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A Catholic Perspective on Some Legal and Social Aspects of Reproductive Technologies in Canada

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A recent news article reporting that a husband and wife had decided to abort one of their naturally conceived twins produced a large number of negative responses. The woman had told the press that she and her husband already had a son, and that, although the pregnancy in question was “wanted,” in fact only one child was “wanted,” not two. She claimed that a twin pregnancy would be a hindrance to their careers. They decided to abort one of the twins, and many in the media reported this as the practice of “selective reduction.”

Perhaps this phrase sounds better, or more clinically detached, but in effect it simply means deciding to kill off one or more of the fetuses growing in the womb. People understand this reality, despite the terminology, and the parents were widely denounced for their selfishness, and for putting the furtherance of their careers before the good of human life. There is nothing wrong with taking one’s career seriously, but we all recognize that many events can interrupt our plans: economic crises, changes in trends, downsizing, cheaper foreign markets, divorce, accidents, ill health and so on. Any one of these can broadside us, but they are all quite different from killing one’s baby deliberately for the sake of one’s career. What are we coming to in our society?

This type of situation highlights once again some of the problems inherent in the practice of reproductive technologies in Canada. The Human Assisted Reproductive Technology Act of 2004 regulates IVF procedures and its surrounding practices, including the use of surrogates, the obtaining of gametes, and training of clinical staff. It bans cloning, the sale of gametes and payment for surrogate services. The Act allows for reasonable expenses for surrogates, but forbids the commodification of such services.

Federal exclusivity in regulating reproductive technologies has recently been challenged by the province of Quebec, which argues that the federal government has no right to be so involved in this area. Quebec argues that the provision of health services such as research, medical practice and supervision should be governed by the provinces.

CATHOLIC PERSPECTIVE ON REPRODUCTIVE TECHNOLOGIES

The purpose of the Act is to regulate reproductive technologies and protect the interests of the various parties involved. The Act in itself is problematic for the Catholic Church, since Catholic teaching is completely against the technologies that the Act legalizes. *Donum vitae*, 1987, states: “Human procreation requires on the part of the spouses responsible collaboration with the fruitful love of God; the gift of human life must be actualized in marriage through the specific and exclusive acts of husband and wife, in accordance with the laws inscribed in their persons and in their union.”

This reiterates the church's constant teaching that the unitive and procreative dimensions of the marriage act are both equally important and inseparable. Any act that separates these two dimensions violates and diminishes this Natural Law teaching, and is morally wrong.

The Act prohibits further activities that Catholic teaching also opposes, i.e., cloning, the commodification and payment of donors, and the buying and selling of gametes (ova and sperm). These activities are not always forbidden in other countries, so the Canadian law is relatively strict.

Catholic teaching on marriage and sexuality is undermined by society's cooperation in condoning these practices whereby just about anyone who wants a child is allowed to pursue that goal, including those who are beyond the possibility of conceiving naturally. Same-sex couples and single women (and presumably men?) all have access to these technologies, further broadening the societal notion of "family."

Of course, now that some of these practices are in place, it makes sense to recognize the law's role in protecting users and donors from *further* harms, and that sort of protection is obviously to be encouraged. At the same time, Catholics must be aware that the Church teaches that these reproductive technologies are wrong and harmful not only in themselves, but also for the individuals participating in them in any way, and for society.

THE SUPREME COURT'S RESPONSE TO QUEBEC'S CHALLENGE

The Supreme Court was divided as to which areas of reproductive technologies are beneficial and matters of medicine, therefore subject to provincial jurisdiction, and those that are "harmful," therefore subject to federal criminal law. The Court voted 5-4 in favour of Quebec's being given jurisdiction

over the regulation of IVF and related practices, while retaining jurisdiction over the parts of the Act prohibited under federal criminal law.

In an interesting statement in her ruling, Chief Justice McLachlin remarked that society should "... seek to avert serious damage to the fabric of our society by prohibiting practices that tend to devalue human life and degrade participants." She was referring mainly to cloning and the commodification of human subjects through payment for surrogates and gametes. Apparently there is not one member of the Supreme Court who thinks that IVF, the obtaining and use of donated gametes or the practice of surrogacy devalues human life or degrades participants.

SOME IMPLICATIONS

The court's decision will please many in the reproductive technologies field. Research and experimentation will now come under provincial supervision, as will the regulation of IVF clinics. This means that the provinces will now control these procedures, and this will have medical and financial consequences. Just recently, while its court challenge was being resolved, Quebec decided that it will pay for IVF for any couple or person who desires it, but will allow only one embryo transfer per cycle.

This is significant because concerns have been raised, even by people otherwise in favour of IVF, about the number of embryos that are sometimes transferred. Previously it was thought that, since the success rate of IVF is low (about 35%), then the more embryos transferred, the better would be the chances of implantation and growth. Yet despite the increased numbers, often not one embryo survives. Sometimes, however, more than one survives, leaving parents who were longing for *a* child with the prospect of multiple births. This prospect is decidedly unappealing to many, and "selective

reduction” is usually chosen. That is, several fetuses are aborted to make space for the one or perhaps two selected to remain.

This situation is totally abhorrent for those who recognize the dignity of embryonic and fetal life. Doctors who have tried to provide their clients with the baby so desperately wanted, now see their efforts wasted when several of these babies are now destroyed. The contradictions inherent in this practice are obvious. There are, of course, serious medical causes for concern where multi-births are involved. They can be dangerous for the mother’s health and life as well as for the fetuses’ as they fight for space in the womb. The kind of medical care necessary in these situations also costs much more in terms of time and money.

At least in this area logic, if not outright good morals, has begun to prevail. Responsible doctors now transfer at most three embryos, sometimes only two. Note the word “responsible,” since the “octo-Mum” incident made people realize that some people will incur the attendant risks of multi births for their own ends, despite the risks involved. This is where the importance of regulation comes in. In Canada, the provinces will now be responsible for deciding matters such as how many embryos may be transferred in any given cycle. They will also be responsible for monitoring IVF clinics, doctors and staff. It is encouraging that many doctors and others are acknowledging that selective reduction (abortion) is wrong and should be avoided, although this is only a small step forward in the eyes of those who respect life at all stages.

PROVINCIAL REGULATION

Quebec’s decision that only one embryo may be implanted shows that there may be some advantages to the new division of powers. If Quebec had had to wait for permission before undertaking this new policy, selective reductions would have

continued. It will be of interest to see how quickly or otherwise the other provinces follow suit. There had been concerns about provinces having independent powers in regulating reproductive technologies, since there would then be the possibility of techniques such as cloning being permitted.

This is not at all far-fetched, given that the UK has endorsed the cloning of embryos for experimental purposes for several years now. In something of a cliffhanger decision, four of the nine justices were in favour of handing over *all* responsibility for reproductive technologies to the provinces. Four justices wanted the activities named in the Act to remain prohibited and under federal criminal law. The tie-breaker voted in favour of keeping those activities prohibited, but for those who have serious moral concerns about the whole area of reproductive technologies it is clear that this is a shaky truce.

It is too soon to comment on what will happen in the area of reproductive technologies after the provinces assume control of the areas under their jurisdiction. As well as fewer selective reductions, stricter monitoring should ensure that fewer mistakes will occur, e.g., the wrong babies being sent home with parents. At the same time, it has to be accepted that, since reproductive technologies involve so much human manipulation using petri dishes, genetic tests, etc., that human error is possible and as likely as in any other field of medicine.

THE BUYING AND SELLING OF GAMETES

There is also the question of regulating the acquisition of ova and sperm. While the sale of gametes is prohibited in Canada, there is a brisk business in internet commerce. People can buy “fresh” sperm, for example, from suppliers, without questioning the identity of donors, or having a way of checking the any donor’s genetic inheritance. It is to be hoped that provinces will have laws that ban such

gametes being used in licensed fertility facilities, since this totally unprincipled approach to the manufacture of human life should be completely prohibited.

Yet some infertile couples think payment *should* be made to donors to ensure wider availability of gametes. They argue that women are allowed to sell their ova for substantial amounts in other jurisdictions. They justify this since the medical and surgical procedures for retrieving eggs are complicated and carry serious risks. Understandably, not too many women are keen to donate their eggs voluntarily. If women were to be paid for undergoing these procedures, both they and their gametes would then become commodities. New human beings would be brought into life not for their own sake, but on the basis of someone else's need or purchasing power. This is not protective of human dignity, and Chief Justice McLachlin is correct when she states that these are practices that "tend to devalue human life and degrade participants."

PARLIAMENTARY DEBATE NEEDED

It is clear that reproductive technologies raise many ethical questions, and it is strange that Canada relies solely on a body of law of nine justices to determine the responses.

Where is the parliamentary debate on these questions? How much information does the average infertile couple receive when entering this technological field? Is there truly give informed consent?

THE END DOES NOT JUSTIFY THE MEANS

Most people think the decision to use these technologies is a private matter, but from the beginning of the process many others are involved. Do couples think clearly in advance about what they will do should more than one embryo implant and develop? Have they thought about the different

implications? Even many Catholics think IVF is a good thing, because babies are the end result, and that, for them, justifies the whole process. They forget Church teaching warns us against using moral theories where the end justifies the means. Why do we not see that truth in these instances?

The approach that rejects these technologies says that a human person should be brought into being through an act of intercourse between his or her mother and father, an act of bodily expressed personal love. Only such creation of human life guarantees its dignity. There is no technological manipulation involved here, no third party interference. Daily, we see new and startling examples of a brave new reproductive world, where human desire is the dominant force, rather than humility before the mystery of life. Only a revisiting of Catholic teaching on the inseparability of the unitive and procreative dimension of the sexual act in marriage can stand as a bulwark against an end-justifying-the-means approach to something so sacred. ■

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See also my two previous articles which refer to Catholic teaching in reproductive technologies:

Why not In Vitro Fertilization? – Part 1

http://www.ccbi-utoronto.ca/documents/bioethic_matters/2010/bioethicsmatters_IVF_Vol%208_1.pdf

Why not In Vitro Fertilization? – Part 2

http://www.ccbi-utoronto.ca/documents/bioethic_matters/2010/bioethics_matters%20Vol18_3_IVF2_FINAL.pdf