

July 30, 2013

Lynn Maitland  
Director, Assisted Human Reproduction  
Director General's Office  
Biologics and Genetic Therapies Directorate  
Health Products and Food Branch  
Health Canada  
2<sup>nd</sup> Floor, Health Protection Building Room 2170  
Ottawa, Ontario K1A 0K9

Dear Ms Maitland,

We are academic researchers interested in the legality of the cross-border egg trade and recently published a paper on the subject (see attached). We are writing to you now to ask you about Health Canada's position with respect to the legality under the *Assisted Human Reproduction Act* of the following advertisement and practice:

"Thank you for your interest in ordering donor sperm and/or donor eggs from NW Cryobank. In order to purchase sperm or eggs in Canada, all purchases must be made via our Canadian Distributor: CAN AM Cryo Services." (<https://www.nwcryobank.ca/can-am-cryo-services/>)

"Anonymous or Open-ID donor eggs [6] \$13500" "Free shipping with purchase"  
(<http://canamcryo.com/donor-sperm/services-and-fees/#donorSpecimen>)

"As an egg donor, you can earn \$4,000 per successful egg retrieval procedure. Egg donors can make up to \$16,000 once approved and dependent on current recipient demand. Once you have filled out the questionnaire and qualified to become a donor, the staff will walk you through the compensation process." (<https://www.nwcryobank.com/egg-donation/>)

Does this violate s.7 of the *Assisted Human Reproduction Act*? If so, why is it (and others like it) not being prosecuted? If not, why not?

In addition, we would like to ask you about Health Canada's position with respect to the legality under the *Assisted Human Reproduction Act* of the following forms of transnational trade in human eggs:

- Canadians going abroad to purchase human eggs
- Foreign nationals coming to Canada to sell human eggs
- Foreign nationals coming to Canada to purchase human eggs

- Canadians advertising in Canada the sale of human eggs in Canada and in the United States

Do any of these forms of transnational trade violate s.7 of the *Assisted Human Reproduction Act* (with respect to purchase/sale/advertising from/to/by the egg provider, a broker, and a bank)? If so, why are they not being prosecuted? If not, why not?

Please note that we are aware that the text of s.7 is “from a donor or a person acting on behalf of a donor” and one might be tempted to conclude that purchasing eggs from an egg bank/clinic is not purchasing directly from a donor and an egg bank/clinic is not “acting on behalf of a donor”. However, if that is the argument you would like to make, we would ask that you respond to the counterargument that, as noted by the Supreme Court of Canada in the *Reference re Assisted Human Reproduction Act*, s.7 was clearly designed to prevent the commercialization of human reproductive materials and, to meet that purpose, “on behalf of a donor” should be interpreted as including banks and clinics which purchase the eggs from the donor and sell them to others (i.e., very clearly acting as intermediaries).

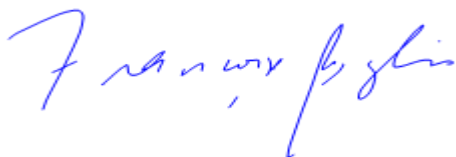
Please also note that we are aware that the *Assisted Human Reproduction Act* does not have a specific extraterritorial application clause (as in the *Criminal Code* re: child sex tourism and human trafficking). We are asking about all of these advertisements and practices as they fall within qualified territorial application (following the Supreme Court of Canada in *Libman v. The Queen*).

As we recognize that you may need to seek legal advice with respect to some of the issues raised in this letter, we would appreciate you giving us an estimate of the time needed to respond. Thank you for your assistance in clarifying Health Canada’s position on these important matters.

Sincerely,



Jocelyn Downie, FRSC, FCAHS  
Professor, Faculties of Law and Medicine  
Dalhousie University



Françoise Baylis, FRSC, FCAHS  
Canada Research Chair  
Professor, Faculty of Medicine  
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