

NOTES FOR AN ADDRESS BY

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BILL C-6 (AN ACT RESPECTING ASSISTED HUMAN REPRODUCTION)

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on Social Affairs, Science and Technology

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A healthy population...a vibrant medical profession
Une population en santé...une profession médicale dynamique



My name is Dr. Eugene Bereza. I am a physician and clinical ethicist at McGill University Health Centre in Montreal and Chair of the Canadian Medical Association's Committee on Ethics. I am accompanied today by Dr. Jeff Blackmer, our Director of Ethics.

I am here today representing the CMA, but I would also like to advocate on behalf of those patients affected by infertility and those patients suffering, or who will suffer, from the myriad diseases for which medical science is searching out a cure.

While there has been considerable debate over the past decade on the moral and ethical issues associated with assisted human reproduction, discussion of this as a health issue has been overlooked all too often.

We must remember this is about the practice of medicine and above all, the health of Canadians.

My remarks today will focus on the inappropriateness of using criminal sanctions to deal with medical and scientific activities.

The Issue

It is important to make it clear at the outset that the CMA does not oppose the prohibition of certain medical and scientific activities.

Others here today are in a better position to address concerns regarding the specific prohibitions proposed under Bill C-6.

Our issue is the means chosen to give effect to these prohibitions and their potential impact on the ability of a physician to ensure the welfare of his or her patients.

Criminal law is a blunt instrument. As parliamentarians, you know how difficult it can be to change the law.

For some activities prohibited under the criminal law, such as murder and theft, change is not an issue. However, the science of medicine evolves constantly, doubling every 18-24 months.

Advances in science and medical practice, coupled with the difficulty of anticipating new developments, make it difficult to adjust the law to remove criminal prohibitions as science and society changes.

In the context of prohibiting medical and scientific activities, it is the CMA's position that the use of criminal law is inappropriate, as it would ultimately not serve our patient's best interests.

Prohibitions, specifically those listed as prohibited activities under Bill C-6, (formerly Bill C-13) could be secured through much less drastic means than criminalization.

The CMA proposes that the determination of permissible activities, temporarily or for the longer-term, should be made by the proposed Regulatory Agency working with up-to-date scientific information while providing for public input and ethical review.

The Regulatory Agency, as proposed in the Bill, would determine if and when changes in health and safety considerations, public attitudes and values might justify allowing certain formerly prohibited activities to take place under specific conditions.

Questions to Consider

Bill C-6 begins with the statement: "This enactment prohibits assisted reproduction procedures that are considered to be ethically unacceptable." However, many Canadians, especially those who are infertile, do not consider some or all of these procedures to be ethically unacceptable nor do the many physicians charged with their care.

The CMA questions whether criminal prohibitions are appropriate for dealing with activities about which there is considerable ethical disagreement among Canadians.

Legislators in Canada have been justifiably reluctant to use 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?

What about the chilling effect criminalization will have on research in this important area?

For the CMA, the most important question is: what about the patients?

What about patients suffering from conditions for which research is banned but may lead to a cure?

Should they be denied the opportunity to benefit from this research?

Just as Bill C-6 unfairly targets patients, so too does the Bill's penalties for infractions.

Jail terms of up to 10 years and fines up to \$500,000 will create a climate of fear and excessive caution for physicians and scientists working in this area.

The chill created by these penalties will be such that scientists may well avoid any activity potentially covered by the bill even to the detriment of patient care.

The CMA recognizes the good faith among parliamentarians in proposing statutory bans to prohibit certain activities.

However, we are convinced in this case the potential for harm outweighs the potential benefits.

There is a better way to prohibit these activities while still facilitating important research and necessary treatments.

An Alternative Solution

Instead of instituting criminal prohibitions within the legislation, the CMA suggest the Assisted Human Reproduction Agency of Canada manage procedures deemed permissible by moving the procedures listed under “Prohibited Activities” to “Controlled Activities.” We recommend that criminal sanctions apply to breaches of agency directives such as performing activities prohibited by the agency and performing controlled activities without a license.

Such an approach would have the dual advantage of being able to both prohibit activities deemed unethical while still providing the flexibility to ensure legitimate medical and scientific progress in the treatment of infertility.

The regulatory agency should be established as soon as possible and should build on the experience and expertise of existing assisted reproduction organizations and structures that deal with practice standards, education, certification and accreditation.

Conclusion

The CMA’s overriding concern in addressing this legislation is the well-being of patients, in this case patients who are infertile and patients afflicted by conditions for which medical research offers significant promise of treatment.

We support government efforts to regulate assisted human reproduction and related activities, including the prohibition of certain practices temporarily or permanently where necessary.

However, we do not believe that criminalization of medical and scientific activities named in the bill is an appropriate way to achieve those objectives. We believe we have advanced a workable alternative within the spirit of the Bill.

Thank you.