

# Submission to the House of Commons Standing Committee on Health on the Draft Assisted Human Reproduction Act

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## Introduction

The Catholic Organization for Life and Family (COLF) welcomes the opportunity to dialogue with members of the Standing Committee on Health about the draft legislation called The Assisted Human Reproduction Act.

COLF was jointly founded by the Canadian Conference of Catholic Bishops (CCCCB) and the Knights of Columbus to promote respect for human life and human dignity and the essential role of the family. Its Board of Directors is a multi-disciplinary group of bishops and lay men and women.

We understand that the purpose of the meeting today is to have at an early stage of the hearings an overview of the issues from a faith perspective. It is understood that what we say today is based on a first reading of the legislation and we would like to have the opportunity to present a more detailed response after further study and reflection. Further, we wish to confirm that the Clerk of the Committee has assured us that our coming here today does not preclude an appearance by the Canadian Conference of Catholic Bishops at a later date in the Fall.

This draft legislation is definitely within the mandate of our organization, since it deals with human life and dignity and personal and social relationships. For the last three years COLF has hosted an annual seminar on biotechnology. Participants have included scientists, theologians, philosophers, bishops, lawyers, ethicists and social scientists. These annual meetings have encouraged a dialogue between faith and science, have fostered a better understanding of recent scientific developments and have helped to inform our ethical thinking. They have also brought us to a growing appreciation that faith and science have much in common touching, as they both do on the wonders and mysteries of creation and the ongoing journey of discovery. Science and faith can inform one another and each in their own way brings us closer to God.

## Principles of Catholic Teaching

We have examined the proposed legislation through the lens of the following principles of Catholic Teaching.

### Respect for Human Life and Dignity

Human life from its very beginnings is a gift beyond all measure. Each human being, created in the image of God, has incalculable worth and inherent dignity. Life is the most precious gift that is given to us and it is our duty to love it, respect it and keep it from harm.

In our view, a human being exists from conception. Our position is shared by medical and other professional opinion. In their April 2001 response to the Canadian Institutes of Health Research (CIHR) discussion paper on Human Stem Cell Research, the Canadian Physicians for Life said:

"It is an objective scientific fact that human life begins at conception/fertilization. This is not a "faith" position or a "belief". We are human beings even at the one cell stage. A human embryo is not a "potential human being". It is a human being. It is precisely what a human being looks like at that point of his or her life."

The Law Reform Commission of Canada in its Working Paper, Crimes Against the Foetus, more than ten years ago affirmed that a human being exists from conception.

"True, the present Code has a curious provision in section 206 to the effect that a child doesn't become a human being until it has proceeded completely from its mother's body. This, far from being a proper definition of the term, runs counter to the general consensus that the product of human conception, in the womb or outside, is a human being."(1)

The Catholic Church teaches that life comes from God in whose image every one is created. Human life and dignity must therefore be protected from the very beginning. In its 1987 Instruction, *Donum Vitae*, the Congregation for the Doctrine of the Faith said:

"The fruit of human generation, from the first moment of its existence, that is to say from the moment the zygote has formed, demands the unconditional respect that is morally due to the human being in his or her bodily and spiritual totality. The human being is to be respected and treated as a person from the moment of conception." (2)

This key principle of Catholic teaching of respecting and protecting human life from its earliest existence has obvious ramifications for our response to certain provisions of the draft legislation.

A child is a gift

The desire for children is deeply personal and very powerful. Who cannot sympathize with this intense desire or the palpable longing of an infertile couple? Yet, the fulfillment of this desire can not be pursued at all costs because ultimately the child is a gift, the most gracious gift of the relationship, the most gracious gift of all.

### The Integrity of Procreation

We are part of the created world. Traditionally, we have understood our bodies to be "temples of the Holy Spirit". We also believe in the integrity, the beauty, and the mystery of our bodies and the created order. The Catholic Church views human procreation as joining in God's creative process. Just as God loved us into existence, so a wife and husband, through the physically intimate expression of their love for each other, participate in God's creative work.

The Church teaches that assisted conception is acceptable between a husband and a wife only in very specific circumstances, which assist the natural processes of generation and do not pose undue risks for the parent or child. In vitro fertilization is not acceptable even for a husband and wife because it separates procreation from the fully human context of the conjugal act and because it can lead to the destruction of embryos that remain after the treatment. In this forum, we shall emphasize the grave concern that we have about the link that has developed between in vitro fertilization and the destruction of human life.

## Preferential Option for the Poor

The Catholic Church takes a wholistic approach to human beings, being concerned not only with their spiritual lives but also with their physical, psychosocial and material well-being. In this respect, the Church understands social justice to be a Gospel imperative, that we are called to provide for those in need and to speak out against injustice. We are called especially to give preference to those among us who are most at risk, impoverished and oppressed. We believe that couples suffering from infertility are very vulnerable as are the young human lives conceived through assisted reproduction. We have a special interest in protecting them from exploitation and in upholding their dignity as human beings.

## The Common Good

The common good is understood as "the sum total of social conditions which allow people, either as groups or individuals to reach their fulfillment more fully and easily."<sup>(3)</sup> It is more likely to be achieved when everyone contributes to the building of a just and compassionate society in which the human growth of everyone is encouraged.

Human beings are created as members of a family with roots established in the larger community; we are social beings who cannot live outside of human relationships. Commitment to the common good is expressed in solidarity which, Pope John Paul II has described as "a firm and persevering determination to commit oneself to the common good; that is to say, the good of all and of each individual because we are all really responsible for all".<sup>(4)</sup>

A basic question with respect to each provision of the draft legislation is: does it serve the common good, does it enable each individual to enjoy the benefits of living in an orderly, healthy and safe society; is it responsible legislation?

## Comments on the Draft Legislation

The balance of our presentation will set out in a general way those parts of the legislation that we can affirm, those which raise questions and those which give us serious concern.

## The Preamble

The Preamble is central to the legislation because it sets out the ethical foundations and framework for all that follows.

## Affirmations

1. We affirm that it is essential to protect the best interests of children affected by the application of the technologies.
2. We appreciate the recognition that women are particularly affected by the technologies. Their health and interests must be protected so that they are not subjected to treatments which may have an inadequate basis in scientific research and medical practice.

3. We endorse the fundamental importance of free and informed consent, given our own tradition's respect for freedom of conscience.
4. We recognize the importance of preserving and protecting human individuality and the integrity of the human being.
5. We are pleased with the concern for justice, that women, men and children must not be exploited.

## Questions

The first clause of the preamble presumes that assisted human reproductive technologies benefit individuals and society. While the assertion underlines the basic principle that science must be for the service of humanity, the background materials don't include any evidence of these presumed benefits.

It would be helpful for the Committee's researchers to provide current information on the success rate of these treatments, the number of people involved and the tangible benefits to society as a whole. Underlying this question, is our concern for the allocation of scarce health resources and whether these procedures truly serve the common good or only an elite group. A related question concerns the ways in which the new technologies may contribute to an excessive medicalization of the human problem of infertility.

## Serious Concerns

1. The preamble to this draft legislation has seriously diluted the content and reversed the priorities of the preamble that was in Bill C-47. Whereas Bill C-47 eloquently asserted that the Parliament of Canada was "gravely concerned about the significant threat to human dignity", the draft legislation subordinates the protection of human dignity to a means of achieving the benefits for individuals and society.
2. Given that this is draft legislation about assisted reproduction and that some of the technologies are experimental, with their risks unknown, it is a serious oversight not to include in the preamble an explicit reference to Parliament's interest in protecting human life.
3. The preamble should acknowledge that the embryos and fetuses are significantly affected by these technologies and indicate that measures are required to protect their best interests.
4. It is very disappointing to see the strong language in the preamble of Bill C-47 about the "health and ethical dangers inherent in the commercialization of human reproduction" watered down in the draft legislation.

## The Title of the Act

While the proposed title of the Act, is "The Assisted Human Reproduction Act", we wonder whether it accurately describes the purpose and content of the proposed legislation. We assume that an assisted human reproduction act would address and attempt to regulate those practices meant to assist couples in procreation. The legislation appears to go beyond this mandate discussing genetic and research practices that are quite different from assisted reproduction.

## The Definitions

"donor"

The definition in Bill C-47 did not include the possibility of "donating" an embryo. The fact that this proposed legislation

does include the possibility illustrates the strong research agenda that accompanies the desire to assist couples with procreation. Considering that human embryos are quite distinct entities from cells and genes, it is puzzling why the donor of cells and genes should be described in the legislation but the donor of an embryo is left to be defined in the regulations where there is little opportunity for input by the public. Given that an embryo has two parents, why is the singular of donor used?

A ban on commercialization, as welcome as it is, does not safeguard against the commodification of human beings. Questions of who has rights over human embryos are grounded in a model of ownership. We emphasize that all children at all stages of their development are gifts and that adults are never the owners of children but stewards, guarding and guiding them in their lives.

"embryo and foetus"

We recommend that the final bill define "embryo" and "foetus" as human beings instead of human organisms. The term "human being" evokes respect; the term "human organism" goes beyond what might be considered sterile clinical language to the language of experimental biology.

"health reporting information"

The health and safety concerns of this definition would be strengthened by the addition of "embryos and fetuses conceived through these procedures".

"human clone"

Since we do not accept that there is a distinction between a human being, an embryo and a foetus, we request that the last two lines of this definition be amended to read: "the cell of a living or deceased adult, child, foetus or embryo".

"human reproductive material"

The conflation of gametes, cells and embryos in the definition of "human reproductive" material is not helpful because it conjoins radically different realities. As embryos are human beings, they should not be in this definition at all. While gametes and cells are not human beings, they are essential to the creation of human life and there should be a more respectful way of describing them. Otherwise, procreation quickly moves from a process of reproduction to production.

"in vitro embryo"

We recommend that the words "outside the body of a human being" be replaced by "outside the body of a woman".

"surrogate mother"

"donor" should be replaced by "donor or donors" to cover the situation where the woman who is carrying the child has not contributed her gametes.

## The Prohibitions

### Human cloning - Clause 3 (1) (a) (e)

We strongly support the prohibition against human cloning and commend the Government's leadership in banning both "therapeutic" and "reproductive" cloning.

The cloning of human beings is disrespectful of human dignity because it separates procreation from the context of a loving relationship and treats the child not as a distinct individual but as a manufactured object. That the human embryo is to be the result only of the union of human gametes and not of cloning serves to ensure that the embryo will always have parents and preserves the human embryo's relationship with the human community.

### Germ line genetic alteration - Clause 3 (1) (b)

We commend the prohibition of germ line alteration because of the potential hazards to the human genetic heritage resulting from such therapy and of the treatment of the human embryo implied in such alterations.

### Maintenance of an embryo outside a woman's body beyond 14 days - Clause 3 (1) (c)

This provision is very important and a welcome attempt to put limits on what may be done to the human embryo. But it does not go far enough. Since the embryo is usually implanted within the first 2 to 3 days after fertilization, why has 14 days been chosen if not to facilitate the availability of research subjects? While it may be argued that women undergoing invasive treatments wish to avoid additional sessions by freezing embryos not needed for implantation, would not the better solution, for those who accept in vitro fertilization, be to research methods of freezing ova? This would eliminate the creation of additional embryos and their subsequent freezing, which is contrary to their human dignity and puts them at risk for subsequent research. In this way, there would be an end to the corrosive link between in vitro fertilization and the destruction of human life.

### Create an in vitro embryo solely for purposes of research - Clause 3 (1) (d)

We are very pleased to see this prohibition. To prohibit the creation of human embryos solely for the purposes of research is consistent with the principle that would prevent human beings from being used as a means to an end. This is what human dignity requires - that human beings, even at the embryonic stage of existence, always be treated as ends in themselves. This prohibition also discourages those inappropriate medical practices that might lead to the exploitation of women as the sources of research material i.e. ovulation stimulation regimes that are in excess of the legitimate needs of the fertility treatment protocols.

### Research and medical use of embryo - Clause 8 (2)

This section, which is in the part under controlled activities, would allow research on embryos who remain after fertility treatments. It would include human stem cell research on these embryos as recommended by the Canadian Health Research Institutes (CIRH) in their recent discussion paper. This form of research would allow the embryos to be stripped of their cells and their integrity, reducing them from a subject to an object, from a human being with dignity to a source of organic material. In our response to CIRH on May 23, 2001, we said:

"Given that the derivation of stem cells from human embryos, however they are created, destroys the embryo there can really be no middle ground as suggested in the discussion paper. To allow this sort of research knowing that the research subject, a human being, will be destroyed is surely a first. No amount of public benefit can ever justify the deliberate killing of a human being. The argument is particularly hollow when the same results could be achieved by alternative means such as the use of adult stem cells. No human being, including the embryo, should ever be used as a means to an end; no human being should ever be considered as "surplus" or "spare". It is always wrong to destroy another human being even to help another. Both the means and objective must be good; there is no middle ground."

We vigorously recommend that all research on human embryos as well as any treatment that is not for their benefit be prohibited and not simply regulated as proposed. Germany bans all research on embryos. It has learned from its history; can not we?

#### Animal/Human Hybrids - Clauses 3 (f) (g) and 9 (1) (2)

We endorse the prohibition of transferring any animal gametes, embryos or foetuses into a human being as well as the use of any human gametes previously transplanted into an animal. The modifying introductory clause in 3 (1) (g) should be deleted to correspond to the French.

It is surprising that the draft legislation only proposes to regulate rather than prohibit the creation of a chimera; clause 9 (1) should be moved to the list of prohibited activities. Prohibiting the production of human-animal chimeras safeguards human individuality. More information is required about the proportion of combinations foreseen in clause 9 (2) before indicating whether it should be under the prohibited or controlled activities.

#### Sex Selection for non-medical reasons - Clause 3 (1) (h)

While we are pleased that the legislation prohibits discrimination on the basis of sex by banning sex selection, we are concerned that by permitting sex selection for health reasons the legislation allows discrimination on the basis of disability. Human embryos and foetuses are regularly discarded or aborted when anomalies are detected. There should be consistency in the application of human rights principles as they relate to sex and ability.

#### Surrogacy - Clause 4

We applaud the prohibition of commercial surrogacy. It recognizes that these arrangements contribute to the exploitation of women, especially those who are poor; to the objectification of children and the commodification of the process of reproduction from beginning to end. The provisions of section 4 and 10 (d), however, will have to be tightened up to prevent fees for arranging surrogacy from being disguised as medical, legal or counselling services or the expenses of the surrogate mother.

The background materials indicate that surrogacy for "altruistic purposes" will be permitted and regulated. Even though there is no financial gain and the offer is made from a generous heart, there is still the commodification of procreation, which we do not support because it is inconsistent with the dignity of both the woman and the child. Moreover, it violates the unity and dignity of marriage and brings about and manifests a rupture between genetic, gestational and social parenthood and the responsibility for the upbringing of the children.

#### Purchase of gametes and embryos - Clause 5

The prohibition against the marketing of gametes and embryos is most welcome because it shows serious respect for human dignity, concern for the vulnerable and the fact that our beginnings are profoundly personal, deeply human and involve more than biology. Special attention, however, must be paid to section 10 that allows for the reimbursement of expenses; there is a danger of making a profit under the guise of reimbursement. At the very least expenses should be modified by "reasonable"

#### Use of reproductive material without consent - Clause 6

We wish to state in the clearest possible terms that consent does not make research or experimentation on an embryo acceptable. One does not own an embryo in the way one might be said to own a gamete. Consent is not sufficient for interventions on an embryo unless it is for the good of the embryo.

While Bill C-47 would have prohibited removing and using gametes from a person who has died, the draft legislation proposes to allow it, provided there has been previous consent by the donor. Children are born everyday after the death of their fathers. But what will be the impact on children who learn that they were conceived after the death of their fathers?

#### The Controlled Activities

#### Overriding Concern

The overriding concern that we have about this section is that so much is left to regulations on which the public traditionally has very little opportunity for input. It is rather disappointing that after all this time the Ministry of Health has not provided a list in the draft legislation of current technologies that will be regulated or a better sense of the ethical content of the regulations. Some examples of what will be regulated are given in the background materials and were referred to in the media, but the public should not have to do extensive research to find out what is involved.

Our concern with respect to section 8 (2) has already been outlined above. A related concern is about section 8 (3) that again equates the storage and destruction of gametes and embryos; they are not scientifically or morally equivalent. The "storage" and destruction of embryos is just one example of an issue about which little detail is given in the legislation but which is probably of great interest to the public, given the destruction about five years ago in England of 3300 embryos that were no longer needed or wanted.

#### Consent of the Attorney General

We are curious why the consent of the Attorney General is required for prosecution under the Act. Is that not a rare provision, given the potential for political interference?

## Regulatory Body

While the draft legislation appears to leave regulation up to the Minister of Health, the background material refers to the possibility of a regulatory body either within Health Canada or at arms length that would have four basic functions: licensing and enforcement, health information, policy development, and communications.

At first glance, it seems preferable to divide the functions between Health Canada and an advisory body that would be accountable to the Minister of Health and report to Parliament.

Perhaps Health Canada with its existing structures could be responsible for licensing and enforcement, health information and some communications with the advisory body being primarily responsible for policy development and some public education.

Membership on the policy development body should be not only multi-disciplinary but include people with different perspectives. It could include some public nominations and have safeguards against over-representation by particular stakeholders. Broad-based representation is essential given the impact of developments in this area on Canadian society. The faith community should be represented.

## Conclusion

Our organization is very mindful of the enormity of your task as you discern the best way to protect the dignity, health, and well being of the people of Canada in a field full of potential benefits and challenges. We look forward to being part of the continuing dialogue and wish you well. As you go about your important work on behalf of all of us, you may wish keep in mind the words of the Psalmist:

You created my inmost self,

Knit me together in my mother's womb.

For so many marvels I thank you;

A wonder am I, and all your works are wonders. (Ps. 139:13-14)

(1) Law Reform Commission of Canada, Crimes Against the Foetus, Working Paper 58, 1989, p. 50

(2) Congregation for the Doctrine of the Faith, Instruction on Respect for Human Life in its Origin and on the Dignity of Procreation, 1987, # 1

(3) Catechism of the Catholic Church No. 1906

(4) Pope John Paul II, Sollicitudo Rei Socialis, 1987, # 38

