

Enforcing the Assisted Human Reproduction Act

To the Editor:

In Canada, the law on payment for eggs, sperm, in vitro embryos, and surrogacy is clear. Such payments are prohibited under the *Assisted Human Reproduction Act* of 2004 (*AHR*). As well, offering to make such payments or advertising that such payments will be made is prohibited. Beyond this, payment for brokering deals for eggs, sperm, in vitro embryos, and surrogacy is also prohibited.

With the *AHR Act* in place, the business of buying and selling reproductive tissues and services should have come to a screeching halt in Canada, especially given the penalties for breaking the law. The penalties include a fine of up to \$500 000, imprisonment for up to 10 years, or both. This has not been the case, however. The legal prohibitions have largely been seen as nothing more than “paper tigers” and, in the absence of any arrests being made, a small cottage industry has developed with thousands of dollars changing hands per transaction.

Indeed, despite media coverage of activities that appeared to contravene the law (including a black market in eggs, sperm, and surrogates), complaints by feminists and activists about practices deserving of investigation, and the public resignation of three Directors from the Board of Assisted Human Reproduction Canada because of challenges in providing responsible oversight, the business of buying and selling reproductive tissues and services expanded.

But all of this may soon change. Recently, the RCMP launched an investigation into the services provided by Canadian Fertility Consultants—one of several Canadian agencies offering to help arrange (broker?) fertility services. This action puts others on notice that alleged

contraventions of the *AHR Act* might be investigated. As a result, perhaps those involved with fertility services will pay more attention to the law.

Another potential benefit of the recent RCMP investigation is that this may shine a light on the federal government’s failure to do its job. While the 2004 law prohibits payment for sperm, eggs, in vitro embryos, or surrogacy, it allows “reimbursement of expenditures” provided such reimbursements are made “in accordance with the regulations and a license.” But in the eight years since the *AHR Act* came into effect, Health Canada has not published regulations detailing what types of reimbursement are permitted, or how to obtain a license for the purpose of making legitimate payments. For a long time, the official reason for this has been the constitutional challenge before the Supreme Court of Canada. But it has now been nearly a year and a half since the Supreme Court of Canada upheld the section of the *Act* governing reimbursement of expenditures, and still there are no regulations on what reimbursements are permitted and how to obtain a license.

Canadian Fertility Consultants may or may not have obeyed the law prohibiting commercial surrogacy. This will only be clear once the investigation is completed and, if charges are warranted, a court process is concluded. What is immediately clear, however, is that Health Canada has not done its job and this has put women, couples, and children at risk. We need no more evidence and no more processes to know this. The regulations for the *AHR Act* should be produced, and the prohibitions and regulations should be enforced.

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