

October 17, 2013

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

Dear Ms. Mainland,

Thank you for your letter of September 24, 2013 (13-114122-39) in response to our letter of July 30, 2013 on the legality of certain practices under the *Assisted Human Reproduction Act (AHR Act)*.

We are writing at this time for further clarification as your response has left us with a number of questions.

Payment

- 1) What is the justification for taking the narrow view (outlined in your letter) of the meaning of "on behalf of" especially in light of: (a) the Act's declaration that "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 (b) the Supreme Court of Canada's statement in the *Reference re Assisted Human Reproduction Act* that s. 7 was clearly designed to prevent the commercialization of human reproduction?
- 2) Does Health Canada maintain that a for-profit company that matches egg sellers with egg purchasers and through whom payments flow from purchaser to seller is acting "on behalf of the donor [i.e., seller]"? Consider for example, the business model of Our Fairy Godmother (<http://www.ourfairygodmother.com>) as contrasted with that of the World Egg Bank (<http://www.theworlddeggbank.com>).
- 3) In your response to our question re: quasi-territorial application of the law you simply state: "Health Canada interprets the prohibitions under the AHR Act as applying to activities that take place in Canada." This fails to address the potential for a finding of qualified territorial application (following the Supreme Court of Canada in *Libman v. The Queen*). Can you please explain why you have concluded that the Act only applies to activities that take place in Canada (thereby ignoring the concept of quasi- as opposed to extra-territoriality)?

Reimbursement

- 4) On what basis does Health Canada allow any reimbursement of “expenditures directly related to their donation”? Section 12 is not yet in force, therefore only s.7 applies and therefore no payments are possible (s. 12 creates an exception to s.7).

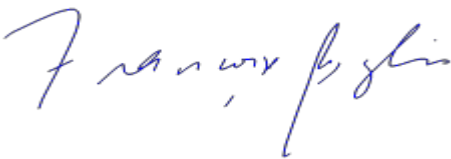
- 5) If Health Canada is acting as if s.12 is in force, then Health Canada must nevertheless conclude that no reimbursement is possible as no regulations are in force. The Act states that “No person shall, *except in accordance with the regulations*, (a) reimburse a donor for an expenditure incurred in the course of donating sperm or an ovum.” To repeat, there are no regulations for s.12, therefore it is not possible to reimburse a donor “in accordance with the regulations”. On what basis does Health Canada conclude that “donors may currently be reimbursed for their actual expenditures directly related to their donation”?

- 6) On what basis does Health Canada conclude that “reimbursement ..., *normally occurs* after receipts are required, and may not be paid in advance of anticipated expenses”? (emphasis added) Again, s. 12 is not yet in force. Further, if acting as if s.12 is in force, then Health Canada would have to conclude that a receipt is absolutely required and not accept the lesser standard of “normally occurs”.

Sincerely,



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