

# COURT OF APPEAL OF QUÉBEC

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**THE OPINION OF THE QUEBEC COURT OF APPEAL IN THE MATTER OF A REFERENCE BY THE GOVERNMENT OF QUEBEC PURSUANT TO THE *COURT OF APPEAL ACT*, R.S.Q., c. R-23, RELATING TO THE CONSTITUTIONAL VALIDITY OF SECTIONS 8 TO 19, 40 TO 43, 60, 61 AND 68 OF THE *ASSISTED HUMAN REPRODUCTION ACT*, S. C. 2004, c. 2 / SUMMARY**

**Montreal, June 19, 2008**

Today the Quebec Court of Appeal rendered its decision in the matter of a Reference by the Government of Quebec pursuant to the *Court of Appeal Act*, R.S.Q., c. R-23, relating to the constitutional validity of sections 8 to 19, 40 to 43, 60, 61 and 68 of the *Assisted Human Reproduction Act*, S. C. 2004, c. 2.

The text of the impugned provisions is appended to this summary.

First, the Court begins by depicting the context surrounding the enactment by the federal Parliament of the *Assisted Human Reproduction Act*, from the creation, on October 25, 1989, of the *Royal Commission on the New Reproductive Technologies* (presided by Ms. Patricia A. Baird, paediatrician) to the adoption of Bill C-6, an *Act Respecting Assisted Human Reproduction and Related Research*, on February 11, 2004.

The Act governs all of the clinical and research activities regarding medically assisted human reproduction. First, it identifies the activities that are prohibited in matters of genetic manipulations and trading in human reproductive material (sections 5 to 7), such as human cloning, the creation of an *in vitro* embryo for any purpose other than creating a human being, the purchase or sale of gametes and *in vitro* embryos, etc. The Reference is not aimed at this chapter of the Act: the Government of Quebec acknowledges that the activities prohibited in those sections are in relation to criminal law and, consequently, fall within the legislative authority of the federal Parliament.

The Act then identifies the activities that can be undertaken only after having obtained the appropriate licences and in accordance with the conditions determined by regulations (sections 10 to 13). It also establishes a mechanism aimed at collecting personal health information from those involved in the assisted human reproduction process and creates a personal health information registry to that effect (sections 14 to 19). The Assisted Human Reproduction Agency of Canada is established to monitor the application of the Act (sections 21 to 59). Finally, the Act provides for penal sanctions for those who contravene its provisions (section 60 to 64) and gives the federal Government vast power to enact regulations (sections 65 to 67). This regulatory power contemplates, in particular, all of the aspects related to the determination of the controlled activities, the identification of the terms and conditions of the licences referred to in the Act and the qualifications for such licences, as well as the creation of standards regarding the facilities in which the controlled activities are carried out.

The Attorney General of Canada argued that the Act was conceived, and passed, on the basis of Parliament's legislative authority in relation to Criminal Law (ss. 91(27) of *The Constitution Act, 1867*). He did not argue the validity of the impugned provisions on the basis of the power of Parliament to legislate for the "peace, order and good government of Canada" (s. 91 of *The Constitution Act, 1867*, the national dimensions doctrine) and the matter was thus not argued on this basis.

The Court first depicts the double-barrel analytical framework relevant to any constitutional analysis related to the division of powers: first, the determination of the pith and substance of the Act or of the provision, or its true matter, and then the identification of the head of power to which the pith and substance relates in order to ascertain whether the impugned Act or provision falls within the constitutional jurisdiction of the order of government that enacted it.

The heads of power listed in *The Constitution Act, 1867* are not static, their content must adjust to the evolution of the Canadian society so that Confederation can be adapted to new social realities. The task of setting limits to the evolution of a given constitutional power in the context of the political structure of Canada is a delicate one, each person having his or her view of what federalism is and of what the point of equilibrium between the powers of the federal government and those of the provincial governments should be.

The Reference called upon the Court to set the limits of the respective powers of Parliament and of the legislatures regarding health and criminal law.

Health is not a head of power identified as such in *The Constitution Act, 1867*. It constitutes a vast and diffuse field of activity, the limits of which are not always easy to determine for division of powers purposes. Traditionally, it is the provinces that legislated in this matter; the Supreme Court of Canada has reaffirmed on many occasions the general jurisdiction of the provinces regarding health and confirmed the extent of this jurisdiction based on the exclusive powers of provincial legislatures regarding the establishment, maintenance and management of hospitals, property and

civil rights, matters of a merely local or private nature and finally, education and instruction (subsections 7, 13 and 16 of section 92 and section 93 of *The Constitution Act, 1867*). However, this did not prevent the federal Parliament from legislating from time to time in this matter, particularly, but not exclusively, under its Criminal Law jurisdiction. The *Food and Drugs Act* and the *Tobacco Act* constitute two examples of such federal initiatives.

While not unlimited, the Criminal Law jurisdiction of the federal Parliament is vast and the Supreme Court of Canada has always defined it broadly. Any legislation enacted by virtue of this power must be prohibitive inasmuch as such is the nature of criminal law; the prohibitions defined must be aimed at a legitimate public objective related to criminal law, such as peace, order, security, morality and health.

The Court is of the view that the pith and substance of the impugned provisions of the Act lie in the regulation of an entire area of medical practice – the clinical and research activities regarding assisted human reproduction – and not in the suppression of an "evil". The impugned provisions thus relate to the general jurisdiction of the provinces in relation to health (subsections 7, 13 and 16 of section 92 and section 93 of *The Constitution Act, 1867*) and not to that of Parliament in relation to Criminal Law.

If the impugned provisions were to be validated on the basis of the federal jurisdiction over Criminal Law, it would follow, according to the Court, that very few, if any, cutting edge medical activities would escape the possible intervention by Parliament. There is a risk, according to the Court, that withdrawing the practice of assisted human reproduction from the head of jurisdiction of health to include it in that of Criminal Law would amount to a Trojan Horse and would reduce substantially the jurisdiction of the provinces. Hence, such jurisdiction in health is not limited to building and managing hospitals, clinics and laboratories; it extends to setting standards for these activities taking place in each province, including the clinical and research activities related to assisted human reproduction, the patient-physician relationship, the supervision of professional orders, the consent to care, etc.

The Court thus answers affirmatively the question put by the Reference. Sections 8 to 19, 40 to 53, 60, 61 and 68 of the *Assisted Human Reproduction Act*, S. C. 2004, c. 2 do not fall within the jurisdiction of the Parliament of Canada under *The Constitution Act, 1867*.

## APPENDIX

Sections 8 to 19, 40 to 53, 60, 61 and 68 of the *Assisted Human Reproduction Act* are written as follows :

**8.** (1) No person shall make use of human reproductive material for the purpose of creating an embryo unless the donor of the material has given written consent, in accordance with the regulations, to its use for that purpose.

(2) No person shall remove human reproductive material from a donor's body after the donor's death for the purpose of creating an embryo unless the donor of the material has given written consent, in accordance with the regulations, to its removal for that purpose.

(3) No person shall make use of an *in vitro* embryo for any purpose unless the donor has given written consent, in accordance with the regulations, to its use for that purpose.

**9.** No person shall obtain any sperm or ovum from a donor under 18 years of age, or use any sperm or ovum so obtained, except for the purpose of preserving the sperm or ovum or for the purpose of creating a human being that the person reasonably believes will be raised by the donor.

**10.** (1) No person shall, except in accordance with the regulations and a licence, alter, manipulate or treat any human reproductive material for the purpose of creating an embryo.

(2) No person shall, except in accordance with the regulations and a licence, alter, manipulate, treat or make any use of an *in vitro* embryo.

(3) No person shall, except in accordance with the regulations and a licence, obtain, store, transfer, destroy, import or export

(a) a sperm or ovum, or any part of one, for the purpose of creating an embryo; or

(b) an *in vitro* embryo, for any purpose.

**11.** (1) No person shall, except in accordance with the regulations and a licence, combine any part or any proportion of the human genome specified in the regulations with any part of the genome of a species specified in the regulations.

(2) The following definitions apply in this section. "human genome"  
«*génomme humain* »

"human genome" means the totality of the deoxyribonucleic acid sequence of the human species.

"species"  
«*espèce* »

"species" means any taxonomic classification of non-human life.

**12.** (1) No person shall, except in accordance with the regulations and a licence,

(a) reimburse a donor for an expenditure incurred in the course of donating sperm or an ovum;

(b) reimburse any person for an expenditure incurred in the maintenance or transport of an *in vitro* embryo; or

(c) reimburse a surrogate mother for an expenditure incurred by her in relation to her surrogacy.

(2) No person shall reimburse an expenditure referred to in subsection (1) unless a receipt is provided to that person for the expenditure.

(3) No person shall reimburse a surrogate mother for a loss of work-related income incurred during her pregnancy, unless

(a) a qualified medical practitioner certifies, in writing, that continuing to work may pose a risk to her health or that of the embryo or foetus; and

(b) the reimbursement is made in accordance with the regulations and a licence.

**13.** No person who is licensed to undertake a controlled activity shall undertake it in any premises except in accordance with a licence permitting the use of the premises for that controlled activity.

**14.** (1) A licensee shall not accept the donation of human reproductive material or an *in vitro* embryo from any person for the purpose of a controlled activity, and shall not perform a controlled activity on any person, unless the licensee has obtained from that person the health reporting information required to be collected under the regulations.

(2) Before accepting a donation of human reproductive material or of an *in vitro* embryo from a person or accepting health reporting information respecting a person, a licensee shall

(a) inform the person in writing of the requirements of this Act respecting, as the case may be,

(i) the retention, use, provision to other persons and destruction of the human reproductive material or *in vitro* embryo, or

(ii) the retention, use, disclosure and destruction of the health reporting information;

(b) to the extent required by the regulations, make counselling services available to the person and ensure that the person receives them;

(c) obtain the written consent of the person to the application of the requirements referred to in paragraph (a); and

(d) in accordance with the regulations, provide the person with the information that the Agency makes available to the public under paragraph 19(i).

**15.** (1) No licensee shall disclose health reporting information for any purpose except

(a) with the written consent of the person to whom the information relates allowing its disclosure for that purpose; or

(b) in accordance with subsections (2) to (5).

(2) A licensee shall disclose health reporting information

(a) to the Agency, to the extent required by the regulations;

(b) to the extent required for the administration of a health care insurance plan within the meaning of the *Canada Health Act*;

(c) for the purpose of complying with a subpoena or warrant issued or order made by a court, body or person with jurisdiction to compel the production of information or for the purpose of complying with rules of court relating to the production of information; and

(d) to the extent required by the provisions of any federal or provincial law respecting health and safety that are specified in the regulations.

(3) A licensee that transfers human reproductive material or an *in vitro* embryo to another licensee shall disclose to the other licensee the health reporting information in its possession respecting the material or embryo, and respecting the person or persons to whom the material or embryo relates, but the identity of any person — or information that can reasonably be expected to be used in the identification of a person — shall not be disclosed except in the circumstances and to the extent provided by the regulations.

(3.1) A licensee who transfers an *in vitro* embryo to another licensee shall notify the Agency of the transfer in accordance with the regulations.

(4) Before performing an assisted reproduction procedure that makes use of human reproductive material or an *in vitro* embryo, a licensee shall disclose to the person undergoing the procedure the health reporting information in its possession respecting the donor, but the identity of the donor — or information that can reasonably be expected to be used in the identification of the donor — shall not be disclosed without the donor's written consent.

(5) A licensee may disclose health reporting information to an individual or organization for scientific research or statistical purposes, other than the identity of any person — or information that can reasonably be expected to be used in the identification of any person.

**16.** (1) A person shall be given, on request, access to any health reporting information about the person that is under the control of a licensee or other person who has obtained the information. The person is entitled to

(a) request the correction of the information if they believe there is an error or omission in that information;

(b) require that a notation be attached to that information reflecting any correction that was requested but was not made; and

(c) require that such a correction or notation be communicated to any person or body to whom that information was disclosed during the two years preceding the request for a correction.

(2) A licensee or any other person that has control of the health reporting information provided by a donor of human reproductive material or an *in vitro* embryo, by a person who has undergone an assisted reproduction procedure or by a person who was conceived by means of such a procedure shall, at the request of the donor or that person, as the case may be, destroy that information in the circumstances and to the extent provided by the regulations, and shall inform the donor or that person that the destruction has occurred.

(3) A licensee and any other person that has control of human reproductive material or an *in vitro* embryo shall destroy that material or embryo at the request of its donor in the circumstances and to the extent provided by the regulations, and shall inform the donor that the destruction

(4) This section does not apply to

(a) government institutions subject to the *Privacy Act* or the *National Archives of Canada Act*; or

(b) a court, body or person referred to in paragraph 15(2)(c).

**17.** The Agency shall maintain a personal health information registry containing health reporting information about donors of human reproductive material and *in vitro* embryos, persons who undergo assisted reproduction procedures and persons conceived by means of those procedures.

**18.** (1) The Agency may use health reporting information, and information otherwise relating to the controlled activities undertaken by an applicant or licensee, for the purposes of the administration and enforcement of this Act or the identification of health and safety risks, potential and actual abuses of human rights, or ethical issues associated with assisted human reproduction technologies and the other matters to which this Act applies.

(2) Notwithstanding section 8 of the *Privacy Act* but subject to subsections (3) to (8), health reporting information under the control of the Agency relating to a donor of human reproductive material or an *in vitro* embryo, a person who has undergone an assisted reproduction procedure or a person who was conceived by means of such a procedure is confidential and shall be disclosed only with the written consent of the donor or that person, as the case may be.

(3) The Agency shall, on request, disclose health reporting information relating to a donor of human reproductive material or of an *in vitro* embryo to a person undergoing an assisted reproduction procedure using that human reproductive material or embryo, to a person

conceived by means of such a procedure and to descendants of a person so conceived, but the identity of the donor — or information that can reasonably be expected to be used in the identification of the donor — shall not be disclosed without the donor's written consent.

(4) On application in writing by any two individuals who have reason to believe that one or both were conceived by means of an assisted reproduction procedure using human reproductive material or an *in vitro* embryo from a donor, the Agency shall disclose to both of them whether it has information that they are genetically related and, if so, the nature of the relationship.

(5) The Agency shall disclose health reporting information

(a) for the purpose of complying with a subpoena or warrant issued or order made by a court, body or person with jurisdiction to compel the production of information, or for the purpose of complying with rules of court relating to the production of information; and

(b) to the extent required by provisions of any federal or provincial law respecting health and safety that are specified in the regulations.

(6) The Agency may disclose health reporting information

(a) for the purposes of the enforcement of this Act;

(b) to the extent required for the administration of a health care insurance plan within the meaning of the *Canada Health Act*; and

(c) for the purposes of disciplinary proceedings undertaken by any professional licensing or disciplinary body established under the laws of Canada or a province and specified in the regulations.

(7) The Agency may disclose the identity of a donor to a physician if, in the Agency's opinion, the disclosure is necessary to address a risk to the health or safety of a person who has undergone an assisted reproduction procedure, was conceived by means of such a procedure or is a descendant of a person so conceived. The physician may not disclose that identity.

(8) The Agency may disclose health reporting information to an individual or organization for scientific research or statistical purposes, other than the identity of any person — or information that can reasonably be expected to be used in the identification of any person.

**19.** The Agency shall make available for inspection by the public in accordance with the regulations any information that is prescribed by the regulations relating to

(a) this Act, the regulations under this Act and policy directions under section 25;

(b) the by-laws of the Agency;

(c) licences issued by the Agency;

(d) applications for, and amendments or renewals of, licences;

(e) notices of proceedings in respect of the issuance, amendment, renewal, suspension, restoration or revocation of licences;

(f) information and observations provided to the Agency in respect of any proceedings respecting licences, other than the identity of — or information that can reasonably be expected to be used in the identification of — any donor of human reproductive material or an *in vitro* embryo, any person who has undergone an assisted reproduction procedure or any person who was conceived by means of such a procedure;

(g) decisions of the Agency arising from any proceedings respecting licences;

(h) the names and addresses of licensees;

(i) aggregated outcomes of assisted reproduction procedures performed by licensees;

(j) measures taken under section 44;

(k) the enforcement of this Act;

(l) agreements entered into under section 58;

(m) agreements entered into under section 68; and

(n) reports and other documentation provided to or by the Agency pursuant to the Agency's power to monitor and evaluate developments in assisted human reproduction and other matters to which this Act applies.

**40.** (1) The Agency may, in accordance with the regulations, issue a licence to any person having the qualifications provided under the regulations, authorizing the person to undertake any controlled activity specified in the licence.

(2) A licence authorizing the use of an *in vitro* embryo for the purpose of research may be issued only if the Agency is satisfied that the use is necessary for the purpose of the proposed research.

(3) The number of licences that the Agency considers sufficient may be issued in respect of clinical trials of a controlled activity.

(3.1) The Agency shall not issue a licence under subsection (1) for embryonic stem cell research unless it has received the written consent of the original gamete providers and the embryo provider in accordance with the *Human Pluripotent Stem Cell Research Guidelines* released by the Canadian Institutes of Health Research in March, 2002, as specified in the regulations.

(4) If a person to whom a licence is issued is not an individual, the licence must designate an individual as the person responsible for compliance with this Act, but that designation does not affect the responsibility of the licensee or any other individual under this Act.

(5) The Agency may, in accordance with the regulations, issue a licence to the owner or operator of any premises permitting the use of those premises for a controlled activity undertaken by persons to whom a licence has been issued under subsection (1).

(6) The Agency may, in accordance with the regulations, attach terms and conditions to a licence at the time of issuing the licence or at any time after that.

(7) The Agency may not apply a policy of cost recovery to the issuance of licences.

**41.** The Agency may, in accordance with the regulations, amend a licence or renew an expiring licence, with or without amendment.

**42.** The Agency may, in accordance with the regulations, amend, suspend or revoke the licence of a licensee who contravenes this Act or the regulations or the terms and conditions of the licence or who fails to comply with any measures ordered to be taken under this Act, and may prescribe conditions for the restoration of a suspended licence.

**43.** (1) In exercising its powers under sections 40 to 42, the Agency may take into account information and observations offered by any person and may seek the advice of persons having expertise related to the application or of persons representative of any interest affected by the application.

(2) Subject to subsection (3), the Agency shall, on request, disclose the information and observations provided under subsection (1) unless the disclosure would, in the Agency's opinion, pose a risk to the health or safety of any person.

(3) The identity of — or information that can reasonably be expected to be used in the identification of — a donor of human reproductive material or an *in vitro* embryo, a person who has undergone an assisted reproduction procedure or a person who was conceived by means of such a procedure may not be disclosed except to an applicant or licensee who, in the Agency's opinion, requires the information to support an application.

(4) No civil or criminal proceedings may be brought against any person for offering information and observations in good faith under subsection (1).

**44.** (1) The Agency may take, or order any person to take, all reasonable measures that the Agency considers necessary to prevent, reduce or mitigate any threat to human health or safety that results, or may reasonably be expected to result, from a controlled activity.

(2) For the purposes of taking measures referred to in subsection (1), the Agency may authorize an inspector designated under section 46 to enter the premises where the controlled activity is being undertaken and to assume the management of those premises and that activity.

(3) Any costs incurred by an inspector acting under this section shall be borne by the person who holds the licence in respect of the controlled activity or premises and, until paid, those costs are recoverable in any court of competent jurisdiction as a debt due to Her Majesty in right of Canada.

(4) No person acting under this section is personally liable for so acting, either civilly or criminally, unless it is established that the person acted in bad faith.

**45.** The following definitions apply in sections 47 to 62 and 65.

"information"  
«*document*»

"information" means information that is recorded in any form.

"material"  
«*matériel*»

"material" means an embryo or part of one, a foetus or part of one or any human reproductive material outside the body of a human being, or any other thing.

**46.** (1) The Agency may designate any person employed by the government of Canada or of a province, or having the qualifications specified in the regulations, as an inspector for the purpose of the enforcement of this Act.

(2) An inspector shall be given a certificate in a form established by the Agency attesting to the inspector's designation and, on entering any place or conveyance under subsection 47(1), the inspector shall, if so required, produce the certificate to the person in charge of that place or conveyance.

**47.** (1) Subject to section 48, an inspector may at any reasonable time enter any place or conveyance in which the inspector believes on reasonable grounds that a controlled activity is undertaken or that there is any material or information in respect of which this Act applies or any information pertaining to a controlled activity.

(2) An inspector entering a place or conveyance may

(a) examine any material or information that is relevant to the administration or enforcement of this Act;

(b) require any person in the place or conveyance to produce, in the manner and form requested by the inspector, any such material or information;

(c) open and examine any receptacle or package that the inspector believes on reasonable grounds contains such material or information;

(d) take, or require any person in the place or conveyance to produce, a sample of such material; and

(e) conduct any test or analysis or take any measurement of such material.

(3) In carrying out an inspection, an inspector may

(a) examine and make copies of or extracts from any books, documents or other records that the inspector believes on reasonable grounds contain information relevant to the administration or enforcement of this Act;

(b) require any person to produce such books, documents or other records for examination or copying;

(c) use or cause to be used any computer system to examine information relevant to the administration or enforcement of this Act that is contained in or available to the computer system;

(d) reproduce such information in the form of a printout or other intelligible output for examination or copying; and

(e) use or cause to be used any copying equipment.

(4) The owner or person in charge of a place entered by an inspector under subsection (1) and every person found in that place shall give the inspector all reasonable assistance and furnish them with any information that they may reasonably require.

#### Warrant to enter dwelling-house

**48.** (1) Where a place referred to in subsection 47(1) is a dwelling-house, an inspector may not enter it without the consent of the occupant, except under the authority of a warrant issued under subsection (2).

(2) If, on *ex parte* application, a justice of the peace is satisfied by information on oath that

(a) the conditions for entry described in subsection 47(1) exist in relation to a dwelling-house,

(b) entry to the dwelling-house is necessary for any purpose relating to the administration or enforcement of this Act, and

(c) entry to the dwelling-house has been refused or there are reasonable grounds for believing that entry will be refused,

the justice of the peace may issue a warrant authorizing the inspector named in it to enter the dwelling-house, subject to any conditions that may be specified in the warrant.

(3) In executing a warrant issued under subsection (2), the inspector named in it shall not use force unless the inspector is accompanied by a peace officer and the use of force has been specifically authorized in the warrant.

**49.** (1) No person shall obstruct or hinder, or knowingly make any false or misleading statement either orally or in writing to, an inspector engaged in carrying out duties under this Act.

(2) Except with the authority of an inspector, no person shall remove, alter or interfere in any way with material or information seized under this Act.

**50.** (1) An inspector who enters a place or conveyance under section 47 may seize any material or information by means of which, or in relation to which, the inspector believes on reasonable grounds this Act has been contravened.

#### Storage and removal

(2) An inspector may direct that seized material or information be kept or stored in the place where it was seized or be removed to any other proper place.

#### Application for restoration

**51.** (1) A person from whom material or information is seized may, within 60 days after the date of the seizure, apply to a provincial court judge within whose jurisdiction the seizure was made for an order of restoration, if the person sends the Agency a notice containing the information prescribed by the regulations within the time and in the manner prescribed in the regulations.

(2) The provincial court judge may order that seized material or information be restored immediately to the applicant if, on hearing the application, the judge is satisfied that

(a) the applicant is entitled to possession of it; and

(b) it will not be required as evidence in any proceedings under this Act.

(3) If, on hearing an application, a provincial court judge is satisfied that the applicant is entitled to possession of seized material or information but is not satisfied as regards paragraph (2)(b), the judge may order that the material or information be restored to the applicant

(a) on the expiry of 180 days after the date of the seizure if no proceedings under this Act have been commenced before that time; or

(b) on the final conclusion of proceedings under this Act.

(4) A provincial court judge may not make an order for the restoration of material or information if it has been forfeited by consent under subsection 52(2).

**52.** (1) If no application is made under subsection 51(1) for the restoration of seized material or information within 60 days after the date of the seizure, or an application has been made but on the hearing of the application no order of restoration is made, the material or information is forfeited to Her Majesty.

(2) Where an inspector has seized material or information and the owner or the person in whose possession it was at the time of the seizure consents in writing to its forfeiture, the material or information is forfeited to Her Majesty.

(3) Subject to section 54, the Agency may dispose of material or information forfeited to Her Majesty in any manner that the Agency directs.

**53.** (1) An inspector is a public officer for the purposes of the application of section 487 of the *Criminal Code* in respect of an offence under this Act.

(2) An inspector may exercise without a warrant any of the powers conferred by virtue of subsection (1) if the conditions for obtaining a warrant exist but, by reason of exigent circumstances, it would not be practicable to obtain a warrant.

**60.** A person who contravenes any of sections 5 to 9 is guilty of an offence and

(a) is liable, on conviction on indictment, to a fine not exceeding \$500,000 or to imprisonment for a term not exceeding ten years, or to both; or

(b) is liable, on summary conviction, to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding four years, or to both.

**61.** A person who contravenes any provision of this Act, other than sections 5 to 9, or the regulations is guilty of an offence and

(a) is liable, on conviction on indictment, to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding five years, or to both; or

(b) is liable, on summary conviction, to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding two years, or to both.

**68.** (1) The Governor in Council may, by order, declare that any or all of sections 10 to 16, 46 to 53 and 61 and any corresponding provisions of the regulations do not apply in a province, except in respect of Her Majesty in right of Canada, if the Minister and the government of that province agree in writing that there are laws of the province in force that are equivalent to those sections and the corresponding provisions of the regulations.

(2) An agreement made under subsection (1) shall be for a period of five years, or any shorter period agreed to by the parties, but may be renewed.

(3) An order under subsection (1) does not prevent the Agency from taking measures under section 44.

(4) Where an order has been made under subsection (1) in respect of a province, any person carrying on an activity in the province that would be a controlled activity under this Act shall obtain health reporting information in accordance with section 14 and disclose it under paragraph 15(2)(a) as if the person were a licensee under this Act, and sections 17 and 18 apply in respect of that health reporting information.

(5) When provisions of this Act cease to apply in a province by virtue of this section, a licence issued in respect of a person or premises in the province continues in effect in that province as if it were issued under provincial law.