Legal Schmegal: Who cares what the AHR law says?

Francoise Baylis PhD, FRSC, FCAHS, Professor and Canada Research Chair in Bioethics and Philosophy
The Law (since 2004)

Assisted Human Reproduction Act
S.C. 2004, c. 2
Assented to 2004-03-29
An Act respecting assisted human reproduction and related research
Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

SHORT TITLE

Short title
1. This Act may be cited as the Assisted Human Reproduction Act.

PRINCIPLES

Declaration
2. The Parliament of Canada recognizes and declares that
(f) trade in the reproductive capabilities of women and men and the exploitation of children, women and men for commercial ends raise health and ethical concerns that justify their prohibition; and
Payment for surrogacy

6. (1) No person shall pay consideration to a female person to be a surrogate mother, offer to pay such consideration or advertise that it will be paid.

Acting as intermediary

(2) No person shall accept consideration for arranging for the services of a surrogate mother, offer to make such an arrangement for consideration or advertise the arranging of such services.

Payment to intermediaries

(3) No person shall pay consideration to another person to arrange for the services of a surrogate mother, offer to pay such consideration or advertise the payment of it.

Surrogate mother — minimum age

(4) No person shall counsel or induce a female person to become a surrogate mother, or perform any medical procedure to assist a female person to become a surrogate mother, knowing or having reason to believe that the female person is under 21 years of age.

Validity of agreement

(5) This section does not affect the validity under provincial law of any agreement under which a person agrees to be a surrogate mother.
Père biologique

Marie-Pier

bésors pesait entre 7 et 8 livres, évidemment, je n'ai ni "je demanderais 35 000$" mon en et de donner la vie mais j'ai aussi beaucoup de plus utiliser un enfant pour faire du "commerce"
Prohibited (since 2004)

Purchase of gametes

7. (1) No person shall purchase, offer to purchase or advertise for the purchase of sperm or ova from a donor or a person acting on behalf of a donor.

Purchase or sale of embryos

(2) No person shall
   (a) purchase, offer to purchase or advertise for the purchase of an in vitro embryo; or
   (b) sell, offer for sale or advertise for sale an in vitro embryo.

Purchase of other reproductive material

(3) No person shall purchase, offer to purchase or advertise for the purchase of a human cell or gene from a donor or a person acting on behalf of a donor, with the intention of using the gene or cell to create a human being or of making it available for that purpose.

Exchanges included

(4) In this section, “purchase” or “sell” includes to acquire or dispose of in exchange for property or services.
The Human Egg Trade

How Canada’s fertility laws are failing donors, doctors, and parents

BY ALISON MOTLUK • ILLUSTRATION BY EMILY L. EIBEL
HEALTH • FROM THE APRIL 2010 MAGAZINE

Excellence in Women’s Health Reporting

34th annual National Magazine Awards
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Biggest Dream on the Block
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Michael Friscolanti, Martin Patriquin,
Cathy Gulli
Behind Those Eyes
Maclean’s

Dalhousie University
Illegal purchase of sperm, eggs and surrogacy services leads to 27 charges against Canadian fertility company and CEO.

‘Business has boomed’: Canadian surrogacy agent facing 27 charges continues her controversial work.
Reimbursement (proposed 2004)

Reimbursement of Expenditures

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.

Receipts

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

No Reimbursement

(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.
Reimbursement (proposed 2012)

Reimbursement of expenditures

12. (1) No person shall, except in accordance with the regulations,

(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.

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

2004, c. 2, s. 12; 2012, c. 19, s. 719.
Thank you for considering CFC to help you build your family.

At CFC, we provide support for our surrogates for every step of their journey. One of the first discussions we have with them is around receipt keeping, and how to submit for expenses. This discussion is done over the phone or in person, to address their individual questions and concerns. They also have access to the following video:

CFC RECEIPT VIDEO http://www.youtube.com/watch?v=IhZByssG68Q&feature=youtu.be

Fertility consultant at centre of criminal case accused of forging egg donor profiles given to potential clients, documents show

Tom Blackwell | 13/04/01 6:59 PM ET
More from Tom Blackwell | @tomblackwellNP
Pleiades Picard (Birthdate: 1975-02-16) of 195 Ontario Street, Brighton, Ontario and Canadian Fertility Consulting Ltd. (Ontario Corporation # 2280874) situated at unit 9, 8 Loyalist Drive, Brighton, Ontario.

on or about the __________ day of __________________, A.D. __________ at the municipality

of __________ Brighton and elsewhere in Ontario, including ________ in the said Region
dans ladite Région

Count 1


AND FURTHER

See attached Appendix "A"
Purchase of gametes

7. (1) No person shall purchase, offer to purchase or advertise for the purchase of sperm or ova from a donor or a person acting on behalf of a donor.

Payment for surrogacy

6. (1) No person shall pay consideration to a female person to be a surrogate mother, offer to pay such consideration or advertise that it will be paid.

Punishment for forgery

367. Every one who commits forgery
(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years; or
(b) is guilty of an offence punishable on summary conviction.
R.S., 1985, c. C-46, s. 367;1994, c. 44, s. 24;1997, c. 18, s. 24.
The Feb. 15 action against Picard marks the first time criminal charges have been laid using the Assisted Human Reproduction Act since its adoption in 2004. This first enforcement of the act, after nine years of inaction, is likely due to recent changes in the way the law is administered. Following a Supreme Court decision on the act in 2010, and changes made by the 2012 budget, the ineffectual arms-length agency developed to enforce the act is being shut down and authority transferred to Health Canada.

The charges against Picard suggest that, with the transfer of authority, the federal government is going to start enforcing the act — particularly its provisions around paying surrogate mothers and arranging payment.
AHRC had the following statutory powers:

24.(1)(a) exercise the powers in relation to licences under this Act;
(b) provide advice to the Minister on assisted human reproduction and other matters to which this Act applies;
(c) monitor and evaluate the developments within Canada and internationally in assisted human reproduction and other matters to which this Act applies;
(d) consult persons and organizations within Canada and internationally
(e) collect, analyse and manage health reporting information relating to controlled activities;
(f) provide information to the public and to the professions respecting assisted human reproduction and other matters to which this Act applies, Italics signify that the provisions did not come into force with the proclamation of the AHR Act (and, indeed, never came into force).
In Canada (as elsewhere) there is a growing demand for human eggs for reproductive purposes and currently deepens supply. This is not surprising, as egg production and retrieval is numerous. It requires considerable time, effort, and energy and carries with it significant psychological and psychological risks. In many terms, the cycle of egg production and retrieval involves an estimated total of 6-8 hours for interviews, counseling, and medical procedures (i.e., screening, hormonal stimulation, and egg retrieval). The screening carries risks of unexpected findings with severe consequences for insurability (which can be catastrophic). The daily hormone injections can be painful and uncomfortable, causing cramping, abdominal pain, nausea, vomiting, bloating, mood changes, and irritability. More serious potential harms include rapid weight gain and respiratory difficulty, damage to the organs that are close to the ovaries (e.g., bladder, bowel, uterus), decreased fertility, infertility, and life-threatening hemorrhage, thromboembolism, and ovarian, breast, or colon cancer.

Potential psychological harms include significant stress and its sequelae. It is one thing to incur these physical and psychological risks in pursuit of a personal reproductive project; it is quite another to do so for someone else's reproductive project. Indeed, given the time, inconvenience, and risks involved (of which we have listed but a few illustrative examples), few women are sufficiently motivated by altruism alone to provide eggs for others. Some women are willing to do so for financial benefit — but this is not a legal option in Canada, as payment for eggs is prohibited. Furthermore, reimbursement of expenses is restricted.

Other jurisdictions do not prohibit the sale of human eggs. They claim to prohibit the sale of human eggs but permit compensation well above the reimbursement of actual expenditures. Within this context of inconsistent regulatory frameworks, a global market for human eggs has emerged. Not surprisingly, Canadians have been targeted as potential providers and recipients. What is surprising, however — given the legal prohibition on payment for human eggs and the constraints on reimbursement — is the active participation of Canadians in the transnational human egg trade. More surprising still is the apparent failure of Canadian authorities to properly respond.

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Canada’s Fertility Industry Now Open for (Unregulated) Business
Posted by Emily Beitiks on April 19th, 2012

In a decision that has unsettled many, the Canadian government has decided to close down the agency charged with regulating the country’s fertility industry. The defunding of Assisted Human Reproduction Canada (AHRC) leaves the industry with virtually no official oversight.

The regulatory agency was established in 2006 to enforce the Assisted Human Reproduction Act (AHRA), which prohibited commercial trade in sperm, eggs, and surrogacy services, and addressed other issues including the effects of anonymous gamete donation on the resulting children and the health impacts of fertility treatments on women and their offspring.

But in 2010 the Supreme Court ruled 5-4 that portions of the law, which was passed after years of public discussion and legislative debate, were unconstitutional, on the grounds that it stepped on the toes of the provinces’ rights. The court’s ruling undermined the effectiveness of Assisted Human Reproduction Canada before it ever really got going. AHRC’s shortcomings make the decision earlier this month to shutter it unsurprising but nevertheless disconcerting. Canadian bioethicist Francoise Baylis told The National Post:

I think the whole debacle is shocking...There has been close to 30 years invested in terms of effort, energy and money [on the issue] and it’s all for naught.

As Baylis and others note, the concerns that brought about the Assisted Human Reproduction Act have not, after all, gone away. While the buying and selling of gametes and surrogacy services continued throughout the era of the AHRC, fertility clinics tried to avoid blatant abuses in order to stay under the radar. The agency’s shutdown next year could leave the Canadian fertility industry with less oversight and fewer guidelines than ever.
Assisted Human Reproduction

In the mid-1980s, Canadian feminist academics and women’s health organizations identified the need to regulate the field of reproductive and genetic technologies. In 1987, the Canadian Coalition for a Royal Commission on New Reproductive Technologies was established and in 1989, Canada’s Royal Commission on New Reproductive Technologies was announced. Four years later, in 1993, the Royal Commission published its final report, Proceed with Care. The final report spanned two volumes and contained 293 policy recommendations. Recommendation 193 urged the creation of an Independent National Reproductive Technologies Commission to license and monitor reproductive technologies.

In 2004, the Assisted Human Reproduction Act received Royal Assent bringing to an end 15 years of policy development. The legislation...