



February 27, 2015

Standing Committee on Justice and Human Rights
c/o Mr. Jean-François Pagé
Clerk of the Committee
131 Queen Street, 6th Floor
House of Commons
Ottawa ON K1A 0A6

Dear Chair Wallace and Committee Members:

Re: Bill C-583 – Submission to the Parliamentary Standing Committee on Justice and Human Rights by the Canadian Academy of Psychiatry and the Law (CAPL)

The Canadian Academy of Psychiatry and the Law (CAPL) appreciates the opportunity to contribute to the deliberations of the Committee regarding C-583.

CAPL represents Canadian psychiatrists with formal training in forensic psychiatry, as well as those with expertise and experience in mental health and the law. CAPL welcomes the opportunity for input and advice to the Standing Committee.

In our regular professional practice conducting assessments and providing treatment for persons with mental disorders who are in conflict with the law, forensic psychiatrists are well aware of the personal, social and financial burden of developmental delay as well as the overrepresentation in the criminal justice system of persons with fetal alcohol spectrum disorder (FASD).

CAPL fully supports the need for enhanced assessment, treatment and support services for persons with FASD, and applauds all initiatives aimed at diversion of persons with FASD from the criminal justice system.

However, CAPL expresses concern regarding Bill C-583 as we regard such legislation as potentially discriminating against persons with other forms of developmental delay (genetic, metabolic, infectious, traumatic and of unknown cause) and those with other forms of developmental functional impairment (e.g., autism spectrum disorder, pervasive developmental disorder).

In our view, there is no compelling ethical, professional, or legal rationale for additional assessment resources mandated in law and provided for in preference of one particular disadvantaged group.

The common pathway into the criminal justice system for persons with FASD is not distinct from that seen in other forms of developmental delay or mental disorder, such as mental illness, severe addiction challenges, traumatic brain injury, or certain personality disorders. Persons with FASD are therefore not unique in their presentation of a broad range of functional deficits and criminogenic needs. A narrow focus on one form of deficit, such as presented by C-583, indicates a simplistic perspective that may favour (or disadvantage) one (similar) group over others, and may not survive a constitutional challenge.

The distinction aimed at in C-583 is not supported by psychiatric standards in diagnosis. The fifth edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-5) of the American Psychiatric Association, the authoritative diagnostic system in North America, does not recognize FASD as a separate or distinct disorder, and groups it appropriately with all other forms of developmental delay.

FASD has evolved from the earlier succinct, diagnostic entity (Fetal Alcohol Syndrome – FAS) to a broad-based disorder conceptualized along a continuum with a range of clinical, behavioural and social features without specific criteria for diagnosis (e.g., symptoms may include...). Under C-583, this would render the “diagnosis” almost impossible to exclude if a person presented with some degree of impairment and a mention of maternal antenatal drinking.

C-583 proceeds in further troubling fashion in asserting that even where there is no substantiation of a history of maternal drinking, it is assumed to have occurred where FASD is suspected. If this is so, then why require an assessment at all? Since there is no requirement to quantify the extent of impairment and presumably with only a single symptom endorsed, the court could simply accept evidence from caregivers or others that there is an indication of at least one of the features, plus a history of confirmed or unconfirmed maternal prenatal alcohol use and proceed without requiring formal diagnosis. It would seem that it is a political rather than a scientific agenda driving this development towards what could be termed “diagnostic jurisprudence.”

If C-583 were to become enshrined in statute, judges would have the power to order assessments that would not need to be conducted by a physician or trained clinician, using a definition that is at variance with other, accepted definitions of the disorder, and employing criteria for diagnosis with little, if any, scientific evidence. It is doubtful that any jurisdiction would have the resources required to cope with the possible number of court-ordered assessments.

Standard forensic assessments are comprehensive and attend to a broad range of conditions that impair a person’s functional abilities, regardless of etiology. Where an identified disorder impacts on fitness for trial or criminal responsibility or risk to the safety of others, the issue is addressed. Therefore, where developmental delay is suspected to have been the result of maternal drinking, this is stated. Similarly, autism spectrum, attention deficit, conduct and personality disorders, as well as psychotic and mood disorders may impact on a person’s ability to function normally in society, and it is a thoughtful assessment of the degree of impairment that is important.

That maternal drinking during pregnancy has detrimental and devastating effects on the developing brain is not in dispute. The social and financial burden of FASD on Canadian society also is not at issue. That it is highly prevalent in certain parts of Canada is well-established.

CAPL asserts that the courts need to be mindful of the difficulties that all persons with developmental delay from whatever cause face. Legal, educational and clinical professions should advocate tirelessly for improved assessment and treatment services for all such persons.

Canadians generally, and criminal justice specifically, have several options available for effective intervention:

1. Advocacy for enhanced education and treatment resources for all persons with developmental delay (including FASD) and especially for those who come into conflict with the law.
2. Advocacy for enhanced pathways into health care if diversion from criminal justice is deemed desirable.
3. In an increasingly complex technological society, persons with developmental delay are more and more disadvantaged. Their plight should have the attention of all Canadians and the Mental Health Commission of Canada would be well-positioned to advance their cause. Focusing on one form of disorder is however, not the best way forward.

Respectfully submitted,

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