

February 27, 2002

The Honourable Andy Scott, P.C., M.P., Chair
Standing Committee on Justice
and Human Rights
House of Commons
Ottawa, Ontario
K1A 0A6

Dear Mr. Scott:

RE: Bill C-217, *Blood Samples Act*

Thank you for the opportunity to appear before your Committee yesterday on behalf of the Canadian Bar Association (CBA) National Criminal Justice Section (the Section) to address Private Members' Bill C-217, the *Blood Samples Act*.

As you know, Committee members asked for a supplementary list of technical suggestions, which were not included in the Section's more general submission. As I mentioned, neither that submission nor these technical suggestions address the fundamental question raised regarding constitutional jurisdiction.

Points for Further Consideration

1. The Bill should require that an applicant make reasonable efforts to obtain a sample on consent.
2. Section 3 should require, as a prerequisite to an application, proof that reasonable efforts to obtain a sample on consent were made.
3. If consent for a sample is obtained, the required subsequent procedures should be publicly funded.
4. If a hearing is to be held under section 4, notice of the hearing to the target person should include notification of the right to retain counsel.

5. The Bill should not be divided into Part I and Part II, as this only creates potential for confusion. Those covered under the “designated function” definition in Part II, section 31.01 should be included within the same definition in Part I, section 2.
6. The Bill should require that as medical science evolves, the least intrusive means for obtaining the desired information should be employed.
7. Section 4 should allow for an *ex parte* hearing if the target person does not attend at the hearing after proof of proper notice.
8. Before a judge or justice proceeds to call a hearing under section 4, affidavit evidence should be received from a qualified physician attesting to the fact that there is objective medical evidence to establish a reasonable likelihood that transmission of the virus may have occurred through the contact at issue.
9. At the hearing proposed within section 4, the target person should be permitted to cross-examine the medical affiant (see # 8, above), with the judge or justice’s permission.
10. Interested third parties could be permitted to apply for, or respond to a demand for a sample, provided a sufficient connection to the parties and contact at issue exists.
11. Definition sections regarding “designated functions” should include the phrase “acting within the lawful execution of their duties or mandate”, for all persons permitted in a professional or occupational capacity to apply for a warrant.

Thank you again for the opportunity to consider Bill C-217. I trust that these further suggestions will be helpful to your Committee.

Yours truly,

Marc David