



Abortion Rights
Coalition of Canada

Coalition pour le droit à
l'avortement au Canada

Your
Voice for Choice

Canada's only national political pro-choice advocacy group

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Position Paper #38

New Reproductive Technologies / Assisted Reproduction Legislation

Overview

It is frustrating at best and heartbreaking at worst for couples, women, or transgender people wishing to become pregnant and being unable to do so “naturally” or by conventional tracking methods (such as charting body temperature or monitoring cervical mucus).

Once a person has attempted to become pregnant for around a year (or 6 months if they are over 40), a doctor or health care provider can provide several options for assisting them to get pregnant. Many of these have been around for decades, such as:

- *HSG (hysterosalpingogram)*: Radiographic dye is injected into the uterine cavity through the vagina and cervix, showing whether the fallopian tubes are open or whether there is a blockage. The process is said to take less than half an hour and be relatively painless, but some women experience extreme pain and spotting afterwards. Though there is no scientific proof, many women become pregnant within their next cycle, suggesting that the procedure helps “clear out” the uterus and helps with implantation or sperm movement.¹
- *Prescribed Medication*: The next step in a fertility improvement cycle is for the woman to be prescribed medication. Some of these methods are provided in pill form and increase the number of eggs released each month. Some boost hormones and are given as a shot. Others are used to stop hormone overproduction or force ovulation. While there are five main drug options, Clomid is the most commonly prescribed and works 80% of the time.²

New Reproductive Technologies

If these attempts above are not successful, after a period of time (usually six months) the woman is referred to a fertility clinic where several new options are available:

Intrauterine Insemination (IUI)

Intrauterine insemination (IUI) is a procedure in which the male partner's sperm or donor sperm is introduced via a thin, flexible catheter into the female patient's reproductive tract close to the time of ovulation. IUI costs around \$1500.

In Vitro Fertilization (IVF)

IVF has been around for 40 years. It is a process in which eggs are removed from the ovary and fertilized in a special culture of sperm (or by direction injection – see ICSI below). The eggs will grow and divide within themselves for three to five days. The resulting embryo will then be transferred into the uterus.

IVF costs around \$10,000. In 2015, Ontario introduced IVF into the Ontario Health Plan, though the waitlists are extensive (2-3 years) and those who wish to pay for the procedure themselves often do so. Quebec and Manitoba offer partial tax credits and New Brunswick a one-time grant for IVF.³

Intra-cytoplasmic Sperm Injection (ICSI)

ICSI is a procedure in which a single sperm is injected directly into the center of the egg to increase the chance of fertilization. This procedure is used more for male factor infertility than female.

Assisted Hatching

Assisted Hatching (AH) is the technique of thinning the shell or outer covering of an embryo. The embryos are then rinsed to remove any excess solution and are returned to an incubator prior to embryo transfer.

Egg Freezing

While not a method to resolve infertility, this is used for women nearing the end of childbearing age who still wish to bear children but don't have a suitable partner or lifestyle. Eggs are removed and cryogenically frozen until the woman wishes to attempt pregnancy⁴ Egg freezing costs around \$12,000.

Womb Scratching

Also known as endometrial scraping, this method involves a biopsy of the lining of the womb. The intention is to cause a favorable inflammation that is receptive to the implantation of the embryo.

Surrogacy

While not a "technology", surrogacy involves a woman carrying a fetus to term with the intention of giving the child to another person. Sometimes the woman is carrying the other woman's egg and sometimes it is her own egg. Surrogacy in Canada is unregulated but the AHRA law (see below) has sanctioned it for altruistic reasons (but not monetary, meaning women who choose to be surrogates are likely being paid "under the table" if they are at all). Preconception agreements are often made, but Quebec is the only province to declare them legally unenforceable.

Assisted Reproduction Legislation in Canada

The legislation around assisted reproduction in Canada is convoluted. It is regulated by the *Assisted Human Reproduction Act, 2004*, s.c. 2004., c.2 (“AHRA”). The AHRA does not prohibit surrogacy, egg donation, embryo donation, or sperm donation but prohibits the payment of surrogates or donors, as well as activities such as human cloning, the creation of embryos for the purpose other than reproduction or reproductive research, sex selection, genetic alteration, or transplanting an embryo of another species into a human.⁵ Quebec is the only Province to regulate on the Act. In December 2010, the Supreme Court held that certain sections of the AHRA are unconstitutional due to the federal government imposing on Provincial health care.⁶

In 2015, a study was released by the Canadian Medical Association outlining ways in which the AHRA should be reassessed and reevaluated. The paper outlines guidance around items such as donation of reproductive material, transference of embryos, embryo storage and disposal, funding, age restrictions, and fertility preservation in the content of acute life-threatening illness.⁷

Cases related to the AHRA and Assisted Reproduction:

D. (D.), Re, 2016 BCSC 22 (B.C.S.C.)⁸

Same-sex couple living in Quebec were applying for declarations relating to their parentage of a child born by a surrogate. The couple were also making declarations that the egg donor and the birth mother were not the child’s parents. This case specifically resolves around the *Family Law Act*, S.B.C. 2001, c. 24 as well as a the *AHRA*.

W. (K.L.) v. Gensis Fertility Center, 2016 BCSC 1621 (B.C.S.C.)⁹

Relating to the ownership and use of reproduction material after an “owner’s” death.

Lam v. University of British Columbia, 2015 BCCA 2 (B.C.C.A.)¹⁰

Discusses whether frozen reproduction material was considered “personal property” and “goods”.

Paxton v. Ramji, 2008 ONCA 687, (O.N.C.A.)¹¹

Doctor was sued for malpractice when a woman who was erroneously assumed to be not pregnant when in fact she was, and was prescribed drugs that caused the child to be born with disabilities. Reassertion that “wrongful life” claims are not recognized in Canada.

Surrogacy and Abortion Rights

Controversy arises when the desires of the intended parents of a fetus carried by a surrogate conflict with the needs of the surrogate herself, preventing a woman from having true reproductive freedom and control over her own body. This is why Quebec has regulated that surrogacy agreements are not valid – a surrogate who has an abortion or does not do everything the potential parents request of her regarding carrying the fetus cannot be taken to court for “breaking a contract” or other such reasons. Surrogacy is not yet regulated in Canada, but when it is, the rights of the pregnant woman should be paramount.

Genetic Screening and Abortion Rights

Genetic screening and testing (of embryos or gametes) is used to check for possible genetic disorders and disabilities. These tests are unregulated in Canada, though it has been suggested that national regulations should specify conditions where screening should be done to inform both the donor (in terms of gamete donation) and potential mother (in terms of embryo implantation).

One of the arguments against screening for disorders or disabilities is that it is discriminatory because it prevents the birth of people with these disorders. This argument is invalid because:

- The fetus is not a “person” and thus cannot be discriminated against.
- People with disabilities are afforded protection under provincial legislation such as AODA (Accessibility for Ontarians with Disabilities Act)
- Anatomy scans are conducted on pregnant women as late as 20 weeks to check for issues, but abortion is very difficult to access in Canada after 20 weeks.
- It must be a personal choice to have or raise a baby with disabilities, especially since it may involve hardship and suffering for the baby and family. It is not women’s duty to have and raise a baby, whether disabled or not.

See ARCC [Position Paper #25: Abortions for Genetic Reasons / Fetal Abnormalities](#) for more information.

Destruction of Unused Embryos

In the same vein as most anti-choice rhetoric, some groups oppose the destruction of unused embryos as “murder”. In Canadian law, an embryo is created from a human but is not a legal person and has no rights until it is born. While embryos in this state (and in the womb) have the potential to be human, they are not considered “people” and thus destroying them should be considered under “biohazardous waste” terms and not ethical ones.

¹ <http://www.advancedfertility.com/hsg.htm>

² <http://www.conceiveeasy.com/get-pregnant/fertility-drugs/>

³ <http://news.nationalpost.com/health/huge-demand-for-ivf-treatment-in-ontario-where-its-fully-funded-has-wait-lists-stretching-to-2018>

⁴ <http://www.canadianliving.com/health/prevention-and-recovery/article/what-you-need-to-know-about-egg-freezing-in-canada>

⁵ <https://www.canlii.org/en/ca/laws/stat/sc-2004-c-2/latest/sc-2004-c-2.html>

⁶ <http://www.fertilitylawcanada.com/fertility-law-in-canada.html>

⁷ <https://www.cma.ca/Assets/assets-library/document/en/advocacy/assisted-reproduction-in-canada-e.pdf>

⁸ <https://www.canlii.org/en/bc/bcsc/doc/2016/2016bcsc22/2016bcsc22.html?resultIndex=1>

⁹ <https://www.canlii.org/en/bc/bcsc/doc/2016/2016bcsc1621/2016bcsc1621.html?autocompleteStr=2016%20BCSC%201621%20&autocompletePos=1>

¹⁰ <https://www.canlii.org/en/bc/bcca/doc/2015/2015bcc2/2015bcc2.html?resultIndex=1>

¹¹ <https://www.canlii.org/en/on/onca/doc/2008/2008onca697/2008onca697.html?autocompleteStr=paxton%20&autocompletePos=1>