

HEALTH LAW IN CANADA



UNIVERSITY OF TORONTO
FACULTY OF LAW

Institute of Health Policy, Management & Evaluation
UNIVERSITY OF TORONTO

HEALTH LAW, POLICY AND ETHICS IN CANADA:

Regulating Creation and the Assisted Human Reproduction Act

Mary and Philip Seeman Health Law Seminar Series

Friday, November 23, 2018

(Pre-conference Debate Thursday, November, 22)

University of Toronto Faculty of Law

Since the adoption of the Canadian Assisted Human Reproduction Act in 2004, assisted human reproduction has been developing at a very fast pace at a global scale, in a complex social, medical and industrial context. An early challenge of the legislation by Quebec in 2010 resulted in the removal of many key components of the legislation, particularly those related to the regulatory control and licensing of assisted human reproduction. New scientific developments, in particular those related to gene editing, have also inspired calls for changes to the remaining prohibitions. Both the federal government and the provinces are under pressure to reimagine how assisted human reproduction should be regulated and funded in Canada. Since the Supreme Court's decision, there have been new funding initiatives at the provincial level, and ongoing debate, yet limited action at the federal level with respect to the development of regulations about surrogacy and gamete donation. A recent proposal to repeal the Act's prohibitions on payment for surrogacy and the purchase of gametes has renewed debate over the remaining criminal law-based restrictions. And while other countries have moved away from anonymous gamete donation, Canada's legislation and case law continue to allow anonymity. Meanwhile, many investigative reports and scholarly research into assisted

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human reproductive practices, including surrogacy and gamete donation, have shed light on what is happening on the ground, and on the multitude of personal, economic, ethical and legal ramifications of Canada’s assisted human reproduction practice.

This one-day colloquium, preceded by an evening debate, will explore a number of key issues related to Assisted Human Reproduction, including:

- Children’s rights and donor’s rights
- Commercialization of surrogacy and gamete donation
- Government funding for fertility treatment
- The future of reproductive technology on fertility law

Very recently, Health Canada announced draft regulations that aim at addressing some of the issues that will be debated at the meeting. The meeting thus provides an excellent opportunity to be informed about and participate in discussing these new developments and proposals.

PROGRAM

Pre-conference Debate - Thursday, November 22, 2018, 7:00 pm: Vida Panitch and Françoise Baylis	
Friday, November 23, 2018 University of Toronto Faculty of Law	
8:00 am - 8:30 am	Breakfast and Registration
8:30 am - 9:00 am	<p>Introduction and Welcome Address</p> <p>Trudo Lemmens, Professor and Scholl Chair in Health Law and Policy, Faculty of Law, University of Toronto</p> <p>Rosario G. Cartagena, Deputy Editor-in-Chief, <i>Health Law in Canada</i>; Adjunct Lecturer, University of Toronto’s Institute of Health Policy, Management and Evaluation; and Chief Privacy and Legal Officer, ICES</p> <p>Assisted Human Reproduction in Canada: A Legal Practice Perspective by Erin Lepine, lawyer, Nelligan O’Brien Payne LLP</p>
9:00 - 10:00 am	<p>The Current State of Affairs</p> <p>Moderator: Bernard Dickens, Professor Emeritus of Health Law and Policy & Co-Director, International Reproductive and Sexual Health Law Program, University of Toronto</p> <p><i>The Law: Brief verview of the state of the law regarding reproductive health in Canada: what are the gaps and why do we need to address them? What do Health Canada’s draft regulations provide?</i></p> <ul style="list-style-type: none">• Erin Nelson, Professor, University of Alberta’s Faculty of Law• Amandeep Kahlon, Policy Analyst, Biologics and Genetic Therapies Directorate, Health Canada <p><i>The Technology: Brief overview of the technological advances that are being pursued and reached</i></p> <ul style="list-style-type: none">• Heather Shapiro, Member of Mount Sinai Fertility; Associate Professor and Vice Chair of Education in the Department of Obstetrics and Gynecology at the University of Toronto

10:15 am - 10:30 am	Health Break
10:30 am - 11:45 am	Panel #1 - Children's Rights and Donor's Rights: Can They be Reconciled? <p><i>In 2013, the Supreme Court of Canada refused to hear a case from the British Columbia Court of Appeal, which ruled that a child did not have a positive constitutional right to "know one's past" and that donor-conceived children were not discriminated against by not having the same right to information as adopted children. Yet, many jurisdictions around the world have moved away from donor anonymity and have recognized the right of children to obtain information about their biological origin. Advances of science, including the growing popularity of DNA tests, are amongst the factors that are invoked to re-evaluate this issue. This panel will explore how a modern legislative framework should deal with the rights of children, the interest in knowing one's origin, and the privacy rights of donors.</i></p> <p>Moderator: Alison Motluk, Freelance journalist who writes and broadcasts about issues relating to reproductive technology for CBC Radio, The Globe and Mail, The Economist, Maisonneuve, The Walrus, Toronto Life and in her weekly newsletter, HeyReprotech.</p> <ul style="list-style-type: none"> • Barry Stevens, Toronto-based writer and filmmaker. Acclaimed documentaries include: <i>Offspring</i> (2001) and <i>Bio-Dad</i> (2009) • Claire Burns, Co-founder of We Are Egg Donors • Sara Cohen, Founder of Fertility Law Canada; Partner at D2Law LLP; Adjunct Professor, York University's Osgoode Hall Law School • Juliet Guichon, Assistant Professor, University of Calgary's Cumming School of Medicine • Cheryl Milne, Director, David Asper Centre for Constitutional Rights, University of Toronto's Faculty of Law
11:45 am - 1:00 pm	Lunch Break

1:00 pm - 2:30 pm	<p>Panel #2 - Commercializing Assisted Human Reproduction: Should the Commercialization of Surrogacy and Gamete Donation be Prohibited?</p> <p><i>In Canada, the current legislative framework permits altruistic surrogacy where a carrier of the baby may be reimbursed for approved expenses but payment of any other consideration or fee is illegal. Similarly, commercial markets for egg and sperm are not allowed in Canada. The laws on commercial surrogacy and gamete donation around the world vary greatly, and some Canadians travel abroad or otherwise circumvent the Canadian prohibition on commercialization of surrogacy and gamete donation. A private members bill in Canada has been introduced to allow commercialization in this context.</i></p> <p>Moderator: Lisa Feldstein, Lawyer at Lisa Feldstein Law Office; Adjunct Professor, York University's Osgoode Hall Law School</p> <ul style="list-style-type: none"> • Stefanie Carsley, Doctoral Student, McGill University's Faculty of Law • Alana Cattapan, Assistant Professor, University of Saskatchewan's School of Public Policy • Ubaka Ogbogu, Assistant Professor and Katz Research Fellow, University of Alberta's Faculties of Law and Pharmacy • Stu Marvel, Lecturer, University of Leeds School of Law, and Visiting Assistant Professor, Department of Women's, Gender, and Sexuality Studies, Emory University
2:30 pm - 3:30 pm	<p>Panel #3 - Government Funding for Fertility Treatment: an Ethical and Policy Conundrum</p> <p><i>During the period of 2010-2015, the Quebec government paid for three IVF cycles, after which this program was scrapped. In Ontario, the government introduced a fertility program in 2015. Keeping in mind the diverging directions being taken by these two provinces, should the government fund fertility treatment, and to what extent? What are the ethical and policy considerations with respect to governmental funding decisions on assisted human reproduction?</i></p> <p>Moderator: Kerry Bowman, Clinical Ethicist, Mount Sinai Hospital</p> <ul style="list-style-type: none"> • Colleen Flood, Professor and University Research Chair in Health Law & Policy, University of Ottawa's Faculty of Law • Dave Snow, Assistant Professor, University of Guelph's Department of Political Science • Kaveh Katebian, Partner, Beaconsfield Group
3:30 pm - 3:45 pm	Health Break

3:45 pm - 5:00 pm	Panel #4 - The Future of Reproductive Technology on Fertility Law: Shifting Sands or 'Uncompromisable' Principles
	<p><i>In Canada, the Assisted Human Reproduction Act criminalizes genetic engineering of germline cells. This reflects the legislative purpose for the Act, which includes a reference to the need to protect "the integrity of the human genome". The development of CRISPR, mitochondrial replacement therapy and other technologies have sparked renewed debate about the limits imposed by the Assisted Human Reproduction Act. Some have suggested that the prohibition be relaxed. Should the law be reactive or proactive when it comes to these new technologies? Should Canada's law be changed?</i></p> <p>Moderator: Lauren Vogel, Health Journalist, Canadian Medical Association Journal</p> <ul style="list-style-type: none"> • Vardit Ravitsky, Associate Professor, University of Montreal's School of Public Health; Director of the Ethics and Health Branch of the Research Centre of Ethics • Jeff Nisker, Clinician; Professor, Western University's Department of Obstetrics & Gynaecology, Reproductive Endocrinology and Infertility • Christopher Kaposy, Clinical Ethicist, Memorial University's Faculty of Medicine
5:00 pm - 5:30 pm	Closing Address - Where Should the Law go From Here?
	<p>Josephine Johnston, Director of Research and Scholar at the Hastings Center, New York</p>

STEERING COMMITTEE MEMBERS*

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- Maria Eugenia Brunello
- Sara Elcombe
- Sana Ebrahimi
- Trudo Lemmens

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The goals of Health Law in Canada are to:

- (1) increase diversity in authorship and encourage collaborations;
- (2) encourage diverse readership across healthcare, legal and government/policy sectors;
- (3) stimulate innovation in the health sector;
- (4) ensure relevance to the health sector; and
- (5) include content that is current, forward thinking and that shapes the future of health law in Canada.

Regulating Creation: CALL FOR PAPERS

We invite speakers, attendees and volunteers to submit papers to be included in a special edition of Health Law in Canada, which will be published in May 2019. Papers for consideration to be submitted by February 15, 2019.

*The views expressed by the speakers do not represent the views of the steering committee members, Health Law in Canada executive board members and their organizations.



Pre-Conference Debate

Thursday November 22, 2018

7:00 pm

University of Toronto Faculty of Law

“The Prohibitions on Payment for Surrogacy and the Purchase of Gametes in Canada’s Assisted Human Reproduction Act Should be Repealed”

Arguing for: Vida Panitch, Associate Professor, Carleton University’s Department of Philosophy

Arguing against: Françoise Baylis, University Research Professor, Dalhousie University’s Faculty of Medicine

DETAILS

PRICE

\$175 - Regular

\$ 75 - Not For Profit

\$ 50 - Student

To purchase tickets:

<https://www.eventbrite.ca/e/health-law-policy-and-ethics-in-canada-regulating-creation-and-the-assisted-human-reproduction-act-tickets-51391060044>

VENUE INFORMATION

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