

Fertility law leaves us in limbo, doctors say [Canada]

Oversight of burgeoning industry a 'farce'

by Tom Blackwell, [National Post](#)
April 30th, 2010

Fertility doctors say they are becoming increasingly frustrated with the lack of guidance from Canada's \$10-million-a-year assisted-reproduction agency, with one physician calling its oversight of the controversial field a "farce."

Some clinics try to abide strictly by a 2004 law banning the trade in sperm, eggs and surrogate-mother services, but the three-year-old agency meant to oversee the area offers no advice on where to draw the line, and ignores those who flout the rules, doctors charge.

As a result, practices vary from facility to facility, and desperate, childless couples sometimes feel driven to buy eggs or sperm over the Internet, taking "horrible" risks, physicians say.

Their comments come as the unexpected resignation of two board members of Assisted Human Reproduction Canada (AHRC) recently cast a further shadow over the organization.

"The situation is a bit of a farce, really," said Dr. Ellen Greenblatt, who heads the fertility clinic at Toronto's Mount Sinai Hospital. "It's frustrating. It really leaves things in a state of limbo."

It is not just a matter of AHRC failing to police the industry, said Dr. Tom Hannam, another Toronto fertility specialist. The agency is so reluctant to even spell out exactly what is permitted under the assisted-reproduction legislation, its lead lawyer refused to give Dr. Hannam his last name or any contact information when they met at a conference.

"As a practitioner, it's been a surreal time," he said. "Each clinic is drawing their own lines at a slightly different place."

Sharron-Lee Kurtenbach, a spokeswoman for AHRC, defended the agency's role, saying it has an active "enforcement and compliance" program in place for alleged breaches of the rules against buying and selling eggs, sperm, embryos or surrogate services.

It will contact the people involved to try to "promote compliance" and, if that does not work, refer a case to the RCMP for possible prosecution, Ms. Kurtenbach said.

As for offering advice, it actually has a toll-free number for clinics to call to ask questions about the law, she said.

Whether payment for an egg or sperm donation is illegal depends on various factors, including "where the purchase takes place, the type of payment involved...and the involvement and knowledge of the clinic in relation to the purchase," Ms. Kurtenbach said.

Yet doctors, as well as critics outside the industry, say they see little evidence of enforcement, and receive almost no guidance. Some say the agency itself is not necessarily to blame, suggesting the Harper government has essentially refused to address the issue, likely viewing it as a potential political minefield.

"I know all the people at AHRC and everybody I know there is very professional and very dedicated," said Dr. Roger Pierson of the University of Saskatchewan, a spokesman for the Canadian Fertility and Andrology Society.

"[But] we don't have government leadership, and that places AHRC in a difficult situation."

First recommended by a Royal Commission 17 years ago, the agency opened in 2007, with one of its chief mandates being to licence, inspect and police the burgeoning fertility-treatment industry, as well as related scientific research.

Little of that has happened. It cites the lack of specific regulations from Health Canada, which in turn says the regulatory process has been held up by a Quebec court challenge of the legislation.

Meanwhile, a parliamentary review of the assisted-reproduction legislation, mandated by the act itself, is more than a year overdue. Carolyn Bennett, the Liberal health critic, said this week she will push for one. "This is just so sad," she said of the lack of regulatory activity.



For those actually working in the fertility industry, anxiety centres around the ban on the sale of gametes, a crucial issue for couples who need them but have no relative or friend able to act as a donor. What the ban precisely means, though, is a matter of debate. Most sperm donations in Ontario, for instance, are imported through a Toronto agency from a U.S. company that pays Americans to donate, noted Dr. Hannam.

Some clinics also believe it is legal to allow patients to find a paid egg donor in the States through a U.S. agency, then bring her to the facility in Canada. Others go further and actually facilitate payment of egg donors here, doctors say. The law allows donors to be reimbursed for expenses.

Asked about any of those issues, AHRC officials tend to recite the law and suggest obtaining legal counsel but offer no real guidance, doctors complain.

"I've given up asking them questions, because I get no answers," said Sherry Levitan, a Toronto lawyer.

This site contains copyrighted material the use of which has not always been specifically authorized by the copyright owner. We are making such material available in our efforts to advance understanding of biotechnology and public policy issues. We believe this constitutes a 'fair use' of any such copyrighted material as provided for in section 107 of the US Copyright Law. In accordance with Title 17 U.S.C. Section 107, the material on this site is distributed without profit to those who have expressed a prior interest in receiving the included information for research and educational purposes. For more information go to: <http://www.law.cornell.edu/uscode/17/107.shtml>. If you wish to use copyrighted material from this site for purposes of your own that go beyond 'fair use', you must obtain permission from the copyright owner.