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Comment

ART regulation in Canada – birth much delayed

11 July 2011

By *Professor Eric Blyth*

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Appeared in BioNews [615](#)

It is not so long since I applauded the decision of the Supreme Court of British Columbia (BC) for promoting the disclosure of the identity of [gamete](#) and [embryo](#) donors to their offspring (1). News that the BC Attorney-General is appealing the judgment to the federal Supreme Court indicates that my enthusiasm was a case of premature elation (2). The good news for those of us who believe that non-anonymous donation is the only ethical form of gamete and embryo donation is that if the federal Supreme Court upholds the views of the BC Supreme Court, all Canadian provinces will be compelled to prohibit donor anonymity. The more sobering take on this is that the establishment of effective regulation of assisted reproductive technology (ART) across the whole of Canada will be much delayed.

It is now 18 years since a Royal Commission appointed by the federal government produced a report recommending regulation of ART. The intervening period has seen several failed attempts by respective federal administrations to introduce legislation for the whole country (3). When such legislation, the Assisted Human Reproduction Act,

eventually appeared in 2004, the provincial government of Québec complained that it encroached on the powers of Canada's provincial governments. In December 2010 the federal Supreme Court upheld much of the Québec government's claim and determined that significant elements of the Act were unconstitutional (4). Given that the Canadian federation has been in existence for more than 140 years, an impartial onlooker might have reasonably expected Canadian lawmakers - and especially their legal advisors - to have developed a more accurate sense of what was rightly the responsibility of the federal government and what was the provincial governments' remit. Be that as it may, very little of the Assisted Human Reproduction Act has ever been implemented, and the decisions of the two supreme courts seem set to push Canada's regulatory saga into its third decade.

The federal government is still considering the implications of the federal Supreme Court ruling for the fate both of its legislative intentions and of the federal regulatory body, Assisted Human Reproduction Canada. Since - like all western countries adversely affected by the 2008 global financial tsunami - the Canadian government is seeking to cut costs, this will doubtless include the rationalisation of government bodies through mergers and transfer of responsibilities. Given that flagship ART regulatory bodies in other jurisdictions have either been abolished, face abolition or have seen their functions significantly changed (for example the abolition of South Australia's Council on Reproductive Technology, the proposed abolition of the UK's Human Fertilisation and Embryology Authority and the redesignation of Victoria's Infertility Treatment Authority as the Victorian Assisted Reproductive Treatment Authority), it seems unlikely that Assisted Human Reproduction Canada will survive in anything like its current form, if at all.

Canada's troubled history in this field does not suggest that the prospects of Canadian federal and provincial lawmakers making the most of the current legal imbroglio are good. Until it does so, professionals working in the field, those seeking fertility treatment and others personally affected by ARTs, such as those who are born as a result of reproductive technologies, embryo and gamete donors and [surrogates](#), will have to get by as best they can. They deserve much, much better from their elected representatives – as indeed do Canadian taxpayers more generally, who have had to foot the bill with very little to show for it.

While ART regulation is never going to be the top priority of any government, it can nevertheless be hoped that Canadian politicians will accept that they cannot risk the humiliation of getting it wrong again. The wish to avoid further embarrassment - if nothing else - might act as an incentive for federal and provincial lawmakers and their advisors to hammer out an effective regulatory framework that is fit for Canadians in the 21st century.

SOURCES & REFERENCES

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BioNews | 06 June 2011

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The Vancouver Sun | 17 June 2011

3) Royal Commission on New Reproductive Technologies (1993) Proceed with care: final report of the Royal Commission on New reproductive technologies

Ottawa: Minister of Government Services Canada. |

4) Supreme Court of Canada (2010) Reference re Assisted Human Reproduction Act 2010 SCC 61

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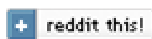
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