

## **NOTES FOR AN ADDRESS BY**

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## **BILL C-13 – AN ACT RESPECTING ASSISTED HUMAN REPRODUCTION**

Presentation to the House of Commons  
Standing Committee on Health

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## **BILL C-13 – AN ACT RESPECTING ASSISTED HUMAN REPRODUCTION**

Madame Chair and Members of the Committee:

My name is Dr. Eugene Bereza. I am a physician and clinical ethicist at the Royal Victoria Hospital in Montreal and Chair of the Canadian Medical Association Committee on Ethics. I am here today representing our members, more than 54,000 physicians from across Canada. I also wish to speak as a advocate for our patients, especially those affected by infertility and those who are or will suffer from diseases for which medical science is searching for cures.

I am accompanied today by Dr. John Williams, our Director of Ethics.

You will recall that we appeared before this Committee on October 23, 2001 in company with representatives from eight other national health provider and scientific organizations to present our views on draft legislation on assisted human reproduction. Although we were pleased that your December 2001 report recommended the establishment of an assisted reproduction regulatory body outside the Department of Health, we were disappointed that you did not find favour with other recommendations we put forward.

The government responded to your report with Bill C-56, now Bill C-13. It is this bill that we are here to address today. Although there are many details in the bill on which we would like either clarification or changes, we intend to focus our remarks on the issue that we consider of greatest importance for our patient's welfare and the practice of medicine. That issue is the use of the criminal power to deal with medical and scientific activities.

### **The Standing Committee Report and Bill C-13**

In your December 2001 report, you acknowledged our position on this issue: "Some witnesses recommended the elimination of the prohibited activities category altogether. Citing the benefits of regulatory flexibility, they felt that all activities should come under the controlled activity category, including the more reprehensible activities like reproductive cloning for which licences, arguably, would never be allowed under the regulations" (page 9). However, you rejected this view on the grounds that "a licence-related prohibition of this sort would not carry the same weight or degree of social censure as the statutory prohibition.... An outright statutory ban signals more clearly that certain activities are either unsafe or socially unacceptable.

The use of the statutory ban also signals that these activities are of such concern to Canadians that their status as a prohibited activity may not be altered except with the approval of Parliament” (page 9).

Bill C-13 reflects your views on this matter. We recognize your good faith in proposing and defending this position but we are convinced that its potential for harm outweighs its potential benefits. And so we are pleased to have this opportunity to reiterate the reason why the CMA believes that Bill C-13 will adversely affect the patient-physician relationship and the advance of medical science.

### **Need to Change Bill C-13**

As you know, our position on this matter is supported by legal scholars such as Patrick Healy, McGill University Faculty of Law, Tim Caulfield, Director of the University of Alberta Health Law Institute, and Bartha Knoppers, Université de Montréal Centre de Recherche en Droit Publique. In essence, our position is that the criminal law is a blunt instrument and very difficult to change and is therefore appropriate for activities whose status is unlikely to change over time, such as murder and theft, rather than medical and scientific activities that are constantly developing. The latter are better left to a representative regulatory body to determine if and when changes in health and safety considerations and public attitudes and values might justify allowing certain formerly prohibited activities to take place under specific conditions.

Bill C-13 begins with the statement: “This enactment prohibits assisted reproduction procedures that are considered to be ethically unacceptable.” This echoes the conclusions in your report. However, as the transcripts of your hearings demonstrate, many Canadians, especially those who are infertile, do not consider some or all of these procedures to be ethically unacceptable. As a matter of public policy, should Canadians who hold this view be denied access to medical treatment for infertility because others consider such treatments to be ethically unacceptable? Should patients who suffer from conditions for which research that is forbidden in Bill C-13 might lead to a cure be denied that opportunity? We question whether criminal prohibitions are appropriate for dealing with activities on which there is considerable ethical disagreement among Canadians.

In Canada legislators have been justifiably reluctant to use the criminal law to deal with medical and scientific issues such as abortion, withdrawal of life-sustaining treatment and the conduct of medical research. Why is an exception being made for assisted reproduction? What sort of precedent will this set for other controversial bioethical issues?

We are also concerned about the bill’s penalties for infractions: jail terms up to 10 years and fines up to \$500,000. These are disproportionate to the penalties for crimes that injure persons or property and, as such, will create a climate of undue fear and excessive caution for physicians and scientists working in this area, such that they will avoid any activity that is potentially covered by the bill, even to the detriment of patient care. Given the rapid advance of science and medical practice and the difficulty of anticipating new developments, it will be difficult to adjust the law to deal with new applications of prohibited activities that may be ethically acceptable.

## **An Alternate Solution**

The CMA has stated repeatedly that we are not opposed to the prohibition of certain assisted human reproduction activities. Instead of instituting criminal prohibitions within the legislation, we remain convinced that an independent body on an ongoing basis should determine the activities that are permissible or prohibited on the basis of up-to-date scientific research, public input and ethical review. This can be accomplished very easily in Bill C-13 by moving the procedures listed under “Prohibited Activities” (sections 5-9) to “Controlled Activities” and adding the words “except in accordance with the regulations and a licence” to each of the provisions in sections 5-9.

Consistent with this recommendation we consider that the regulatory agency should be established as soon as possible and be given as much authority as possible over the matters that Bill C-13, section 65, reserves to regulations of Governor in Council. We hope that the agency will build upon the experience and expertise of existing organizations and structures in the field of assisted reproduction that deal with practice standards, education, certification and accreditation.

## **Conclusion**

To summarize, we strongly support government efforts to regulate assisted human reproduction and related activities, including the prohibition of certain practices either temporarily or permanently. However, like others who have appeared before this Committee, we do not believe that criminalizing the medical and scientific activities named in the bill is an appropriate way to achieve those objectives. We consider that the objectives could be as well achieved by far less drastic means than criminalization and, moreover, that criminalization would create major obstacles to legitimate medical and scientific progress in the treatment of infertility. We recommend that the proposed agency be empowered to regulate these practices and that the criminal power be invoked when controlled activities are performed without authority of a licence from the agency or in defiance of the licensing conditions established by the agency.

Thank you, Madame Chair and members of the Committee. We will be pleased to respond to your questions.