

# Respectfully Submitted



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**POLICY REPORT for Parliamentarians**  
Courtesy of the Association for Reformed Political Action (ARPA) Canada

# In Vitro Embryo:

## Improving the Law

## Governing the Creation of Human Life

### **Executive Summary:**

*The birth of Louise Brown on July 25, 1978, the first from in vitro fertilization (IVF), changed the world of reproductive medicine. A procedure that once sounded like science fiction, IVF has now become a common answer to infertility. While it has opened new doors for couples struggling with the pain of childlessness, it also raises new and difficult questions of how to treat human life at its beginning.*

*Because embryos created through IVF are human, they deserve to be treated as members of the human family. This has implications for embryos that are cryogenically preserved or used for scientific research. IVF should respect the right of children to know their mother and father. The principle of non-commodification of human beings must extend to embryos. Canada can learn from the example of other countries for how to improve our laws in relation to the treatment of embryos in IVF.*

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*"Parliament has a strong interest in ensuring that basic moral standards govern the creation and destruction of life, as well as their impact on persons like donors and mothers."*

The Right Honourable Beverley McLachlin,  
Chief Justice of the Supreme Court of Canada

## Summary of Recommendations

- Recommendation #1:** *Prohibit the intentional destruction of human embryos at any stage.*
- Recommendation #2:** *Require that only one egg be fertilized and transferred at a time.*
- Recommendation #3:** *Prohibit the cryopreservation of embryos.*
- Recommendation #4:** *Prohibit gamete donation.*
- Recommendation #5:** *Amend section 7 of the Assisted Human Reproduction Act (AHRA) to prohibit the purchase and sale of gametes.*
- Recommendation #6:** *Expand section 7 to prohibit the importation of gametes except under certain conditions respecting the principle of non-commodification.*
- Recommendation #7:** *Mandate access to donor information for all biological offspring of future gamete donors.*
- Recommendation #8:** *Follow the example of Germany, Italy, Austria, and Switzerland by prohibiting pre-implantation genetic diagnostics.*

## What is In Vitro Fertilization?

IVF is a process that allows for the creation of a human embryo outside the womb of its mother. The procedure generally consists of these steps:<sup>1</sup>

1. A series of hormonal injections stimulates egg production so that multiple eggs (from one or two, to over 30 eggs at one time) can be harvested from a genetic mother.
2. The eggs are fertilized with sperm in a laboratory.
3. The resulting human embryos grow in a laboratory until time of transfer.
4. Some of or all the resulting embryo(s) are transferred into the birth mother's uterus, usually between three to five days after fertilization and never later than 13 days.
5. Many of these tiny embryos miscarry. Some survive and are carried to term.

The desire for children is deeply felt and infertility can be painful. However, there are limits to what science should explore and government should sanction. This report scrutinizes the practice of IVF in Canada and recommends amendments to Canada's regulatory regime.

## Overview of Ethics

Canadians no doubt disagree over the parameters for the ethical use of IVF. We do not propose to delineate those parameters precisely in this report. However, there are several obvious and pressing ethical concerns with the way IVF is currently practiced in Canada.

The Bible describes children as a blessing from God and the crown of their parents.<sup>2</sup> They are a gift, but not a right. New life is a good gift to be celebrated, but not all means of creating life are ethical. The Bible teaches us God's will and design for family: children are meant to be born and raised in the context of the faithful union of husband and wife.<sup>3</sup>

This has immediate implications for IVF. At minimum, it excludes the use of donor gametes. Donors introduce a third party into a process meant to take place exclusively within marriage. A similar conflict exists for those trying to become a single parent using IVF. The donor who does not intend to be a parent is effectively abandoning his or her child. Further, wilfully cutting a biological parent out of a child's life, absent a pressing reason such as harm toward or neglect of the child, is unloving and against God's good design.<sup>4</sup> That is our Christian understanding, and may not be shared by you, the reader. Nevertheless, we invite you to consider the following points, on which people of various or no faith backgrounds may find considerable agreement.

## Forgetting Human Dignity

IVF involves exercising control over the earliest stages of human life. Doctors are active agents in the extraction of ova, the fusion of sperm and ovum, and the maturation, selection, and transferring of human embryos. To assess the ethics of this practice, we need to understand what an embryo is and how that should govern our treatment of it.

The moment a sperm cell fertilizes an egg, whether naturally or through IVF, something radical occurs: a new, genetically unique human being comes into existence.<sup>5</sup> The embryo is a single biological system with a self-directed and active developmental program.<sup>6</sup> Though the embryo and mother influence each other, they are separate – the embryo does not serve a functional role in her biological economy. Their individuality is clearly illustrated by the fact that, for example, it is possible to transfer and gestate a zebra embryo in a horse's womb; though cared for and nurtured during the pregnancy, the zebra remains a distinct creature and a different species.<sup>7</sup> In IVF, we know the embryo is an individual and we know that this individual is human. Thus, we ought to treat the smallest members of the human family as we treat each other: with dignity and respect.

“The production of human life in clandestine facilities may well constitute a public health evil.”

Chief Justice Beverley McLachlin,  
Supreme Court of Canada

Some will point out the vast differences between born humans and the early embryo and argue that certain characteristics such as the presence of rational thought, an active brain, or independence from the mother are relevant to their moral status. We reject this idea.<sup>8</sup> There are no appropriate moral lines to draw after fertilization and nothing that bestows moral value on the embryo apart from its humanity. Disregarding the humanity of an embryo is to discriminate based on age, stage of development, location, or degree of dependency. Such discrimination is wrong at any stage of life and should not be countenanced.<sup>9</sup>

Modern IVF practices violate the dignity of embryos in several ways. First, it is common practice to create more embryos than necessary for each IVF cycle, to increase the chances of a healthy embryo. The strongest are transferred to a woman's uterus and the weak are discarded, frozen, or donated to research.<sup>10</sup> This is a well-known part of the IVF industry and a deliberate violation of the dignity of human life.

Discarding an embryo ends a human life. Frozen embryos eventually die if not transferred into a woman's uterus. In embryonic research, young humans are dismembered and destroyed for their cell lines or the investigation of embryonic development.<sup>11</sup>

IVF would not be possible without knowledge derived from experimenting on and destroying countless embryonic human beings.<sup>12</sup> The IVF industry continues to incentivize and practice destructive research. Unless the human dignity of the embryo is adopted as the primary regulatory principle, the IVF industry will continue its destructive practices.

### *Recommendation #1*

Prohibit the intentional destruction of human embryos at any stage.

## **Multi-fetal Pregnancies**

Research demonstrates that a multi-fetal pregnancy (triplets, quadruplets, etc.) comes with significant health complications. Yet current practices in assisted reproduction lead to frequent multi-fetal pregnancies compared to single embryo transfer pregnancies.<sup>13</sup> Because of the risks involved in a multi-fetal pregnancy, women are encouraged to "reduce" the pregnancy. That is, they are encouraged to abort one or more of their pre-born children in order to increase the likelihood of a healthy pregnancy for a single pre-born child.<sup>14</sup> A policy mandating that only one embryo be transferred at a time would be safer for Canadian babies, reduce hospital costs significantly, and remove the motivation to have an abortion.<sup>15</sup>

### *Recommendation #2*

Require that only one egg be fertilized and transferred at a time.

## Freezing Embryos

“Extra” embryos, nascent human beings, are often frozen for indefinite lengths of time. Cryopreservation is a degrading and dangerous practice. We would be appalled at the idea of freezing any more developed humans without their consent; the difference is only age and level of development. Cryopreservation can be dangerous; many embryos do not survive thawing.<sup>16</sup> Cryopreservation facilitates the creation of “excess” human beings.

The regulations under the AHRA only provide options for the use of frozen embryos by genetic parents or others and do not address discarding unwanted frozen embryos.<sup>17</sup> The only regulations that do exist, in Quebec, leave the matter in the hands of fertility clinics after five years of no contact.<sup>18</sup> When the B.C. Women’s Centre for Reproductive Health shut down in 2012, staff were unable to contact the parents of many of the embryos frozen in their facilities. The Centre was granted an order to discard those embryos from the British Columbia Supreme Court. Hundreds of human beings were promptly destroyed, with judicial authorization.<sup>19</sup>

Our courts have classified early embryos as property, with one judge describing them as “chattels that can be used as she (the mother) sees fit”.<sup>20</sup> Calling a human being property justifies reprehensible treatment of that person. Human life should not be so callously treated in Canada.

### *Recommendation #3*

Prohibit the cryopreservation of embryos.

## Donor Gametes and Genetic Responsibility

The IVF industry relies on sperm and egg (gamete) donations. This practice is unethical. The moral significance of a genetic parent-child relationship is undeniable. Gametes carry with them the latent potential of a familial (blood) relationship between the donor and any resulting offspring. Severing ties between genetic parents and their children is a harm that should not be perpetrated, but gamete donation does just that. The Bible directs parents to love and care for their children and warns strongly against neglecting this duty.<sup>21</sup> ARPA Canada believes that the practice of gamete donation is ethically unjustifiable.

### *Recommendation #4*

Prohibit gamete donation.

## Gamete Commodification

Short of prohibiting gamete donation, however, there are simple measures the government could take to improve the current situation.

The Baird Commission Report, in its initial recommendation, stated that the Commission believed it was fundamentally wrong for decisions about human reproduction to be determined by a profit motive. They argued that it would be dehumanizing, disrespectful of human dignity, and would disregard the moral significance of reproduction.<sup>22</sup> We agree with this conclusion, and the Supreme Court of Canada affirmed it in the *Reference Re AHRA*.<sup>23</sup>

Yet unintended loopholes in our current laws allow this to occur. Section 7(1) of the AHRA states that “*No person shall purchase, offer to purchase or advertise for the purchase of sperm or ova from a donor or a person acting on behalf of a donor.*”<sup>24</sup>

However, the language of s.7 is being interpreted to allow gamete banks in Canada to purchase sperm and eggs from donors in the United States.<sup>25</sup> Health Canada narrowly interprets “*a person acting on behalf of a donor*” to mean an agent or representative of the donor, thus excluding gamete banks, and interprets s.7 to apply only to activities taking place in Canada. The result is that Canadian gamete banks can buy from foreign donors and sell to Canadians at home.<sup>26</sup>

### ***Recommendation #5***

Amend section 7 of the AHRA to prohibit the purchase and sale of gametes.

### ***Recommendation #6***

Expand section 7 of the AHRA to prohibit the importation of gametes except under certain conditions respecting the principle of non-commodification.

## Donor Anonymity

Another key issue is donor anonymity. The government must recognize the right of donor-conceived children to access the identity of their genetic parents. The importance of this relationship to the child is reflected in a deep desire among many adoptees and donor-conceived children to know their genetic parents. Their advocacy led to the banning of donor anonymity in several European countries.<sup>27</sup> Consider the following testimonies, collected through *Anonymous Us*, a collection of voices of donor conceived children who want their stories told:

*“I’ve always felt I’m not whole (cliché, I know). I’m missing the person who created me, who gave me their genes and quirks. I have siblings I’ve never met and probably never will. I also have siblings who I might’ve passed on the street, or sat next to in my sixth-period math class.”<sup>28</sup>*

*“How could the government, charged with protecting the most vulnerable members of the community—its children—legislate to make it illegal for me to know the identity of my biological father? How can its institutions subject me to the psychological torture of knowing that records exist but that I am forbidden to know the contents?”<sup>29</sup>*

Olivia Pratten had similar feelings and went to court trying to find out who her donor father was. She was successful at the lower court, which found: *“Based on the whole of the evidence, assisted reproduction using an anonymous gamete donor is harmful to the child, and is **not in the best interests of donor offspring**.”<sup>30</sup>* The case was appealed to the BC Court of Appeal, however, which reversed the decision and found that donor-conceived children have no right to know who their genetic parents are.<sup>31</sup> The Supreme Court of Canada did not hear Olivia’s appeal.

This leaves Canada distinctly out of line with international trends: since 1985, Sweden, Austria, Germany, Switzerland, the Australian states of Victoria and Western Australia, the Netherlands, Norway, the United Kingdom, and New Zealand have all passed laws to the effect that donor information must be made available after the donor-conceived person reaches 18 years of age.<sup>32</sup> The right of the child to know his or her origins vastly supersedes any privacy interest held by a gamete donor who freely chooses to participate in creating a new human life.

### ***Recommendation #7***

Mandate access to donor information  
for all biological offspring of future gamete donors.

## **Designer Babies?**

It is now possible, through pre-implantation genetic diagnosis (PGD), to identify and reject embryos with genetic conditions that parents and doctors deem incompatible with the life they want for their children. PGD is conducted between three to five days after fertilization, when the human embryo has 8 cells. One of the cells is removed and tested to identify its genetic make-up and screen for defects like monogenic, X-chromosome linked diseases, and other chromosomal abnormalities including cystic fibrosis, Alzheimer’s, and even predisposition to cancer.<sup>33</sup> If the embryo has such a disease, he or she is discarded.



Parents can use IVF and PGD to try to ensure that the child they choose will not have certain genetic diseases. These technologies have rightly garnered criticism (especially those that screen for spina bifida, cerebral palsy, and blindness) because they dehumanize and devalue individuals living with such conditions.<sup>34</sup> To sort out human beings in this way – to nurture the healthy and kill the disabled – is eugenics, and it is happening here in Canada.

Some use IVF to intentionally create and select children *with* disabilities. In one survey of American PGD clinics, 3% reported instances of requests to intentionally select an embryo for the presence of a disability.<sup>35</sup> To nurture disabled embryos and discard the others is also a violation of the inherent dignity of the human being. No matter the motivation, the practice of PGD and embryo selection amounts to lethal discrimination against the most vulnerable members of the human family.

The level of control over reproduction that PGD offers raises difficult questions: who should have this control? How will it be monitored? What are its limits? What kind of impact will it have on society?<sup>36</sup> Children are a gift from God, not customizable products.<sup>37</sup> Currently, these matters are unregulated in Canada; this must change.<sup>38</sup>

### ***Recommendation #8***

Follow the example of Germany, Italy, Austria, and Switzerland by prohibiting pre-implantation genetic diagnostics.

## **Division of Powers**

Self-regulation of IVF by colleges of physicians and surgeons is not sufficient; physicians' interests are not co-extensive with the public interest, profit incentives should not govern ARTs, and existing college standards in Alberta and Saskatchewan are sorely lacking.<sup>39</sup> All the recommendations made in this report can be implemented as valid criminal law due to their deeply moral dimensions and criminal law form (a prohibition with a penalty for a valid criminal law purpose).<sup>40</sup> This is not about running hospitals or licensing practitioners; this is about protecting the weak, respecting human dignity, and mending the moral fabric of our nation.

## **Conclusion**

IVF involves how we care for human life and how it begins. As such, it necessitates a rigorous ethical analysis to ensure that Canada is not recklessly disregarding human life at its most vulnerable stages. The practice of creating more embryos than are intended to be transferred into the woman's uterus, freezing embryos for indefinite periods of time, destroying human embryos, severing children from their biological parents, and discarding unhealthy embryos should be condemned in Canada. It is Parliament's duty to institute a regulatory scheme that identifies these harmful activities and protects life from its very beginning.

## References:

\*for hyperlinks to online sources cited below, see the online PDF version of this report at [ARPACanada.ca](http://ARPACanada.ca) in the resources and publications menu.

- <sup>1</sup> Attain Fertility “[IVF Process: 4 Steps to Getting Pregnant](#)”.
- <sup>2</sup> [Proverbs 17:6](#).
- <sup>3</sup> [Genesis 2:18-25](#), [Exodus 20:12](#), [Psalm 128:3](#), [Ephesians 6:1-4](#).
- <sup>4</sup> [Ephesians 6:4](#).
- <sup>5</sup> Dr. Dianne N. Irving, “[When do human beings begin? ‘Scientific’ myths and scientific facts](#)” *International Journal of Sociology and Social Policy*, 19:3/4 (1999):22-36.
- <sup>6</sup> Robert P. George and Christopher Tollefsen, “Embryo: A Defense of Human Life”, (2011) Princeton: The Witherspoon Institute: chapter 2, p. 49.
- <sup>7</sup> Robert P. George and Christopher Tollefsen, “[Embryonic Debate](#)”, *National Review*, (2008).
- <sup>8</sup> *Supra* note 6, pp, 156-157.
- <sup>9</sup> *Ibid*, p. 130.
- <sup>10</sup> Pacific Fertility Center “[Sperm and Embryo Freezing](#)”.
- <sup>11</sup> *Supra* note 6, pp. 209-215.
- <sup>12</sup> D. Gareth Jones, “In Vitro Fertilization and the Destruction of Human Embryos”, *Perspectives on Science and Christian Faith*, vol. 67 no. 3, (2015) 164.
- <sup>13</sup> Annie Janvier et al., “The Epidemic of Multiple Gestations and Neonatal Intensive Care Unit Use: The Cost of Irresponsibility” *The Journal of Pediatrics*, vol 159 no. 3, (2011), 409.
- <sup>14</sup> American Society for Reproductive Medicine “[Patient Fact Sheet: Complications and Problems Associated with Multiple Births](#)” (2008).
- <sup>15</sup> Amending the law to limit fertilization and transfer of embryos one at a time will require a transitional provision allowing for the transfer of previously cryopreserved vials which contain more than one embryo.
- <sup>16</sup> Christophe Sifer, “[Contribution of embryo vitrification procedure to ART efficiency](#)” *Gynécologie Obstétrique & Fertilité*, vol. 42, (2014) 721.
- <sup>17</sup> Alana Cattapan and Françoise Baylis, “Frozen in perpetuity: ‘abandoned embryos’ in Canada”, *Reproductive Biomedicine and Society Online*, vol 1 no. 2, (2015) p. 108.
- <sup>18</sup> *Ibid*, p 108, where the source says, “when embryo providers ‘fail to make contact for more than 5 years, a centre for assisted procreation may conserve, donate, transfer or dispose of those persons’ gametes or embryos in a manner that is acceptable in terms of ethics and recognized by the Minister”
- <sup>19</sup> *Ibid*, p. 104.
- <sup>20</sup> *Ibid*, p. 109.
- <sup>21</sup> [1 Timothy 5:8](#).
- <sup>22</sup> Canada, “[Proceed with Care: the final report of the Royal Commission on New Reproductive Technologies](#)” (1993) Ottawa: Privy Council Office, p. 627.
- <sup>23</sup> [Reference re Assisted Human Reproduction Act](#), 2010 SCC 61, (2010) 3 S.C.R. 457, para 111.
- <sup>24</sup> [Assisted Human Reproduction Act](#), S.C. 2004, c. 2.

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- <sup>25</sup> [Letter from Lynn Maitland](#), Director of Assisted Reproduction at Health Canada to Dr. Jocelyn Downie and Dr. François Baylis, (September 24, 2013).
- <sup>26</sup> [Email from Carol De Rose](#) at Health Canada to Dr. Jocelyn Downie and Dr. François Baylis. (December 16, 2013).
- <sup>27</sup> Jennifer Ludden, “[Donor-conceived children seek missing identities](#)”, *NPR*, (September 18, 2011).
- <sup>28</sup> “[Best of 2011 – 2014](#)” *AnonymousUs.Org*.
- <sup>29</sup> *Ibid.*
- <sup>30</sup> Juliet Guichon, “[Sperm Donor Secrecy: BC Appeal Court takes giant step backwards](#)”, *The Globe and Mail*, (November 30, 2012); *Pratten v. British Columbia (Attorney General)*, 2011 BCSC 656.
- <sup>31</sup> *Pratten v. British Columbia (Attorney General)*, 2012 BCCA 480.
- <sup>32</sup> Glenn Cohen et. al, “[Sperm donor anonymity and compensation: an experiment with American sperm donors](#),” *Journal of Law and the Biosciences*, Vol. 3 no. 3 (2016), 468.
- <sup>33</sup> Jack Hamilton, “The Ethical Viability of In Vitro Fertilization”, *Dialogue & Nexus*, vol. 2, (2015) p. 52.
- <sup>34</sup> Shannon O’Neil and Dr. Jeff Blackmer, “Assisted Reproduction in Canada: An overview of ethical and legal issues and recommendations for the development of national standards”, *Canadian Medical Association*, (2015), p. 9-10.
- <sup>35</sup> Darshak M. Sanghavi, “[Wanting Babies Like Themselves, Some Parents Choose Genetic Defects](#)” *New York Times*, (December 5, 2006).
- <sup>36</sup> *Supra* note 33, p. 53.
- <sup>37</sup> [Psalm 127:3-4](#).
- <sup>38</sup> *Supra* note 34, p. 10.
- <sup>39</sup> Juliet Guichon et al, “Assisted Human Reproduction in Common Law Canada after the Supreme Court of Canada Reference: Moving beyond Regulation by Colleges of Physicians and Surgeons” *Canadian Journal of Women and the Law*, vol. 25 no. 2 (2013) p. 323.
- <sup>40</sup> *R. v. Malmo-Levine*, 2003 SCC 74, [2003] 3 S.C.R. 571, at para. 77.