Sperm, Egg, & Embryo Donation in Canada

Legal Information

This info sheet helps LGBTQ parents and donors understand their legal rights and responsibilities in egg and sperm donation.

Fertility treatment, including insemination, is limited by the federal Assisted Human Reproduction Act, which empowers Health Canada to regulate certain aspects of assisted reproduction. Sperm donation is further limited by a set of regulations called the “Processing and Distribution of Semen for Assisted Conception Regulations” or the “Semen Regulations.”

Who can donate?

A donor must be at least 18 years old and legally competent to donate eggs or sperm.

Home Insemination

It is legal to inseminate both inside and outside of a clinical setting with sperm from a known or unknown donor.

Many families inseminate with sperm from known donors at home.

Some fertility clinics offer home insemination options with sperm from unknown donors. It is also legal for intended parents to have sperm shipped from a sperm bank to their family doctor and then inseminate on their own.

Insemination in a Clinical Setting

The restrictions on sperm from known donors discussed below do not apply to those who are inseminating outside of a clinical setting.

Donors who have had sex with men since 1977, and people over the age of 40 are barred from donating to a sperm bank as unknown donors. If you are inseminating with sperm from a known donor who is included in these groups your physician must apply for permission from Health Canada through the Donor Semen Special Access Program. Contact information is listed at the end of this info sheet.

Clinics are legally required to follow specific procedures for inseminating people with sperm from anyone other than the recipient’s sexual partner. Before they can donate, both known and unknown donors are tested for STIs. Their semen is then frozen and held in quarantine for a minimum of six months. The donor is
then retested, the semen is released for insemination only if the donor continues to test negative for STIs.

In-Vitro Fertilization (IVF)
Some intended parents pursue IVF, where an egg is fertilized outside of a person’s body. IVF is used by LGBTQ people in gestational surrogacy, when someone carries their partner’s egg, or as treatment for infertility with or without donor eggs. There is no legal requirement to quarantine sperm prior to IVF. Despite this, there are some clinics that ask clients to quarantine the sperm or the embryos.

Consent in a Clinical Setting
Everyone who is entering into fertility treatment in a clinical setting should be asked for their consent. Giving consent as an egg or sperm donor has a particular legal significance:

- Consent must be given without undue pressure or promise of reward.
- Consent must be given in writing, signed by the donor and witnessed by a third party.
- Before giving their consent a donor should be given an information document. This information must include the lawful uses of donated eggs and sperm, how to withdraw consent, and the lawful uses of excess reproductive materials.
- A donor may consent to extraction of sperm from their body at the time of their death. They can only do so for use by their common-law partner or spouse.
- A donor may consent to the use of excess embryos at the time of their death for reproductive use by their partner. However, their partner cannot then donate those embryos.

Withdrawing Consent
Donors who wish to withdraw consent must do so in writing.

An unknown donor who donates to a bank can revoke consent for any egg or sperm that has not yet been ordered by a recipient. As a client of a sperm or egg bank, once you have placed an order for sperm or eggs, it is legally yours, and the unknown donor’s consent is final.

In an unlikely scenario, a known donor could wish to revoke consent after donating but before the egg or sperm is transferred to a recipient. While they have no legal right to withdraw consent once the egg or sperm is in storage, a fertility clinic or sperm bank may refuse to transfer the egg or sperm due to ethical concerns.

Payment
Under Canadian law, you cannot purchase eggs, sperm or embryos from a donor. You may not pay a donor to encourage a donation, or to compensate for time or suffering.
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It is legal for a third party not acting on behalf of the donor to sell eggs and sperm. This allows clinics and banks to charge a fee for storage, transfer and use of donated eggs or sperm.

Questions about payment are more often a concern for egg donors than sperm donors, but the same rules apply to both. You are allowed to reimburse for receiptable, documented expenses. Reimbursable expenses often include travel, in-town accommodation, and childcare for the donor’s own children. Either the recipients or the donor should keep receipts. Reimbursements cannot include anticipated expenses or unaccounted allowances. Recipients should expect to pay some costs directly, such as medical costs, and legal fees, instead of through reimbursement. An experienced fertility lawyer will be able to advise you on best practices.

While it is illegal to pay someone to arrange a surrogacy, there is no prohibition against paying an agent to arrange an egg donation. Some intended parents make an arrangement directly with a friend or family member, but others prefer to work with an agency to recruit a donor. Prior to working with the agency, the parents and egg donor would not know each other, and they may or may not meet during the time the donation is being arranged.

Other jurisdictions have different laws governing egg and sperm donation. It is important to make sure you are following the laws of the jurisdiction in which any part of the process occurs. In some American jurisdictions it is legal to pay for the time, suffering and risk associated with egg or sperm donation. If you are considering egg donation outside of Canada, it is important to speak to a lawyer about the possible legal risks. This is especially important if you are considering arranging egg donation internationally but still hoping to retrieve the eggs in Canada.

Known Donor Agreements

Agreements between recipients and known donors should be in writing. Creating this document provides an ideal opportunity for everyone involved to discuss their intentions and expectations.

Recipients and donors often make agreements in which the donor relinquishes rights and responsibilities as a parent.

Custody and Access

Most donors and recipients move forward from these agreements by building a relationship of trust and shared understanding.

Minor disagreements between recipients and donors can occur, and are often settled on good terms. Sometimes these conflicts can escalate to the point of litigation. It is best practice to have a written donor agreement. There are very few legal precedents involving disputed donor agreements. While donor agreements are not necessarily binding, they are an important and helpful document.
Any time a dispute over parental rights and access ends up in court, judges consider only the best interests of the child in making a decision. Donor agreements show everyone’s intentions at the time of the agreement, and may serve as evidence of what the parties believe to be the child’s best interest. In making family court decisions, judges typically try to minimize disruption to the child by continuing existing relationships and supporting established living arrangements. In one case a donor successfully asserted his right to block a second parent adoption, despite initially agreeing to relinquish his rights as a parent.

**Child Support**

Donor agreements typically state that the donor is not responsible for paying child support. There has never been a decision by a Canadian court in which a donor was required to pay child support, and so there are no legal precedents. There is no guarantee that a donor would not be liable and anyone who acts in a parental role may be liable for child support.

**Dispute Resolution**

Donor agreements may include a dispute resolution clause. This means that prior to being in conflict, the recipients and the donor agree to a dispute resolution process for any future conflicts should they arise. This may be a good way to minimize conflict.

**Anonymity and Donor Profiles**

An unknown donor is a donor whose identity is not already known to recipients prior to the donation. When donating through an agency, egg or sperm bank, both egg or sperm donors may choose to donate anonymously or to allow their identity to be released at a later point in time. Both of these types of donors are considered to be *unknown donors*.

A donor to an egg or sperm bank may choose to remain anonymous. The right to donate anonymously has been upheld by Canadian courts, which decided that donor conceived people do not have a constitutional right to know the identity of their donor.

Egg and sperm banks create profiles with information about each of their donors. Information about sexually transmissible infections and blood type provided by egg or sperm banks is based on reliable laboratory tests.

Donor profiles include information about the donor’s health and social history. Many families find these profiles to be helpful and reliable. There is a possibility that information in these profiles may not be completely accurate. For example, donors may misrepresent information such as their education or occupation. Donors may not know their family’s full health history. If a particular piece of information is especially important to you, you can consider confirming it by speaking to the egg or sperm bank. Online donor sibling registries offer another way for families who have used the same donor to connect. This may be one way to verify information from a donor profile or to get more information.
Excess Sperm, Eggs and Embryos

It is best practice for fertility clinics to obtain informed consent and instructions from all recipients of donor sperm, eggs and embryos, as well as from people who are storing their own eggs, sperm or embryos. Typically, this consent is given in writing when you begin treatment. The informed consent document asks for your instructions for any excess sperm, eggs and embryos after you finish treatment, and in the case of couples, if you end your relationship.

If you have sperm, eggs, or embryos that you will not use, you may wish to donate them to someone else. To transfer eggs or sperm from an unknown donor to another person, no further consent is required. To transfer eggs or sperm from a known donor, or an embryo created from donated sperm or eggs, further consent is only required if the donor agreement states that the donor’s permission is required. However, in practice, most fertility clinics consider all embryos created and all donor eggs or sperm received during a relationship to be linked to both partners regardless of any genetic connections.

In one case in British Columbia excess donor sperm was considered property, and split between the partners. According to Health Canada regulations, if recipients have their own eggs or sperm in storage, these are not split between partners, but remain the property of the person who has a genetic connection to the sperm or eggs. According to these regulations, if a couple breaks up and only one has a genetic connection to frozen embryos, they are not required to obtain the consent of their former partner to use or donate the embryos.

It is very important that you read informed consent documents carefully. If you change your mind later, be sure to contact your clinic to revise your informed consent and instructions for excess sperm, eggs and embryos.
Glossary

These explanations are meant to be guidelines only and are not formal definitions.

**Assisted human reproduction (AHR)**
Activities used to aid human reproduction. Examples of AHR include taking prescription fertility drugs, in vitro fertilization, and donor insemination.

**Assisted Human Reproduction Act (AHRA)**
Canadian legislation that regulates assisted human reproduction in Canada.
http://laws-lois.justice.gc.ca/eng/acts/a-13.4/page-1.html#h-1

**Donor**
A person who donates their sperm, eggs, or embryos.

**Known Donor**
A known donor is someone who is already known to recipient(s) prior to donation.

**Unknown Donor**
An unknown donor is a donor whose identity is not already known to recipients prior to donation.

Some sperm banks have a category of donors who are unknown to recipients at the time of donation, but who consent to release their identifying information to people who were conceived, typically at the age of 18.

Sperm banks refer to these donors as “willing-to-be-known” or “open” donors or “ID-Release donors.” These donors are legally considered the same as unknown donors.

**Donor insemination**
The process of inseminating with sperm from a donor.

**Egg/Ovum/Oocyte**
Reproductive or germ cell.

Oocyte is an immature egg cell, found in the ovaries. An ovum is a mature oocyte that is ready to be released or has been retrieved.

Oocyte and ovum are the same cell at different stages of development, but the two terms are often used interchangeably. Egg is the more general term.

**Egg donation**
When someone’s eggs are retrieved to donate to another person. Eggs may also be retrieved, frozen, and held in a bank until a recipient requests them.

**Embryo**
A human organism during the first eight weeks of development after fertilization.

**Embryo Donation**
When people have embryos they will not use, they may search for someone to donate their remaining embryos. Families who need egg donation and sperm donation to conceive will sometimes consider embryo donation instead, and may search for a donor.
**Fertilization**
Combination of an egg and a sperm to produce an embryo.

**Gestational Carrier**
A person carries a pregnancy for another person. “Gestational carrier” is the term that is preferred, rather than “surrogate” to refer to the person who carries the pregnancy. Canadian law is written using the term “surrogacy” and “surrogate” rather than gestational carrier.

**IVF – In Vitro Fertilization**
A process where ovulation is stimulated using medication, and then the eggs are surgically retrieved from a person’s body, and then exposed to sperm in a laboratory. Conception occurs, and then the resulting embryos are transferred into a person’s uterus to carry the pregnancy.

Eggs may be frozen prior to fertilization, or embryos may be frozen after fertilization has occurred. Egg donation requires IVF. Surrogacy pregnancies are typically conceived through IVF.

**“Semen Regulations”**
Processing and Distribution of Semen for Assisted Conception Regulations (SOR/96-254)
This legislation controls how intended parents can access donor sperm in clinical settings. The semen regulations do not apply to home insemination.

**Sperm**
Reproductive or germ cell.

**Sperm donation**
A person donates sperm to help another person or people conceive. Sperm may be donated informally with fresh sperm from one person to another. Sperm may also be donated to a sperm bank, where it is frozen until it is requested by a recipient.

**Gestational Carrier or Surrogate**
A person who carries a pregnancy for another person. “Gestational carrier” is a more inclusive term, rather than “surrogate” to refer to the person who carries the pregnancy. Canadian law is written using the term “surrogacy” and “surrogate” rather than gestational carrier.

**Gestational Carriage or Surrogacy**
There are two types of gestational carriage:

- **Genetic surrogacy or traditional surrogacy**: the gestational carrier is also the egg donor, and is genetically linked to the child. Pregnancy may be conceived through insemination or IVF.
- **Gestational carriage**: the gestational carrier is not the egg donor. The egg may be provided by an intended parent or by a donor. The pregnancy is conceived through IVF with the egg and sperm, and then the embryo is transferred to the gestational carrier. The gestational carrier is not genetically linked to the child. Gestational carriage is generally preferred by both clinicians and lawyers working in surrogacy.
Additional Resources and Contacts

LGBTQ Family Planning Courses
These courses provide opportunities for LGBTQ people to consider parenting, gather information, and build community. Offered in partnership with The 519. For dates and registration, visit: lgbtqpn.ca/courses

LGBTQ Parenting Network Directory
This online listing includes several fertility lawyers who are familiar with LGBTQ parenting issues and can provide legal advice. Please visit lgbtqpn.ca/directory

LGBTQ Parenting Network Library
Resources in the library include information about assisted human reproduction, and a variety of other topics. Most resources are available online to view or purchase. Please visit lgbtqpn.ca/library

Health Canada
The federal agency responsible for implementing the Assisted Human Reproduction Act and its regulations.

Email: Info@hc-sc.gc.ca    Toll Free: 1-866-225-0709    Teletypewriter: 1-800-465-7735

Donor Semen Special Access Program E-mail: DSSAP@hc-sc.gc.ca    Tel: (613) 952-8318