

Symposium on Bill C-13: The Assisted Human Reproduction Act

Introduction

On September 21, 2002, the Health Law Institute and the University of Alberta's Stem Cell Task Force sponsored a Symposium on Bill C-56: *The Assisted Human Reproduction Act*.¹ We brought together scholars from across Canada and from a variety of disciplines to analyse various aspects of the Bill.² Most of the participants wrote and presented short papers that were then critiqued by their workshop colleagues. Comments in hand, the papers were revised and re-submitted. This special edition of the *Health Law Review* contains these papers.³

Major Themes

Though the development of group consensus was not an explicit goal of the meeting, a number of broad themes emerged.⁴ First, we all agreed that the purpose of and justifications for the legislation need further clarification. Whether one favours the use of statutory prohibitions or, alternatively, flexible regulations, the Government should provide details on: how the adopted regulatory scheme relates to generally accepted Canadian values and views; and why the adopted regulatory approach is required. Admittedly, the Report of the Standing Committee on Health, *Assisted Human Reproduction: Building Families*, is the only government document that relates *directly* to this Bill. However, we also drew on the Health Canada documentation that accompanied the 2001 *Proposal for Legislation Governing Assisted Human Reproduction*. This is not to say that we all disagreed with every conclusion presented in these documents. However, as discussed further in the papers that follow, a coherent, comprehensive, and sustainable legislative policy remains absent.

To cite just a few examples, though we differed on how best to regulate the area, all agreed that the available formal justifications for the statutory bans on non-reproductive cloning (“therapeutic”) and the creation of “chimeras” were inadequate. Indeed, we are unaware of any formal documentation or, even, formal Government statements on the proposed ban on the creations of chimeras. How and why do the use of these technologies infringe human dignity and other core values? Why is a statutory ban needed to achieve the objectives of the legislation? Without further clarification, we all felt that the long term value and practical and just application of the legislation may be in jeopardy (and some of us felt that even its constitutional validity may be in question). Given the significant amount of time and political energy that has already been invested in this area, this is a profoundly disappointing state of affairs.

A second theme that emerged throughout the day was concern about the various definitions found in the Bill. Though we understand that legal and scientific definitions often differ, the Government needs to be sensitive to the practical and philosophical implications of selected definitions. For example, the definition of “chimera” is much narrower than the accepted scientific understanding of chimera. Why was this definition adopted and what is the reason for regulating only a small area of chimeric work? As noted by one workshop participant, “the Government needs to decide and communicate what work it wants the definition to do.” Moreover, in addition to clarifying the scope and purpose of the definitions created by the legislation, Parliament must also strive to frame them in plain language. This will enable these definitions to be readily understood and interpreted by the legal and scientific communities and by the Canadian public.

Finally, we all felt the Government has greatly underplayed the complexity of public opinion. There was general agreement that there was little moral consensus about many of the regulated technologies and that such consensus is likely to remain absent. This is not to say that a lack of consensus should stop the Government from acting. However, the Government needs to explicitly recognize the state of public perception and explain how the proposed framework will meet the challenges associated with regulating an area destined to be forever shrouded in moral ambiguity.

Timothy Caulfield, on behalf the Symposium participants.

1. Bill C-56, the Assisted Human Reproduction Act, received 1st and 2nd reading in the House of Commons in May, 2002 but died on the Order paper when the 1st Session of the 37th Parliament ended on September 16, 2002. The Bill was subsequently re-introduced in the House on October 9, 2002 as Bill C-13. Because the re-introduction has taken place after our meeting but while some of the papers were still be edited, reference to the Bill number may differ. See also N. Greenway "Liberals Reviving Cloning, Sem-Cell Bill" (15 September 2002) *Edmonton Journal* A2.
2. Participants: Abdallah S. Daar, Professor of Public Health Sciences, Professor of Surgery, Director, Program in Applied Ethics and Biotechnology, University of Toronto Joint Centre for Bioethics, Toronto; Lorraine Sheremeta, Research Associate, Health Law Institute, Faculty of Law, University of Alberta; Jason Scott Robert, Assistant Professor and CIHR New Investigator, Department of Philosophy, Dalhousie University, Halifax; Dr. Edna Einsiedel, Faculty of Culture and Communications, Faculty of Development Studies, University of Calgary, Calgary; Laura Shanner, Associate Professor, John Dossetor Health Ethics Centre, University of Alberta, Edmonton; Angela Campbell, Assistant Professor, Faculty of Law (Common Law), University of Ottawa, Ottawa; Timothy Caulfield, Canada Research Chair in Health Law and Policy, Associate Professor, Faculty of Law and Faculty of Medicine and Dentistry, Research Director, Health Law Institute, University of Alberta, Edmonton; Barbara Billingsley, Assistant Professor, Faculty of Law, University of Alberta, Edmonton; Mike Enzle Research Co-ordinator, Office of the VP Research; Professor, Department of Psychology, University of Alberta, Edmonton, Rodney Schmaltz, Ph.D. candidate, University of Alberta, Edmonton, Brent Windwick, Executive Director, Health Law Institute, University of Alberta, Jennifer Foster, Barrister and Solicitor, Health Sciences Policy Unit, Ontario Ministry of Health and Long Term Care. Also present were Bill McBlain, Associate Vice President, Office of the VP Research, University of Alberta, Edmonton, Barb Beckett, Stem Cell Network; Greg Korbitt, Associate Professor, Surgery, University of Alberta, Edmonton and Thorsten Duebel, Health Canada.

3. We would like to thank the Stem Cell Network, Genome Prairie and the University of Alberta Conference Fund who provided support for this symposium.
4. Though their invited articles are included in this publication, Francoise Baylis, Bartha Knoppers, Josephine Johnston and Matthew Herder did not attend the meeting held in Edmonton on September 21, 2002 and they were not a party to the consensus described in the introduction. Moreover, the invited papers by Francoise Baylis and Josephine Johnston were not available at the meeting and, as such, they did not inform any consensus- building exercise.

