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Image of the month / Image du mois
Secretory Endometrial Adenocarcinoma ........ 429
Adénocarcinome endométrial sécrétoire ........ 430
Pinki Pandey, Sandhya Mittal, Anupama Goel,
Alok Dixit

Editorial / Éditorial
Weight Watchers .................. 431
Des arguments de poids .......... 433
Timothy Rowe

Letters to the Editor
Abortion Curriculum in Undergraduate
Medical Education Is an Issue of
Civic Professionalism .............. 435
Ginevra Mills

In Response ...................... 435
Tara A. Cessford

Obstetrics
Attitudes Among Toronto Obstetricians
Towards Vaginal Breech Delivery .......... 437
Karthika Devarajan, P. Gareth Seaward, Dan Farine

Higher Caesarean Section Rates in Women
With Higher Body Mass Index: Are We
Managing Labour Differently? .......... 443
Haim A. Abenhaim, Alice Benjamin

Developmental Origin of Chorionic Villus Cultures
From Spontaneous Abortion and Chorionic
Villus Sampling .................... 449
Paul J. Yong, Deborah E. McFadden,
Wendy P. Robinson

Pregnancy and Neonatal Outcomes of
Women With Reactive Syphilis Serology in
Alberta, 2002 to 2006 ................ 453
Sheila C. Caddy, Bonita E. Lee,
Karen Sutherland, Joan L. Robinson,
Sabrina S. Plitt, Ron Read, Ameeta E. Singh

Women’s Health
Pregnant Women’s Perception of Risk With
Use of the H1N1 Vaccine .......... 460
Sachi Sakaguchi, Brenda Weitzner,
Nathalie Carey, Pina Bozzo, Kamella Mirdamadi,
Nardin Samuel, Gideon Koren, Adrienne Einarson

Gynaecology
Choosing the Right Patient: Planning for
Laparotomy or Laparoscopy in the Patient
With Endometrial Cancer ............ 468
Allison Ball, James R. Bentley,
Colleen O’Connell, Katharina E. Kieser

Case Report
Sonographic Findings and Clinical Outcomes in
Women With Massive Subchorionic Hematoma
Detected in the Second Trimester .......... 475
Catherine Windrim, Greg Athaide, Tracy Gerster,
John C.P. Kingdom

Commentary
Prevention of Adverse Pregnancy Outcomes With
Low-Dose ASA in Early Pregnancy: New
Perspectives for Future Randomized Trials .... 480
Emmanuel Bujold, Sylvie Tapp, Francois Audibert,
Ema Ferreira, Jean-Claude Forest, Evelyne Rey,
William D. Fraser, Nils Chaillet, Yves Giguère

Implementing an Altruistic Sperm Donation
Program in Canada .................. 484
Eric Blyth

SOGC Clinical Practice Guideline /
Directive clinique de la SOGC
Ultrasoundographic Cervical Length Assessment in
Predicting Preterm Birth in Singleton Pregnancies . 486
Recours à l’évaluation échographique de la longueur
cervicale pour prédire l’accouchement prématuré
dans le cadre de grossesses monofœtales ........ 500
Kenneth Lim, Kimberly Butt, Joan Crane

Magnesium Sulphate for Fetal Neuroprotection .. 516
Recours au sulfate de magnésium à des fins
de neuroprotection fœtale ................ 530
Laura Magee, Diane Sawchuck, Anne Synnes,
Peter von Dadelszen

Healing Art
Salmon Run ....................... 560
Magali Robert

ERRATUM .................. 436
INDEX TO ADVERTISERS .......... 422
CLASSIFIED ADVERTISEMENTS .... 420

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Implementing an Altruistic Sperm Donation Program in Canada

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Recent publications on sperm donor recruitment in Canada have highlighted problems for donor sperm services resulting from legislative prohibitions regarding the commercialization of gamete procurement; consequently, there has been heavy reliance on sperm supplies from a small number of foreign sperm banks that meet Health Canada’s stringent blood products and tissue screening regulations.1–4 Concerns about the viability of donor sperm services have been heightened in the wake of a case in the Supreme Court of British Columbia in which a donor-conceived adult has challenged the protection of donor anonymity, afforded not only by past “accepted practice,” but also, since 2004, by the federal Assisted Human Reproduction Act.5

In the most recent discussions,4,5 explicit reference has been made to sperm donor recruitment in the United Kingdom and, in particular, to assertions that since the lifting of donor anonymity in 2005, donor recruitment has plummeted. Any parallel between the United Kingdom and Canada is far from exact and, therefore, any comparison must be made with caution. However, if comparisons are to be made, it is essential these rest on the most sound knowledge available.

Following regulation of assisted reproductive technology in the United Kingdom in 1990, gamete donation was premised on a model that permitted modest remuneration of sperm donors (£15, or approximately $23) but— with the specific exception of egg sharing—relied on altruistic oocyte donation. Since implementation of the European Tissue and Cells Directive,7 which applies to donation of all—not only reproductive—human tissues and cells throughout the European Union, gamete donation in the United Kingdom has essentially been “voluntary and unpaid,” and advertising the need for, or availability of, human tissue for “financial gain or comparable advantage” has been restricted or prohibited (as in Canada).7 However, the Directive permits donors to “receive compensation, which is strictly limited to making good the expenses and inconveniences related to the donation” and grants European Union member states discretion to “define the conditions under which compensation may be granted.” The United Kingdom’s statutory regulatory body, the Human Fertilisation and Embryology Authority (HFEA), permits reimbursement to gamete donors of all out-of-pocket expenses demonstrably connected with the donation and incurred within the United Kingdom only (so as not to encourage donors to seek compensation for commuting to the United Kingdom from overseas). It also permits compensation for loss of earnings. This is set at a daily maximum commensurate with jury service (currently £61.28, or approximately $100), with an overall limit of £250 (approximately $400) for “each course of sperm or egg donation.”8 However, unlike some other states, the United Kingdom does not authorize compensation to donors for any “inconveniences” associated with donation. Concern with donor recruitment in the United Kingdom has largely focused on the impact of the removal of donor anonymity rather than on donor remuneration, although there is some suggestion that the current compensation limits act as a disincentive by leaving some donors out of pocket,8 rather than making donation “cost neutral,” as intended. The HFEA is currently reviewing its policy on all

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aspects of gamete and embryo donation. Incontrovertibly, although there was a decrease in sperm donor recruitment immediately before the change in United Kingdom law (as measured by donor registrations recorded by the HFEA), this has subsequently been reversed. Sperm donor recruitment is on the increase, and new donor registrations for 2008 (the most recent year for which data are available) are at levels last seen more than a decade ago. In addition to HFEA data, some United Kingdom clinics are reporting successes in recruiting donors who are both altruistic and identifiable to any offspring.

Canada has not been spared criticism for the interminable delay between publication of the report of its Royal Commission on New Reproductive Technologies and the implementation of truly effective federal legislation and regulation—a delay compounded by the Quebec government’s challenge to the constitutional validity of the Assisted Human Reproduction Act on the grounds that specific provisions violate areas of provincial legislative authority. In December 2010, the Supreme Court of Canada gave its ruling in this case. Although it found in favour of the Government of Quebec in some areas, the Court confirmed that payment of gamete donors remains a legitimate federal responsibility. However, there is a case for making a virtue out of necessity. Consideration of the European model for donor compensation and its implementation in specific jurisdictions might well provide valuable lessons about running an altruistic gamete donation service in Canada without stepping on to the ethically thin ice of whether governments (or regulatory bodies) should actively promote, or simply regulate, gamete donation. The case for considering the European model is likely to become even greater should the challenge to donor anonymity in the Supreme Court of British Columbia be successful and Canada move towards operating a gamete donation service that is dependent on donors who are not only altruistic but also willing to be identifiable to their offspring.

REFERENCES