COMMENTARY

Assisted Human Reproduction Act of 2004: Promoting Health But Placing Limits on Choice?

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ABSTRACT
Despite the many positive aspects of the 2004 Assisted Human Reproduction Act, some of its elements may inadvertently restrict women's autonomy. In particular, the Act states that only licensed professionals should inseminate women, potentially restricting those who wish to self-inseminate in privacy and avoid institutionally-controlled conception. The Act creates a problematic distinction between those who conceive through heterosexual intercourse and those who do not.

KEYWORDS
Assisted Human Reproduction Act, genetic engineering, insemination, reproductive technology, sex selection, stem cell, surrogacy

On March 29, 2004, the Assisted Human Reproduction Act became law in Canada. Consisting of a broad set of regulations regarding assisted human reproductive technology and research, the legislation guides the management of activities such as assisted insemination, stem cell research, genetic engineering, sex selection, and surrogacy. This Act has been described as "long awaited and urgently required" and is the product of years of research and discussion by the Royal Commission on Reproductive Technologies.[1]

Founded on principles that seek to promote "human health, safety, dignity and rights in the use of these technologies and in related research", it prohibits assisted reproduction procedures that are "considered to be ethically unacceptable".[2] Despite the many positive aspects of the Act, we suggest that some of its elements may inadvertently restrict women's agency. This is an issue of particular relevance to Canadian midwives and others who concern themselves with women's reproductive rights and choices. In particular, Section 10.3 states that:

> *no person shall, except in accordance with the regulations and a license, obtain, store, transfer, destroy, import or export a sperm and ova… for the purpose of creating an embryo.*[2]

By giving accredited practitioners the exclusive legal right to store and handle gametes, this section implies that any form of unlicensed self-insemination for the purposes of procreation is now considered illegal. Presumably, such legislation is intended to ensure that donor sperm has been tested for STDs and other factors that could endanger the health of the woman or her future child. Yet, by making institutional insemination the only legal option, it may mainstream practices, engendering the view that anyone opting for an alternative to institutional insemination is undertaking a risky act. Without a caveat regarding self-insemination, the Act may indirectly undermine those who wish to become pregnant outside of institutionalized settings.

While Section 10.3 might impact all Canadians who do not necessarily require high-technology solutions for conception, it could differentially affect certain groups of women. According to the

Royal Commission on New Reproductive Policies, self-insemination is most frequently performed by single and lesbian women.[3] Considering that even in the 1990s, some fertility clinics followed explicit policies of refusing treatment to lesbians and single women, this legacy of discrimination might make institutionally-controlled conception undesirable for some of these women.

Moreover, individuals who quietly or unknowingly break the law may encounter other legal consequences. Mona Greenbaum, president of Lesbian Mothers Association of Quebec, speculates that:

> *[in cases] where parents must go to court for co-parent adoptions, we will not be able to explain how we started our families without admitting to committing a crime in our own home.*[4]

As professionals who see personal agency as paramount to women's health and well-being, midwives have a particular responsibility to familiarize themselves with the services this Act offers and the limitations it may place on women. Will women who conduct self-insemination now be regarded as irresponsible? If so, how could this impact their willingness to discuss their pregnancy with care providers?[iii] Finally, does the Act create a problematic distinction between those who conceive through heterosexual intercourse and those who do not? It is unlikely that government would ever attempt to regulate the "safety" of heterosexual unassisted insemination.

How the Act will be carried out remains to be seen. At this time, specific regulations are still in development and the laws are not being enforced. Although Egale Canada, a national organization committed to advancing justice for lesbian, gay, bisexual and trans-identified people, has met with the Minister of Health to discuss their concerns about the Act, questions still linger.[5] For example, in correspondence with an editor from FAB magazine, a Health Canada representative stated:

> *The Assisted Human Reproduction Act applies to any procedure where gametes are manipulated for the purpose of creating an embryo. The intention of the Act is to address assisted human reproduction procedures that take place in a health care setting and are performed by a professional. It is not the intention of the Government to become involved in the private matter of home insemination.*[6]

This statement seems to conflict with Section 10.3, illustrating the ambiguity that still surrounds this Act. Therefore, as regulations and interpretations develop over time, health practitioners must remain informed on the impact of this legislation and ensure that they do not inadvertently undermine women's choices.

FOOTNOTES

[i] The Royal Commission defines assisted insemination as any form of insemination occurring in the absence of intercourse using donor or partner's sperm and self-insemination as an act performed by the woman, her partner, or non-medical support, without medical assistance.[3]

[ii] Many of the terms that describe insemination, including "artificial" and "alternative" insemination, are problematic in that they often imply value judgments. "Artificial" immediately categorizes acts as either artificial or natural. Similarly, "alternative insemination" creates a distinction between the so-called alternative and normal. For the purposes of this article, we have chosen to use the term "assisted", in keeping with government terms. However, the "assisted" terminology connotes a sense that women's bodies require assistance in reproduction, which may or may not be welcome.

[iii] Ontario's Antenatal Record[1] requires that practitioners identify the process used in determining a woman's estimated date of birth. The form features boxes to be checked off, including dates based on menstrual cycles, ultrasound and assisted reproductive techniques (ART). Specifying ART might raise questions as to the site of insemination and could create a judgmental atmosphere (actual or perceived) for women who have self-inseminated.

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