

Submission

To the House of Commons Standing Committee on Health
Assisted Human Reproduction Impacts Women's Health

Arthur Leader, MD, FRCSC *

Maureen McTeer, LLM, MA, LLD

September 6, 2022

*Please address any correspondence to: artleader70@gmail.com

Declaration of the Parliament of Canada

(Assisted Human Reproduction Act, 2004. 2012)

In an unusual move, Parliament prefaced this Act with a declaration of 7 principles:

The health and well-being of children born through the application of assisted human reproductive technologies must be given priority in all decisions respecting their use;

The benefits of assisted human reproductive technologies and related research for individuals, for families and for society in general can be most effectively secured by taking appropriate measures for the protection and promotion of human health, safety, dignity and rights in the use of these technologies and in related research;

While all persons are affected by these technologies, women more than men are directly and significantly affected by their application and the health and well-being of women must be protected in the application of these technologies;

The principle of free and informed consent must be promoted and applied as a fundamental condition of the use of human reproductive technologies;

Trade in the reproductive capabilities of women and men and the exploitation of children, women and men for commercial ends raise health and ethical concerns that justify their prohibition;

Human individuality and diversity, and the integrity of the human genome, must be preserved and protected.

Overview

The AHR Act (AHRA) is long overdue for a full and comprehensive Parliamentary review.

Building a family is not easy for the 1 in 6 Canadians who suffer with infertility. Assisted conception can be confusing, costly and both physically and emotionally distressing. In most provinces it is easier to get complete comparative information on a used car than an IVF clinic. The privatization of fertility services has meant that corporations now control essential human health and safety data for these services. Fertility treatments are just another unregulated business transaction between a company and a customer. The unregulated and variable costs of these services raise equity and access issues for the infertile. There is no way to assess if the “add-ons” that are promoted to patients contribute to the success or safety of treatments. Faced with infertility and in order to give informed consent, Canadians are searching for independent information to help them decide what treatment is the right choice. They want a simple tool that calculates success rates in exactly the same way for each clinic so that they may select the best providers for the clinical services needed.

Aside from self-promoting pregnancy data, corporations have little interest in the long-term follow-up of the effects of treatments on the health and well-being of children born from these treatments or the persons who must undergo multiple interventions. For example, a mainstay of IVF treatment, frozen embryo transfer (FET) has been shown in Nordic government studies to increase the risk of both childhood cancer and macrosomia (Sargisian N, Lannering B, et al. (2022) Cancer in children born after frozen-thawed embryo transfer: A cohort study. PLoS Med 19(9): e1004078. <https://doi.org/10.1371/journal.pmed.1004078>) . Another study concluded that FET, unlike a fresh embryo transfer increases the risk of a hypertensive crisis for a pregnant woman (<https://www.news-medical.net/news/20220706/Pregnancies-following-frozen-embryo-transfer-have-higher-risk-of-hypertensive-disorders.aspx>).

A comprehensive review by Dr. Leader of the policies of the provincial regulatory bodies has shown that there is a wide variation in the ways in which the provinces regulate assisted human reproduction. Patients, donors, surrogates and gametes move freely across this country. It's time to use existing laws and professional bodies to establish standard rules applicable across Canada. Canadians in need of this medical treatment deserve no less.

We know that with some effort and co-operation, that this can be done. Some provinces are already acting to address this problem. For example, Quebec has introduced an extensive framework, including detailed clinical practice parameters, facility standards and an active program of oversight of insemination and IVF therapies. Working together, Alberta, Saskatchewan and Manitoba have recently developed a specific accreditation model based on International Organization for Standardization (ISO) standards for non-hospital surgical facilities that provide assisted reproductive therapies. Ontario and British Columbia inspect IVF facilities as private surgical facilities. Ontario does not inspect the IVF laboratories. Nova Scotia and New Brunswick have IVF clinics but offer no specific programs for oversight. Prince Edward Island, Newfoundland and the territories do not have IVF clinics. None of the provinces use performance indicators to assess IVF clinics or their laboratories.

We recommend that Canada follow the approach now taken by Australia, another federal state, and support an audited and publicly available comprehensive data system on maternal and perinatal outcomes applicable to all IVF clinics in each province.

Commercialization and Surrogacy

The Royal Commission on New Reproductive Technologies recommended against the commercialization of reproductive technologies and related practices, including surrogacy. Parliament followed that recommendation. Commercial reproductive procedures and practices, including surrogacy, are prohibited under the Criminal Code. For whatever reason, this law has not been used. On-line shopping by Canadians for donor eggs and sperm from paid donors continues. The regulations currently in force provide a layer of protection for women and reassurance for intended parents in a surrogacy arrangement, but some practices are prohibited by section 6 generally and section 6(1) of the Act. If normalizing the practice of

surrogacy is the aim of regulations, then greater clarity and transparency are essential. We believe that the Criminal Law is not the proper tool to address the problem of the commercialization of reproductive services and practices such as surrogacy.

Action going forward

Looking to the future, how we can improve the quality of reproductive health care for women in Canada? Part of this process has already been accomplished. The federal and provincial governments have worked together in the past to bring their family and estate laws up to the date to meet the changing nature of families. In so doing, they have clarified the legal status of children born from women who have used these reproductive technologies. The two levels of government must now extend their collaborative efforts to address the other pressing issues described in this submission.

Reproduction and Research

As a result of medical-scientific and genetic research, at which Canadians excel, we have seen remarkable, exciting game-changing advances in reproductive biology and the treatment of infertility and inheritable conditions. The updating of the Act to ensure that this research is both favoured and funded must be a priority. Canadians have the human right to benefit from the advancement of science and its application (article 27, Universal Declaration of Human Rights, 1948). The criminal bans on specific research should be reassessed to ensure that they do not negatively affect human genetic and reproductive research. Some options already exist. Alternatives to amending the Act have been recommended by legal scholars. For example, under the Food and Drug Act there are nuanced regulatory schemes backed by criminal law powers capable of protecting public health and safety without overly restricting health innovation (Bubela T, Kleiderman, Master Z et al. (2019) Canada's Assisted Human Reproduction Act: Pragmatic Reforms in Support of Research. *Front.Med.* 6:157). As well, "there are many examples of the evolution of criminal law as societal values and views of what comprises reprehensible conduct shift over time." (Bubela T, et al. 2019).

In Summary

Canada's Assisted Human Reproduction Act is long overdue for a full and comprehensive Parliamentary review with a specific mandate to recommend legislative action to bring the Act up to date and make it fit for the purpose of improving the health and well-being of Canadians. The Supreme Court of Canada's decision made it clear that the provinces have jurisdiction in the provision of reproductive medicine and related therapies and practices involving AHR technologies such as IVF. However, there remains a key co-ordinating and funding role for the federal government to provide the leadership that is required to address the most pressing clinical issues and to establish "a proportionate, responsive and considerate regulatory regime for research using human reproductive materials in ways that are currently prohibited" (Bubela T, et al. 2019).