitudes Toward Strategies to Increase Organ Donation: Views of the General Public and Health Professionals. *Clin J Am Soc Nephrol* 7. (p 1956–1963)