

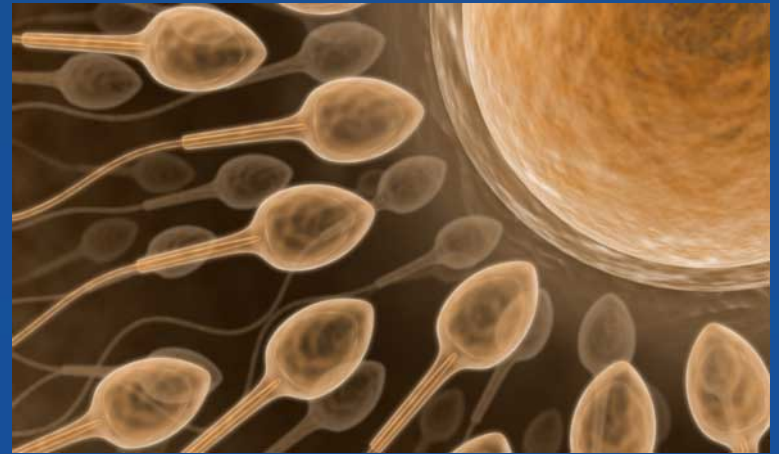
# ETHICAL OVERSIGHT OF AHR IN CANADA: STATE OF PLAY

FRANÇOISE BAYLIS, PHD, FRSC, FCAHS  
CANADA RESEARCH CHAIR IN BIOETHICS AND PHILOSOPHY

NOVEMBER 5, 2011

# Overview

- Problems with/for AHRC
- Current controversial ethical issues
- Future challenges for the provinces



# I. Problems with/for AHRC

- Problems setting up Agency and Board of Directors
- Work disparities: lots of work for Health Canada; little work for Agency; no work for Board
- Persistent failure to effectively address ethical challenges
- Constitutional challenge

# Setting up the Agency

- **March 29, 2004: AHR Act received Royal Assent**
- **January 12, 2006: AHRC established**
- **December 21, 2006: AHRC members named**
  - Public criticism of 4 members as "social conservatives"
- **March 25-27, 2007: First Board meeting**

## THE GLOBE AND MAIL

### Critics troubled by new fertility panel

*Social conservatives on oversight board for stem-cell research, reproduction*

CAROLYN ABRAHAM - Saturday, December 23, 2006

The federal government announced on the eve of the holiday weekend it has a new body that could have a major impact on the way babies are made in Canada and the future of stem-cell research in Canada.

The 10-member board will oversee Assisted Human Reproduction Canada, an agency with the power to influence both Parliament and medical practices in promising and controversial areas of health care and science -- fertility treatment and research on human embryonic stem cells.

Both areas have traditionally divided liberals from social conservatives, and the new board appointees spread among doctors and researchers yesterday, a sign of concern.

The board is to be headed by former Tory premier and family doctor Joe Clark. Dr. Elinor Wilson, a former CEO of the Canadian Public Health Association, will be president.

The board's eight members include those who have in the past spoken out against abortion, embryonic stem-cell research and the way in which stem-cell research is conducted.

The board does not, however, appear to include any stem-cell scientists or embryonic stem-cell researchers.

"They could steer this all in a very conservative way, and maybe that's what the federal government wants," said Michael Rudnicki, scientific director of Canada's Stem Cell Network. "We will have to see whether the function of this board will be politicized and whether there is an agenda."

"This committee could make life very difficult for stem-cell research in Canada."

### New reproductive technology board belies expert selection process

Published at [www.cma.ca](http://www.cma.ca) on Feb. 7, 2007.

The federal government reopened an expert selection process and then hand-picked members to the board of a new reproductive health agency — a move some scientists fear is intended to circumvent the legislation the agency will enforce.

On Dec. 21, Health Minister Tony Clement announced that Dr. John Hamm, a former Conservative premier of Nova Scotia, will chair the board of Assisted Human Reproduction Canada. Elinor Wilson, an RN and CEO of the Canadian Public Health Association, will be the Agency's new president. Eight board members were also appointed, including a lawyer, a geneticist, an oncologist and several ethicists and consultants. But against the advice of an expert selection panel, there are no obstetrician/gynecologists, patient representatives or stem cell researchers.

made did not reflect the broad conclusions and recommendations of the panel," says Drew Lyall, executive director of the Stem Cell Network and a member of the selection committee.

In fact, many of those appointed to the Board were not even on the list of candidates that the expert panel was invited to review in 2005, say Lyall and Dr. André Lalonde, executive vice-president of the Society of Obstetricians and Gynecologists of Canada (SOGC), who was also part of the selection committee.

Erik Waddell, a spokesperson for Clement, confirmed that when the new government came to power in January 2006 it re-opened the selection process for the agency's board.

"We weren't satisfied with the original short list," Waddell told CMAJ. "We just felt that it was best if we broadened the range of the current applicants so that we could have the best board we could put together."

But members of patient groups and the stem cell research community say broad representation is exactly what the board lacks. They are also concerned that 4 of the 8 board members have expressed socially conservative views that



Clement announced a board that includes only 2 of the 25 candidates recommended by an expert committee.

stated position in opposition of what they're supposed to be regulating."

The choices "raise the possibility of political interests at work," he added.

The executive director of the Infertility Awareness Association of Canada held a news conference on Parliament Hill to object to the lack of patient representation on the board. Beverly

# Division of powers

- At federal level -- responsibility for AHR is shared by Health Canada and AHRC.
- *Controlled activities*: “No person shall, except in accordance with the regulations and a licence...”
- **Health Canada** is responsible for developing policy and regulations under the *Assisted Human Reproduction Act*.
- **Assisted Human Reproduction Canada** is responsible for administering and enforcing the Act and its regulations.

# Health Canada

- 65. (1) The Governor in Council may make regulations for carrying into effect the purposes and provisions of this Act and, in particular, may make regulations
  - (a) defining “donor”, in relation to an *in vitro* embryo;
  - (b) for the purposes of section 8, respecting the giving of consent for the use of human reproductive material or an *in vitro* embryo or for the removal of human reproductive material;
  - (c) for the purposes of section 10 and 11 ...



# One regulation

- *Dec. 1, 2007: (Section 8) 'Consent to Use' regulations*
- "Health Canada has decided to delay the prepublication of draft regulations in *Canada Gazette*, Part I, until an opinion is provided by the Supreme Court of Canada on the constitutionality of parts of the *Assisted Human Reproduction Act*"

# S. 24 (1) The Agency may:

## AHR Act 2004

- (a) exercise the powers in relation to licences under this Act;
- (b) provide advice to the Minister on assisted human reproduction ...;
- (c) monitor and evaluate the developments within Canada and internationally in assisted human reproduction ...;
- (d) consult persons and organizations within Canada and internationally
- (e) Collect, analyse and manage health reporting information ...
- (f) Provide information to the public and to the professions ...
- (g) Designate inspectors and analysts for the enforcement ...
- (h) Do anything that is reasonably necessary or incidental to achieving the Agency's objectives

## Post Reference re: AHR Act

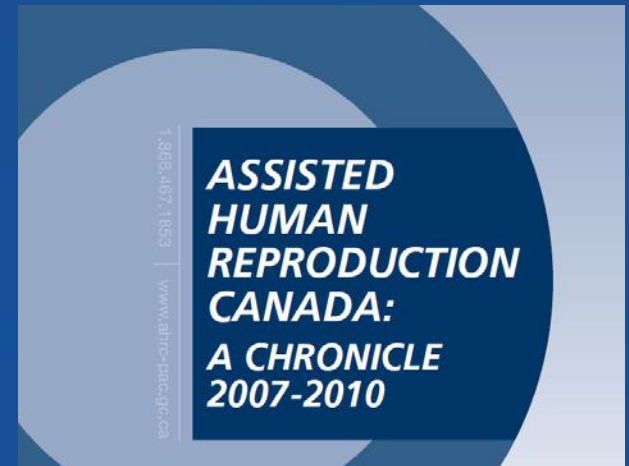
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# What has AHRC accomplished?

- Outreach to AHR patients
- Established sub-committees
  - Tri-partite Committee
  - Science Advisory Panel
  - Healthy Singleton Births Committee
  - AHR/ART Related Outcome Committee
- Educational products (brochures/website)
- Meetings
  - Workshop with CIHR and AHRC
  - International Forum on Cross-Border AHR
  - Multiple Births Roundtable
  - Oncofertility Symposium
- Consent to Use regulations -- implementation



# What has AHRC NOT accomplished?

- AHRC has not been able to effectively address threats to the health and safety of donors, patients, children born of AHR. Not been able to ensure:
  - standards are followed
  - prohibitions are enforced



# S. 30. The board of directors ...

## AHR Act 2004

30. ... is responsible for the overall management of the Agency, including

- (a) the provision of advice to the Minister on assisted human reproduction and other matters to which this Act applies, or on any matter referred to the Agency by the Minister;
- (b) the approval of the Agency's goals and operational policies;
- (c) the approval of the Agency's budget; and
- (d) the evaluation of the Agency's performance.

(a), (b), and (c) are non-delegable powers

## Post Reference re: AHR Act

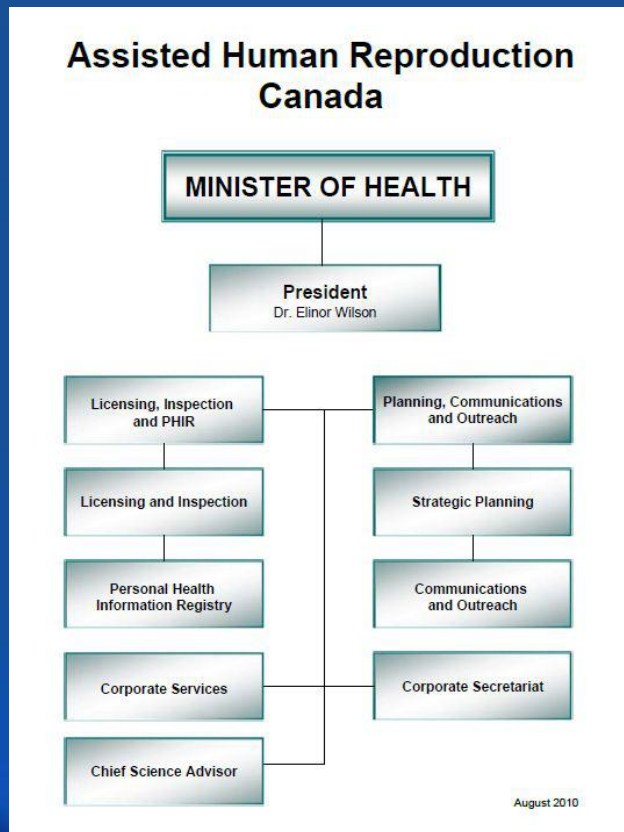
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  - (c) the approval of the Agency's budget; and
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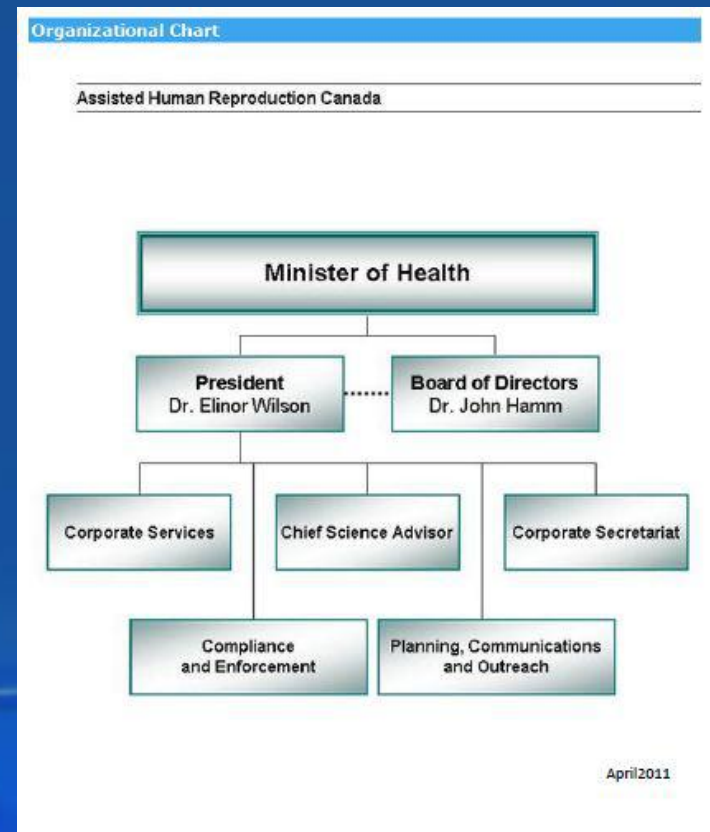
# What has Board accomplished?

# Problem of idle hands (minds)

Before public complaints



After public complaints



# AHRC Resignations

- March 18, 2010 Baylis (ethics)
- March 28, 2010 Slater (health policy)
- May 30, 2010 Ryll (patient)
- Cannot adequately fulfill the mandate
- Requested an interview with the PMO - denied (Summer 2010)
- Testified before the Standing Committee on Health (Oct 28, 2010)





## Board members flee federal agency

By CHRISTINA SPENCER, PARLIAMENTARY BUREAU Copyright © 2010 Ottawa Sun All Rights Reserved

Last Updated: June 2, 2010 6:09pm

OTTAWA - Three recent resignations from the board of a federal agency meant to police fertility clinics and research have sparked allegations of lack of transparency and calls for an investigation.

NDP health critic Megan Leslie will ask a parliamentary committee next week to examine the situation at Assisted Human Reproduction Canada, after the agency's board of directors lost its consumer representative, Irene Ryll; policy expert Barbara Slater; and ethicist Francoise Baylis.

In their resignation letters, Ryll and Slater said they were unable to get details on spending at the agency, which began operations in 2007 and has an annual budget of about \$10-million, has yet even to begin its primary role of regulating the fertility industry and reproduction-related scientific research.

## National Post Third board member quits fertility industry watchdog

Tom Blackwell, National Post  
Monday, May 31, 2010

Another board member has suddenly quit the troubled federal agency meant to police Canada's thriving fertility industry, prompting calls for a public investigation of the organization and its controversial record.

Irene Ryll, who runs an Edmonton support group for parents using reproductive technology, handed in her resignation over the weekend, becoming the third director in 2-1/2 months to leave Assisted Human Reproduction Canada (AHRC).

Outside experts say the unheralded departures add to dark clouds over the three-year-old agency, which has failed to even begin its key task of regulating the fertility business. AHRC has an annual budget of about \$10-million.

"It's obviously a mess," said Diane Allen, head of the Infertility Network, an advocacy organization. "Some sort of investigation or explanation ought to be forthcoming ... This is about the creation of human life, and the purpose of the [law] is to safeguard the health and safety of fertility patients and the children born to them, and the agency is charged with overseeing that."

Ms. Ryll could not be reached for comment. Her move comes after the resignations in March of Francoise Baylis, a Dalhousie University bio-ethics professor, and Barbara Slater, a former health policy director with the Ontario government.

"Really important expertise and perspectives are no longer at the table," said Jocelyn Downie, another bio-ethicist at Dalhousie. "It absolutely signals that there is some kind of a serious problem."

able getting details on spending at the agency, which began operations in 2007 and has an annual budget of about \$10-million, has yet even to begin its primary role of regulating the fertility industry and reproduction-related scientific research.

## National Post Fertility issue: letter spending at

The resignations have added to the trouble for a three-year-old agency that, with an annual budget of about \$10-million, has yet even to begin its primary role of regulating the fertility industry and reproduction-related scientific research.

Tom Blackwell, National Post · Wednesday, Jun. 2, 2010

A former Ontario bureaucrat says she quit the board of a controversial federal agency overseeing the fertility industry because of possible mishandling of tax dollars, and repeated stonewalling of directors who questioned the organization's actions.

Barbara Slater, one of three women who have resigned from Assisted Human Reproduction Canada since March, says in a letter of resignation she became worried last year about the agency's "prudence and diligence in managing public funds."

She hoped her initial concerns about spending would lead to improvements, but that did not happen, she wrote in her letter to board chairman John Hamm, a copy of which was obtained by the National Post.

"Since the time I raised questions about the budget, I have asked questions regarding other issues as well and I have noticed a change in attitude towards me and other board members who ask questions," the letter says. "This gravely concerns me, since it appears that board members who are trying to fulfil their responsibilities are seen as obstructionist."

The three resignations have added to the trouble for a three-year-old agency that, with an annual budget of about \$10-million, has yet even to begin its primary role of regulating the fertility industry and reproduction-related scientific research.

The agency says it cannot act without specific regulations from Health Canada. Ottawa says it has to wait for a Supreme Court of Canada ruling on Quebec's challenge of the

## National Post

## 'Red Flag' raised at fertility agency

Tom Blackwell, National Post · Tuesday, Apr. 20, 2010

Two respected board members of a controversial federal agency have unexpectedly quit, raising new questions about a three-year-old organization that has yet to fulfill its key role of policing Canada's growing fertility industry.

The two former directors refused to comment on why they had stepped down, with one citing a "sweeping" gag order they had to sign when they joined Assisted Human Reproduction Canada in 2007.

Outside observers, though, say they were among just a few board members without clear political leanings, or ties to fertility clinics and pharmaceutical companies.

The agency, with an annual budget of about \$12-million, has been criticized repeatedly for its lack of action on regulating the fertility business.

"This is a critically important agency," said Jocelyn Downie, an ethicist at Dalhousie University in Halifax. "Are we losing the independent, non-ideological voices? I don't know. But when you look at the profiles, that is a legitimate question to ask ... Why have these people left, and what does it leave us with as a board?"

Health Canada, speaking on behalf of the agency, said yesterday it was not able to comment yet on the resignations or the secrecy around them.

Françoise Baylis, Canada research chair in bioethics and philosophy at Dalhousie University, confirmed that she resigned on March 18, saying in an email exchange that "I was unable to meet what I believe to be the responsibilities of a board member."

She said she could not explain her reasons any further because of the confidentiality agreement she signed three years ago, adding that the only way she could openly discuss the agency would be as a witness before a parliamentary committee.

"I really do believe there is a story here, but I have to stay true to this confidentiality agreement," she said.

Barbara Slater, a former manager of health sciences policy with the Ontario Health Ministry, also resigned recently, and also refused to comment on why.

## Fertile ground for waste and futility

By MINDELLE JACOBS Copyright © 2010 Edmonton Sun All Rights Reserved

Last Updated: June 4, 2010 12:00am

Most government departments and agencies strive to spend as much money as possible so they don't lose funding the next year.

In stark contrast, the body that regulates the use of donated sperm, eggs and embryos actually put money back in the federal piggy bank.

Yes, folks, Assisted Human Reproduction Canada (AHRC) only spent \$5.2 million of its \$12.4 million budget in 2008-09. It gave the leftover money back to the government.

How to agency, doesn't "The ones with real knowledge and expertise are no longer there.." the activities,

It's supposed to enforce the regulations of the Assisted Human Reproduction Act, passed in 2004, but there are virtually no regulations in place after all these years.

As University of Calgary bioethicist Dr. Ian Mitchell quips: "It's a void. Nothing is happening."

And not much is going to happen until the Supreme Court constitutional challenge.

## Head of reproductive agency defends travel

By CHRISTINA SPENCER, PARLIAMENTARY BUREAU  
Copyright © 2010 Toronto Sun All Rights Reserved  
Last Updated: June 15, 2010 3:47pm

OTTAWA -- The president of the embattled federal agency that is meant to police Canada's fertility industry defended her frequent travel to Vancouver Tuesday after a report suggested she had been mixing business with pleasure.

"It's a free-for-all at fertility clinics in Canada."

Procréation assistée Canada, created just three years ago, is in the midst of moving employees from Ottawa to Vancouver, where its head is supposed to be located. "We are in a period of transition," Wilson said. A Quebec newspaper reported Tuesday that Wilson had travelled to Vancouver at least five times since 2007. Le Devoir said the trips sometimes coincided with traditional Canadian holidays and that

## National Post

### Disband Canada's fertility-industry watchdog

Leona Aglukkaq, the minister, said the regulatory process has been frozen because of a court challenge of the assisted-reproduction legislation by the Quebec government Reuters/Blair Gable

Tom Blackwell: Tuesday, Jun. 15, 2010

The federal health minister and her officials came under intense pressure from opposition critics over a controversial fertility-industry watchdog on Tuesday, with one MP suggesting Assisted Human Reproduction Canada actually be disbanded because it is doing so little with its budget of \$5-10-million a year.

Carolyn Bennett, the Liberal health critic, noted that the government has yet to pass regulations for the organization to carry out its key roles of licensing and inspecting fertility clinics and reproduction-related research.

That raises questions about the agency's effectiveness. "How can you have an agency to enforce regulations that don't exist," she said. "How can you have an agency to exist," Ms. Bennett asked.

"We don't seem to be looking after the people this legislation is supposed to support." Leona Aglukkaq, the minister, said the regulatory process has been frozen because of a court challenge of the assisted-reproduction legislation by the Quebec government. The Supreme Court of Canada has been considering the case for over a year.

Ms. Bennett, though, noted that the legal challenge does not deal with some important aspects of the law the agency is supposed to

enforce — such as the sale of sperm, eggs and embryos. MPs also suggested that the 2009-10 budget being carried out now should be

## LE DEVOIR.com

Libre de penser

### Procréation assistée Canada - L'agence fédérale se torpille elle-même

L'organisme de surveillance des cliniques de fertilité finance une étude pour démontrer que la loi fédérale est inapplicable

Hélène Buzetti 18 juin 2010 Canada

Ottawa — La déconfiture de Procréation assistée Canada s'explique peut-être enfin. L'agence censé faire appliquer la loi fédérale aux cliniques de fertilité a financé cet hiver une étude dont l'objectif est de démontrer que la loi... est inapplicable. Ce contrat a précipité le départ d'au moins un membre du conseil d'administration de l'agence.

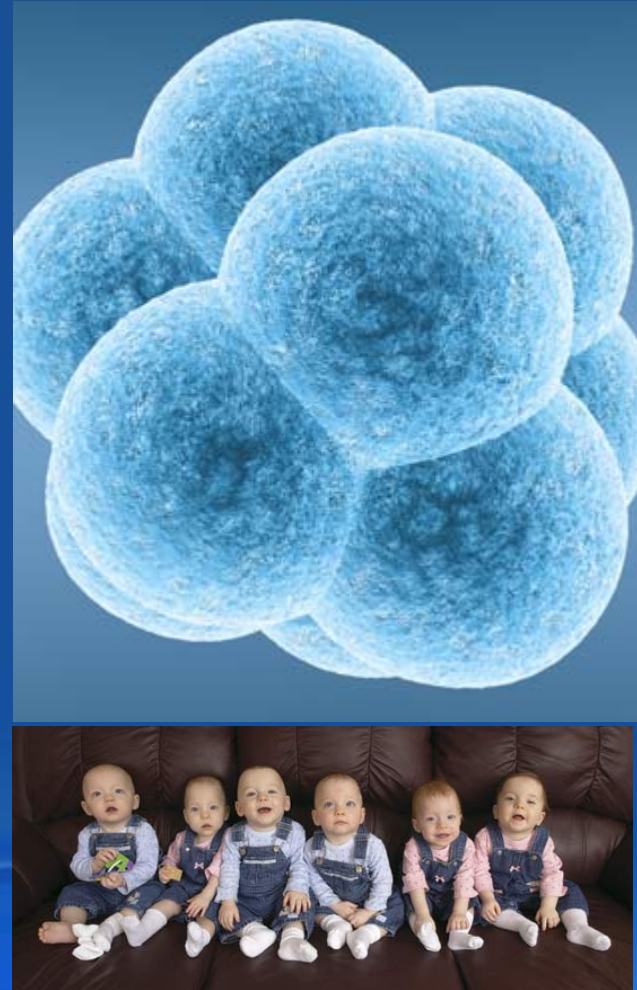


# Board of up to 13 members

- *President:* Dr. Elinor Wilson (CEO, PHAC)
- *Chairperson:* Dr. John Hamm (Past Premier NS)
- *Vice Chairperson:* Dr. Albert Chudley (Medical geneticist)
- *Directors*
  - Dr. Joseph Ayoub (Hemato-oncologist)
  - Theresa Kennedy (President of TEK Inc.)
  - Dr. David Novak (Jewish studies)
  - Dr. Suzanne Rozell Scorsone (works for Archdiocese of Toronto)

## II. Controversial ethical issues

- Effective regulation of AHR practices and management of health information
- Anonymity of gamete donors
- Reproductive travel
- Black market in eggs





## Sperm donor mix-up: Where do these two girls come from?

Amber Kanwar - Saturday, Sep. 25, 2010

He was known only as donor number 3168, a laboratory identity with flesh-and-blood consequences.

Three years ago, Trudy Moore found that her daughter, Samantha, conceived using her husband's sperm and her sister as a surrogate, was not a genetic match to her husband. Frantic for answers, she confronted her doctor, who suggested in e-mails to Ms. Moore that he may have contaminated her husband's sample — possibly with 3168.

Determined to find out, Ms. Moore consulted an online registry which connects donor-conceived children with others conceived using the same donor. There she found Jacqueline Slinn, a patient of the same doctor and a single mother whose daughter Bridget was supposed to have been conceived using donor 3168. Ms. Moore asked to test Samantha against Bridget to see whether their DNA matched.

The results stunned both of them: The two girls are not related — nor is either a match to 3168.

And the only federal regulatory body with the power to investigate what happened is paralyzed by a court challenge, leaving the thousands of Canadians who use assisted reproductive technologies each year without an effective watchdog.



## Fertility lawsuits name Ottawa doctor Two families want to rule out possibility Barwin was sperm donor

BY ANDREW DUFFY, THE OTTAWA CITIZEN SEPTEMBER 14, 2010

Two local families have asked the Superior Court of Justice to order DNA testing of a celebrated Ottawa fertility specialist to determine whether his sperm was used to create their children.

Dr. Norman Barwin and the clinic he founded, the Broadview Fertility Clinic, have been named in two unusual lawsuits.

The suits contend that Barwin inseminated two women with the wrong sperm samples.

In both cases, the families ask the court to order Barwin to be tested "to conclusively rule out the possibility that he is the donor whose sperm was used."

The lawsuits seek a total of \$3 million in damages. None of their allegations have been proven in court.

Through his lawyer and in court documents, Barwin, has denied all allegations of wrongdoing, including using his own sperm to inseminate the women.

He has asked the court to dismiss the cases.

Barwin's lawyer, Karen Hamway, said the physician cannot comment further because of patient confidentiality. "They (patients) can waive confidentiality for themselves, but the doctor is not permitted to waive it at any time," Hamway said Monday.





# NEWS

## Limit pregnancies by same sperm donor: fertility experts



Ryan Kramer, a child of a sperm donor, poses at his home in Pasadena, Calif., in May. As the number of children born through artificial insemination increases, concern is growing about having many children fathered by the same donors.

## 150 children, one sperm donor

New realities of conception raise ethical, medical issues

By JACQUELINE MROZ  
The New York Times

Cynthia Daily and her partner used a sperm donor to conceive a baby seven years ago, and they hoped that one day their son would get to know some of his half-siblings — an extended family of sorts for modern times.

So Daily searched a web-based registry for other children fathered by the same donor and helped to create an online group to track them. Over the years, she watched the number of children in her son's group grow.

And grow.

Today there are 150 children, all conceived with sperm from one donor, in this group of half-siblings, and more are on the way. "It's wild when we see them all together — they all look alike," said Daily, 46, a social worker in the Washington area who sometimes vacations with other families in her son's group.

As more women choose to have babies on their own, and the number of children born through artificial insemination increases, large groups of donor siblings are starting to appear. While Daily's group is among the largest, many others consist of 50 or more half-siblings in chat groups, where sperm donors are tagged with unique

*"It's wild when we see them all together — they all look alike"*

**CYNTHIA DAILY**  
Mother of a child conceived through sperm donation

identifying numbers.

Some experts are growing concerned about parents, donors and medical experts about potential negative consequences of having so many children fathered by the same donors, including the possibility that grows for rare diseases could be spread more widely through the population.

Some experts are even calling attention to the increased odds of accidental incest between half-siblings and their mothers, who often live close to one another.

"My daughter knows her donor's number for this very reason," said the mother of a teenager conceived via sperm donation. "She's had crushes on donors. She's had crushes on boys who are donor children. It's become part of sex education for her."

with sperm from popular donors, and that families should be given more information on the health of donors and the children conceived using their sperm. They are also calling for legal limits on the number of children conceived using the same donor's sperm and a re-examination of the anonymity that cloaks many donors.

No one knows how many children are born in the U.S. each year using sperm donors. Some estimates put the number at 30,000 to 40,000, perhaps more. Mothers of donor children are asked to report a child's birth to the sperm bank voluntarily, to the sperm bank's database.

But just 20 to 40 per cent of them do so, said Wendy Kramer, founder of the Donor Sibling Registry, because of the dearth of records, many families turn to the registry's website, [donorsiblingregistry.com](http://donorsiblingregistry.com), for information about a child's half-siblings or half-sisters.

Kramer, who had her son, Ryan, through a sperm donor, started the registry in 2000 to help connect so-called donor families. On the website, parents can register the birth of a child and find half-siblings by looking up a number assigned to a sperm donor. Many parents, she said, are shocked to learn just how many half-siblings a child has.

They think their daughters may have a few siblings," Kramer said, "but then they go on our site and find out their daughter actually has 18 brothers and sisters. They're floored out. I'm amazed that these groups keep growing and growing."

Kramer said that some sperm banks in the United States have tested donor families' worthily and that it is time to consider new legislation.

Sperm donors, too, are being scrutinized. "When I ask specifically how many children might result, I was told, 'I don't know for sure but that five would be a safe estimate,'" Kramer said in Texas, where his same-sex partner is a lawyer. "I was told that it would be very rare for a donor to have more than one child."

He later discovered in a registry that some donors have dozens of children.

"It was all about what could get away with," he said, the sperm bank to which he donated. "It is unfair to the donors and donor children."

With one Toronto man estimating he has up to 1,000 half-siblings, some fertility-treatment experts are calling on Canada to legally restrict how many children can be born from a single donor's semen.

The growing families of donor offspring could cause unusual spread of genetic malformations, raise the risk of inadvertent incest between biological brothers and sisters and prove emotionally taxing to the children, critics say.

Although medical groups and others already recommend restrictions in the number of pregnancies per donor, legislation is needed to ensure sperm banks and their suppliers follow the proper limits, said Juliet Guichon, a bio-ethics professor at the University of Calgary.

It [self regulation] is not working," said Prof. Guichon. "There's no incentive. It's the market economy: why would you limit business?"

Various reports on the infertility industry, including the 1993 federal Royal commission on new reproductive technology and an earlier B.C. commission, have actually been recommending limits of as few as six pregnancies per donor for the last 30 years, she said.

Britain, some Australian states, New Zealand, the Netherlands and a handful of other European countries already have laws that restrict the number of children per donor, Prof. Guichon noted.



A medical worker opens a liquid nitrogen tank that contains a stock of frozen human semen straws used in artificial insemination.

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Tom Blackwell Sep 5, 2011 - 6:25 AM ET | Last Updated: Sep 7, 2011 8:15 PM ET



## Court case seeks to strip sperm donors' anonymity

By WENDY STUECK

October 25, 2010

**B.C. woman conceived by artificial insemination wants same rights as adopted children**

Two years after launching a court action with the hope of learning the identity of her biological father, Olivia Pratten v trial that could have major implications for people conceived through artificial insemination - and donors involved in t

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## Nanaimo-born woman's search for sperm-donor dad goes to court



BY KEITH FRASER AND ANDY IVENS, THE PROVINCE OCTOBER 25, 2010

Born through artificial insemination, Olivia Pratten is fighting to have the Adoption Act declared unconstitutional so that children conceived by sperm donors can find out who their father is.

Photograph by: Ian Smith, PNG

Olivia Pratten's battle to learn the identity of her biological father — an anonymous sperm donor — went to court Monday with her lawyer arguing she should not be treated as a second-class citizen.

The 28-year-old journalist from Toronto has campaigned for 10 years for the same rights that adopted children have.

Pratten, who was born in Nanaimo in March of 1982, said she has a father and mother and is not looking for another father.

"I want the choice of knowing if I can meet him," she told reporters outside court.

"When you're conceived in anonymity, the choice of whether or not you want to know this person is taken away from you."

Pratten is challenging the laws that prevent her from finding out the identity of the man who donated sperm for her conception.

Lawyer Joe Arvay, a constitutional expert, said the current laws deny a person's constitutional guarantees to security of the person and to equal treatment under the law.

"[Pratten] doesn't want to interfere in [her biological father's] life," Arvay told B.C. Supreme Court Justice Elaine Adair.

## A child's right to know?

**Egg, sperm donors shouldn't be secret, court hears**

By TAMSYN BURGEMANN

October 26, 2010 The Canadian Press

VANCOUVER — Olivia Pratten doesn't know who the man is who donated his sperm to make her conception possible, and she isn't sure she wants to meet him.

But she wants a court to give her and other children of donors across Canada the option of knowing their biological fathers if that's what choose.

"We never signed a contract, we never agreed to this and we grow up and we go, 'Wait a minute, this isn't what I wanted,'" Pratten said Monday outside British Columbia Supreme Court. The 28-year-old, a Vancouverborn, Toronto journalist with The Canadian Press, has launched a constitutional challenge because records of sperm and egg donors aren't currently made available to children born through artificial insemination and are frequently even destroyed.

Pratten's lawyer, constitutional expert Joseph Arvay, is poised to argue that B.C.'s Adoption Act should be tossed out for new legislation obligating doctors to maintain records and give them to the children. The move would effectively eliminate the don't.



## Canadian court allows woman to seek information on sperm-donor father

25 October 2010 By Antony Blackburn-Starza

A Canadian woman conceived through donor insemination has been allowed to bring legal action against the province of British Columbia to obtain information about her biological heritage, which may include the identity of the sperm donor involved in her conception.

Olivia Pratten argues British Columbia has failed to protect her right to know the identity she is entitled to information regarding her conception, which is important to her psychological well-being. Pratten argues that British Columbia failed to legislate to ensure donor records are preserved and says the province has violated a person's right to know their biological heritage between donor conception and adoption.

Even if records regarding her own conception no longer exist, the court felt satisfied a constitutional challenge was warranted. The court found the province's failure to create a legal framework surrounding the rights of donor-conceived individuals. In permitting the case to proceed, Justice Gropper sitting in the Supreme Court of British Columbia said the plaintiff and others are directly affected'. She added: 'She has satisfied me that the province has failed to enact protective legislation in respect of donor-conceived individuals that affects Ms Pratten directly or she has a genuine interest in protecting'.



# 60-year-old woman in Canada gives birth to twins

THE ASSOCIATED PRESS

Friday, February 6th 2009, 12:44 PM

**CALGARY, Alberta** — A 60-year-old woman in western Canada gave birth to twin boys after undergoing fertility treatments, Canadian national media reported Thursday.

**Ranjit Hayer** became a mother for the first time on Tuesday at Calgary's **Foothills Hospital**, according to the **Canadian Broadcasting Corp.** The **Canadian Press** news agency said the Calgary Health Region confirmed a 60-year-old woman had given birth.

Hayer told the CBC from her hospital bed that she had tried for decades to conceive naturally and with medical intervention and eventually went to **India** for fertility treatments.

The broadcaster said she became pregnant because of medical problems.

Giving birth at that age is rare but not unheard of.

Hayer gave birth less than two years after **Frieda** twins boys after undergoing in-vitro fertilization.

## Editorial: A mother of a certain age

Posted: February 06, 2009, 8:00 PM by NP Editor  
Editorial



Two extraordinary mothers — one in Canada, one in the United States — have seized headlines in recent days. In the act of conception and delivery, both women pushed the boundaries of accepted bioethical behaviour. And both, equally, demonstrate the fundamental inability of a liberal, humane and open society to police those boundaries.

The delivery of live test-tube octuplets from **Nadya Suleman**, a 33-year-old California woman with a history of mental illness, six pre-existing kids and no husband or real means of support, has some American authorities calling for tighter controls on U.S. fertility clinics. Mere days later, a 60-year-old Calgary woman has given birth to a set of twins, becoming the oldest Canadian mother on record.

Sexagenarian **Ranjit Hayer** was turned aside from fertility clinics in Canada, where the whole business is tightly policed. But one cheap airplane ticket to India was all **Ms. Hayer** needed to circumvent those regulations and come home in time for a difficult birth that involved an emergency Caesarean section, a blood transfusion and temporary respiratory assistance for one of the babies — as well as a hysterectomy that cynics might suspect to have been partly prophylactic.

We can spend all the time we like volleying the principles of bioethics back and forth, but when it comes to mothers such as **Ms. Suleman** or **Ms. Hayer**, we're whistling in the wind. What Canadian physicians will not do, or will not be allowed to do, Indian ones will; and unless obstetric sonography is added to Canada's customs and immigration procedures, we fail to see how women fertilized abroad can be blocked from coming home to receive the benefits of



**DALHOUSIE**  
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*Inspiring Minds*



# THE HUMAN EGG TRADE

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

In the spring of 2006, Heather Cox got an unexpected phone call from a Toronto fertility clinic. Three years earlier, she had donated eggs anonymously to a gay couple through the clinic. Now the same couple wanted a full sibling for their child. Would she consider providing eggs again?

She hesitated. Her first experience had been extremely unpleasant. A few days after the eggs were retrieved, her abdomen had filled with fluid. "I looked nine months pregnant," she says. After fainting in the shower, she called the clinic, and they advised her to come back in to have the fluid drained. She did, but it took a full week before she felt better.

The clinic, CRaTE Fertility Centre, called her during her recovery. They wanted to know if she had a telephone number for her cousin, who had also been a donor, and whom they wanted to ask to donate again. Cox couldn't help them. "Well, would *you* be interested in donating again?" she recalls them asking. She said no.



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# The Human Egg Trade

- The law has “simply forced the activity underground, with unintended and undesirable consequences”
- “In the years since the act was passed ... Canada has found itself in the uncomfortable position of banning the purchase of gametes in principle but not in practice.”
- Heather Cox was paid \$7,000 “called a reimbursement for concrete expenses — even though, according to her, she negotiated the fee up front and was never asked to provide receipts.”

# The Human Egg Trade

- **ReproMed**, a Toronto clinic, put Ania and her husband in touch with an agency called **Our Fairy Godmother**, in Naples, Florida run by past clinical director of ReproMed.
- Our Fairy Godmother has coordinated about 135 donations in Canada. About a third of those donors were Canadian women.
- **CReATe**, told Ania and her husband that it “would work with whomever she wanted, but that it had a long-standing working relationship with the **International Assisted Reproduction Center**, an agency in Maple Grove, Minnesota”
- IARC has arranged roughly 225 Canadian-based donations over the past three years.



## *How Canada's fertility laws are failing donors, doctors, and parents*

**ILLUSTRATION BY EMILY L. EIBEL**

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Alison Motiuk  
The Human Egg Trade  
The Walrus

34<sup>th</sup> annual National Magazine Awards  
34<sup>e</sup> édition des Prix du magazine canadien

**Winners  
Lauréats**



# III. Constitutional challenge

- Whether the “pith and substance” (i.e., purpose and effects) of the contested sections of the legislation were:
  - (i) to protect morality, safety and public health (which is a federal responsibility)
  - (ii) to regulate and promote the benefits of medical practice and research related to assisted human reproduction (which is a provincial responsibility )



# Unconstitutional sections

- (s. 10) the use of reproductive material, the use of *in vitro* embryos, and the keeping or handling of gametes and embryos
- (s.11) the creation of transgenics
- (s.13) use of premises in which controlled activities may be undertaken
- (ss.14-18) the collection and management of health reporting information
- (ss. 40(2-5)) issuance of a license for embryo research, clinical trials, AHR facilities
- (ss. 44 (2-3)) enter and assume management of premises; cost recovery for inspections

# Work for the provinces...

- Threats to health and safety of children born of AHR in the absence of:
  - (s.10) harms with multiple embryo transfer
  - (s.10) harms of unregulated human embryo research
  - (s. 10) harms of egg/embryo freezing
  - (ss.14-18) harms with failure to collect info about identity, personal characteristics, genetic information and medical history of gamete donors, persons using AHR, persons conceived by AHR
- Baylis, F. (2011) Supreme Court of Canada decision on the Assisted Human Reproduction Act creates urgent need for action [Guest Editorial]. *Journal of Obstetrics and Gynaecology Canada* 33(4), 317-319.







## NEWS

## Sperm donor mix-up: Limit pregnancies by same sperm donor do these two girls compare fertility experts

Amber Kanwar - Saturday, Sep. 25, 2010

He was known only as donor number 3168, a identity with flesh-and-blood consequences.

Three years ago, Trudy Moore found that her Samantha, conceived using her husband's sperm as a surrogate, was not a genetic match to her for answers, she confronted her doctor, who e-mails to Ms. Moore that he may have contaminated her husband's sample — possibly with 3168.

Determined to find out, Ms. Moore consulted a registry which connects donor-conceived children conceived using the same donor. There she found Samantha Slinn, a patient of the same doctor and a single daughter Bridget was supposed to have been born to donor 3168. Ms. Moore asked to test Samantha and Bridget to see whether their DNA matched.

The results stunned both of them: The two girls — nor is either a match to 3168.

And the only federal regulatory body with the authority to investigate what happened is paralyzed by a lack of funding, leaving the thousands of Canadians who use reproductive technologies each year without a watchdog.



A medical worker opens a liquid nitrogen tank that contains a stock of frozen human sperm straws used in artificial insemination.

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Tom Blackwell | Sep 5, 2011 - 6:25 AM ET | Last Updated: Sep 7, 2011 9:15 PM ET

With one Toronto man estimating he has up to 1,000 half-siblings, so treatment experts are calling on Canada to legally restrict how many children born from a single donor's semen.

The growing families of donor offspring could cause unusual spread of genetic malformations, raise the risk of inadvertent incest between biological siblings and prove emotionally taxing to the children, critics say.

Although medical groups and others already recommend restricting the number of pregnancies per donor, legislation is needed to ensure sperm banks

## THE VANCOUVER SUN

## Mother, daughter strive to discover father's identity Woman launches legal action to find out who donated the sperm she was conceived with; doctor says the records no longer exist

BY NEAL HALL, VANCOUVER SUN SEPTEMBER 11, 2009

### Editorial: A mother of a certain age

Posted: February 06, 2009, 8:00 PM by NP Editor  
Editorial

The mother of a young biological father — the provincial and of kids.

"Legal action was a very, very long and reproductive technology Wednesday.

The mother said she Senate committees should rights as offspring who

But she said the federal government should preserve the medical records which includes anonymous

"The process has been incredibly frustrating"



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



## Setting a limit

### Cap must be established on use of sperm donors

CALGARY HERALD SEPTEMBER 10, 2011

With attention being drawn in the U.S. to the problems of accidental incest and dispersion of genes for rare diseases throughout the population, due to the proliferation of children produced from individual sperm donors, it is time for Canada to be proactive.

The New York Times recently revealed that one sperm donor has fathered 150 children, who are being tracked on a website via the donor's identifying number. Proof of the results of over-use of one individual's sperm comes from Toronto filmmaker Barry Stevens.

Conceived in 1952 in the U.K. via anonymous sperm donation, Stevens says his "father" donated sperm over a 30-year period, with the result that Stevens may have up to 1,000 half-siblings in the U.K., Canada and elsewhere - giving a worrisome new meaning to the word. Recent estimates are that about 95 per cent of sperm donations used in Canada for artificial insemination come from American donors.

Besides the grave concerns about possible unions between un

## Couple urged surrogate to abort fetus due to defect

### B.C. case reveals parental contracts in legal limbo

BY TOM BLACKWELL, NATIONAL POST OCTOBER 6, 2010 8:55 AM




...that the fetus their surrogate mother was carrying was likely to be wanted an abortion. The surrogate, however, was determined to making a disagreement that has raised thorny questions about the rights of surrogate mothers.

## Surrogate mother's troubles

News Posted: Sep 14, 2011 10:40 AM AT | Last Updated: Sep 14, 2011 11:43 AM AT

A FILM by THE CENTER FOR BIOETHICS AND CULTURE



The infertility industry has a dirty little secret...

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