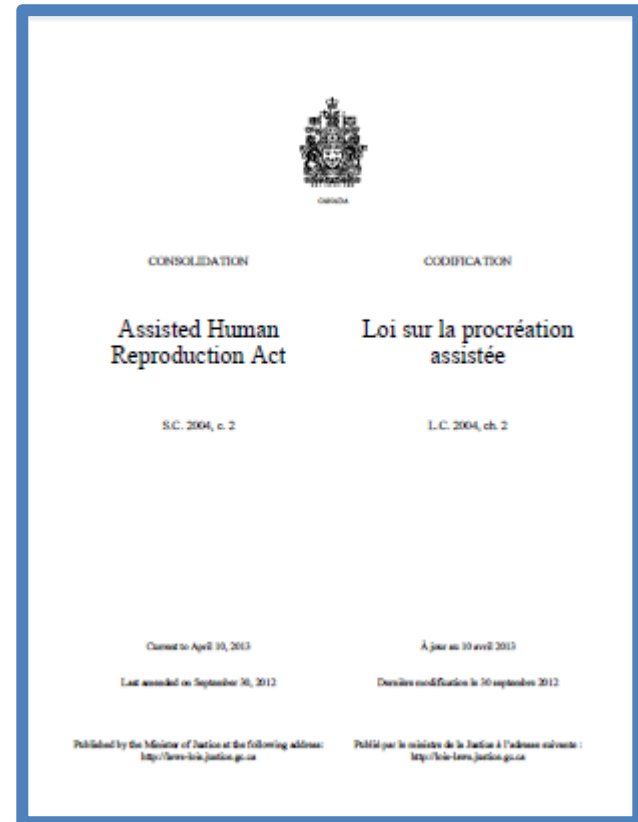


## Legal Schmegal: Who cares what the AHR law says?

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

# Prohibited (since 2004)

## **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**

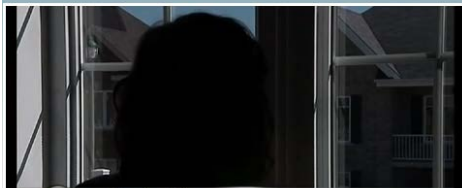
(3) No person shall pay consideration to another person to arrange for the services of a surrogate mother, offer to pay such consideration or advertise the payment of it.

## **Surrogate mother — minimum age**

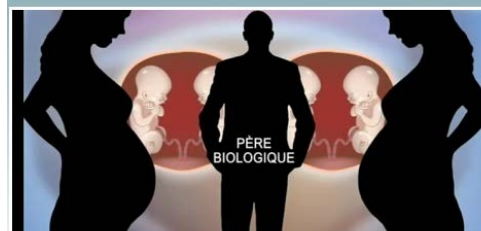
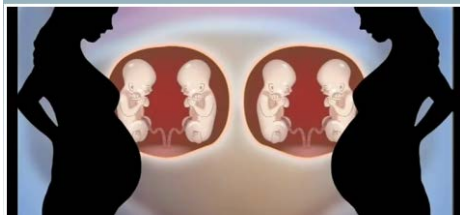
(4) No person shall counsel or induce a female person to become a surrogate mother, or perform any medical procedure to assist a female person to become a surrogate mother, knowing or having reason to believe that the female person is under 21 years of age.

## **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.



Marie-Pier



b) créer un embryon in vitro à des fins autres que la création d'un être humain ou que l'apprentissage ou l'amélioration des techniques de procréation assistée;  
c) dans l'intention de créer un être humain, créer un embryon à partir de tout ou partie d'une cellule prélevée sur un embryon ou un fœtus ou le transplanter dans un être humain;  
d) conserver un embryon en dehors du corps d'une personne de sexe féminin après le quatorzième jour de développement suivant la fécondation ou la création, compte non tenu de toute période au cours de laquelle son développement est suspendu;

**6. (1) Il est interdit de rétribuer une personne de sexe féminin pour qu'elle agisse à titre de mère porteuse, d'offrir de verser la rétribution ou de faire de la publicité pour le versement d'une telle rétribution.**

Intermédiaire

(2) Il est interdit d'accepter d'être rétribué pour obtenir les services d'une mère porteuse, d'offrir d'obtenir ces services moyennant rétribution ou de faire de la publicité pour offrir d'obtenir de tels services.

Rétribution d'un intermédiaire

(3) Il est interdit de rétribuer une personne pour qu'elle obtienne les services d'une mère porteuse, d'offrir de verser cette rétribution ou de faire de la publicité pour le versement d'une telle rétribution.

2002, c. 6, a. 30

**540.** La personne qui, après avoir formé un projet parental commun hors mariage ou union civile, ne déclare pas, au registre de l'état civil, son lien de filiation avec l'enfant qui en est issu engage sa responsabilité envers cet enfant et la mère de ce dernier.

1991, c. 64, a. 540; 2002, c. 6, a. 30.

**541.** Toute convention par laquelle une femme s'engage à procréer ou à porter un enfant pour le compte d'autrui est nulle de nullité absolue.

1991, c. 64, a. 541; 2002, c. 6, a. 30.

**542.** Les renseignements personnels relatifs à la procréation médicalement assistée d'un enfant sont confidentiels.

Toutefois, lorsqu'un préjudice grave risque d'être causé à la santé d'une personne ainsi procréée ou de ses descendants si cette personne est privée des renseignements qu'elle requiert, le tribunal peut permettre leur transmission, confidentiellement, aux autorités médicales concernées. L'un des descendants de cette personne peut également se voir octroyer un tel accès.

trésors pesait entre 7 et 8 livres, évidemment,

je n'ai si « je demanderais 35 000\$ » on en et de donner la vie mais j'ai aussi beaucoup de plus utiliser un enfant pour faire du "commerce"



Françoise Baylis professeur et titulaire  
Chaire de recherche du Canada en bioéthique



Louise Langevin  
avocate, spécialiste de la condition féminine

# 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



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John Lorinc  
*Biggest Dream on the Block*  
Cottage Life

Michael Friscolanti, Martin Patriquin,  
Cathy Gulli  
*Behind Those Eyes*  
Maclean's

dia category receive a \$1000 cash prize and will be  
ual conference of SOGC in June. There will also be  
entions per category. **Submissions are due by March**  
eria and applications forms are [here](#).

ble Mentions include National Magazine Award-winning  
**Egg Trade** by Alison Motluk (*The Walrus*) and **"Guérir**  
Valérie Borde (*L'actualité*).

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



**TOM BLACKWELL** | 13/02/15 | Last Updated: 13/02/18 5:38 PM ET  
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## ‘Business has boomed’: Canadian surrogacy agent facing 27 charges continues her controversial work



**TOM BLACKWELL** | 13/03/17 | Last Updated: 13/03/17 11:46 PM ET  
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# 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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(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.

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



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The fertility consultant facing an unprecedented criminal prosecution over her work arranging surrogacy services is accused of providing false profiles of egg donors and surrogates to potential clients, documents filed by the RCMP indicate. Darren Stone / Postmedia News files

Police File No. - N° de dossier de la police  
**2011-1305408**

CANADA  
PROVINCE OF  
PROVINCE DE

Ontario

Toronto

(Region or District - Région ou District)

Information of  
Dénonciation de

Corporal Steven C. HAN

of - de

Royal Canadian Mounted Police - Gendarmerie royale du Canada

(Occupation  
Profession)

Peace Officer - Agent de la paix

The informant says that he/she believes on reasonable grounds that  
Le dénonciateur déclare qu'il/elle a des motifs raisonnables de croire que

- (1) **Pleiades Picard (Birthdate: 1975-02-16) of 195 Ontario Street, Brighton, Ontario and Canadian Fertilty Consulting Ltd. (Ontario Corporation # 2280874) situated at unit 9, 8 Loyalist Drive, Brighton, Ontario.**

on or about the  
le ou vers le

day of  
jour de

, A.D.

at the  
à

Municipality

of  
de

Brighton and elsewhere in Ontario, including

in the said Region  
dans ladite Région

**Count 1**

**THAT Pleiades Picard and Canadian Fertilty Consulting Ltd., between April 1, 2011 and February 29, 2012, in the Municipality of Brighton and elsewhere in the Province of Ontario, did purchase ova from a donor, to wit: B.K., contrary to section 7(1) of the Assisted Human Reproduction Act, thereby committing an offence under section 60 of the said Act.**

**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.



## Strict enforcement of Assisted Human Reproduction Act is a backward step

For Canadians needing a surrogate mother there are few alternatives to paying someone.



By: Alana Cattapan and Audrey L'Espérance Published on Fri Mar 01 2013

The RCMP has announced that charges would be laid against Leila Picard, the owner of [Canadian Fertility Consultants](#). Picard is accused of violating the [Assisted Human Reproduction Act](#) for arranging surrogate mothers for would-be parents.

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. Her case points to the failings of the

- 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).

## Transnational Trade in Human Eggs: Law, Policy, and (In)Action in Canada

Jocelyn Downie and  
Françoise Baylis

In Canada (as elsewhere) there is a growing demand for human eggs for reproductive purposes<sup>1</sup> and currently demand exceeds supply. This is not surprising, as egg production and retrieval is onerous. It requires considerable time, effort, and energy and carries with it significant physical and psychological risks.<sup>2</sup> In very general terms, one cycle of egg production and retrieval involves an estimated total of 56 hours for interviews, counseling, and medical procedures<sup>3</sup> (i.e., screening, hormonal stimulation, and egg retrieval). The screening carries risks of unanticipated findings with severe consequences for insurability (which can be catastrophic).<sup>4</sup> 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.<sup>5</sup> Potential psychological harms include significant stress and its sequelae.<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup>

Other jurisdictions do not prohibit the sale of human eggs,<sup>9</sup> or they claim to prohibit the sale of human eggs but permit compensation well above the reimbursement of actual expenditures.<sup>10</sup> Within this context of inconsistent regulatory frameworks, a global market for human eggs has emerged.<sup>11</sup> 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.<sup>12</sup> More surprising still is the apparent failure of Canadian authorities to properly respond.<sup>13</sup>

*Jocelyn Downie, M.Litt., S.J.D., is a Professor in the Faculty of Law and Medicine at Dalhousie University. She is an elected fellow of the Royal Society of Canada and the Canadian Academy of Health Sciences. Françoise Baylis, Ph.D., is Professor and Canada Research Chair in Bioethics and Philosophy at Dalhousie University. She is an elected fellow of the Royal Society of Canada and the Canadian Academy of Health Sciences.*

## 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 Françoise 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.







# Impact Ethics

*Governance of assisted human reproduction in Canada is a morass of guidelines, regulations and laws*

ELA<sup>2</sup> > Assisted Human Reproduction

## 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



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