Protection of Conscience Project

www.consciencelaws.org

10 December, 2001

The Rt. Honourable Allan Rock,
Minister of Health,
House of Commons,
Ottawa, Ontario
K1A 0A6
Re: Assisted Human Reproduction Act (Draft)

Dear Mr. Rock:

In response to your request for input on the draft legislation you have proposed, I note the absence in the bill of any reference to protection for health care workers and others who, for reasons of conscience, object to participation in the defined controlled activities. These activities include (at least) artificial production of human embryos, experimentation on human embryos, production of chimeras and various forms of surrogate motherhood, all of which are widely acknowledged to be morally controversial procedures.

There is also a potential for the *ad hoc* legalization even of activities nominally prohibited by the Act by means of Order in Council [draft Section 40(1)m]. The same section can be used to nullify the Act in undefined circumstances. I note that *ad hoc* legalization or nullification through regulations issued by the Governor in Council does not require parliamentary scrutiny or approval.

Once the Act is passed, it will have the effect of establishing an expectation that the licenced procedures will be made available, perhaps through state agencies or programmes. That expectation will, in turn, cause pressure to be applied to health care workers and others to participate in morally controversial procedures.

Experience in Canada and elsewhere suggests that conscientious objectors will, sooner or later, be subjected to coercion and discrimination that will prevent them from entering their chosen professions, force them to leave their professions or the country, or effectively force them to surrender freedom of

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conscience as a condition of employment, education or professional qualification. Alternatively, they will be forced into expensive litigation before human rights tribunals or courts. In effect, they will have to buy the freedom that ought to have been their birthright. Further problems will arise should you or one of your successors decide that the controlled activities must be made available by a province or institution as a pre-condition for federal health care grants or transfer payments.

In view of these concerns, I request that the Act be amended to include a saving provision, to the effect that nothing in the statute shall be construed to impose an obligation to participate in the controlled activities. In addition, the Act should make it an offence to require such participation as a condition of employment, admission to an educational programme, or professional qualification, or to discriminate against those who decline to do so, except where the participation is a *bona fide* occupational requirement and the principal activity required in the position in question. The Project site includes numerous examples of this type of legislated protection.

With respect to draft Sections 34(b) and 35(b), I am alarmed that the government would deprive citizens of the right to trial by jury when they face imprisonment for two to four years and fines of $100,000.00 to $250,000.00. Granted, these sections do not contravene the Charter of Rights, which preserves the right to trial by jury only for offences punishable by at least five years imprisonment. However, I suggest that it would be more consistent with our legal traditions to reduce the proposed terms of imprisonment to 18 months on summary conviction (comparable to unlawfully causing bodily harm, for example), or to eliminate the summary conviction provision altogether. I mention this because this is the approach I would recommend in the case of offences of forced participation or discrimination.

Finally, there appear to be some gaps in the draft that could create additional problems for conscientious objectors by broadening the class of legal activities beyond that clearly specified in the text, or by creating circumstances that may impact a person s conscientious judgement about whether or not to participate in an activity. Specifically:

> **Section 2:** The definition of embryo donor will be enacted by regulation, not statute, leaving it uncertain whether or not the definition will include both father and mother; it may include a researcher.
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> The definitions of embryo and foetus exclude those in a state of suspended development, thus exempting them from the provisions of the Act. Similarly, it is not clear that the definition includes a dead embryo or foetus. Thus, it is not clear that the Act would apply to genetic materials obtained from a frozen or dead embryo or foetus.
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> While human clone is defined to prohibit cloning by using nuclear DNA, the definition does not exclude the cloning of humans using extra-nuclear DNA. Moreover, the definition does not exclude human cloning by using genetic materials from an embryo or foetus in a state of suspended development.

Human reproductive material is not defined to exclude genetic materials obtained from a cadaver, including embryonic and fetal cadavers.

Section 3(1)d The prohibition of creation of in vitro embryos solely for research purposes fails to define what is meant by research. Moreover, the prohibition can be circumvented by an assertion that the embryos were not created solely for research.

Section 3(1)e The section appears to allow the creation of embryos using cells from a dead embryo or foetus or from an embryo or foetus in a state of suspended development.

Section 3(1)h Sex selection is permitted only if it is in the interests of the health of the resulting child. However, experience indicates that health is such an elastic term that it would permit the selection of female offspring on the grounds that male offspring would suffer adverse psychological effects from the social environment, or vice versa. Reference to health, without further qualification, is likely to render the section unenforceable.

Section 6(1), 6(3) While the donor must consent to the use of an embryo for reproductive purposes or research, the failure to define who a donor is in the case of an embryo appears to leave open the prospect that a researcher producing embryos under licence could be designated a donor for the purposes of this section.

Section 7(1) Parental consent is not required for the harvesting of sperm and ova from minors.

Section 18 While health reporting information must be obtained from a potential donor, there appears to be nothing to require that the researcher verify that the information provided is, in fact, that of the potential donor and not someone else. Specific attention should be paid to the problem of personation.

Thank you for providing an opportunity to discuss the draft legislation. Please contact me if you require further information.

Sincerely,

Sean Murphy,
Administrator