

DRAFT LEGISLATION ON ASSISTED HUMAN REPRODUCTION

CMA BRIEF TO STANDING COMMITTEE ON HEALTH

October 23, 2001

EXECUTIVE SUMMARY

The Canadian Medical Association strongly supports the objectives of the proposed legislation on assisted human reproduction as laid out in the Preamble. However, 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 less drastic means than criminalization and, moreover, that criminalization would create major obstacles to legitimate medical and scientific progress in the treatment of infertility.

The CMA is not in principle opposed to the idea of prohibiting certain assisted human reproductive activities, although we have not at this time taken a position on whether any of the specific activities listed in section 3 of the draft legislation should be prohibited. Our issue is not with the prohibitions as such but rather with the means by which prohibitions, whatever they are, should be given effect. We propose that the determination of permissible activities, whether temporarily or long-term, should be made by a regulatory agency on the basis of up-to-date scientific information, public input and ethical review. Criminal legislation is 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. Criminal penalties could apply where controlled activities are performed without authority of a license from the regulatory agency or in defiance of the licensing conditions established by the agency.

Because the draft legislation has little to say about an oversight and regulatory regime, we recommend that the bill not be introduced in Parliament until it incorporates specific provisions for a regulatory agency. Such an agency should:

- incorporate and utilize existing bodies and institutions as appropriate;
- acknowledge, respect and build upon the important role that various health providers and their professional colleges and associations play with respect to these matters; and,
- be sufficiently accountable to Canadians and involve Canadians as appropriate in ongoing policy decision-making and oversight regarding these matters.

The agency should be given appropriate responsibilities and accountability for coordinating the activities of organizations that are already working in the area of assisted reproduction and for carrying out functions that these organizations cannot perform.