

# Egg donation in Canada: Autonomy, practice and the Canadian Assisted Human Reproduction Act, 2004



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## Abstract

This study examines the autonomy being exercised by Canadian egg donors, how donor compensation may affect autonomy, and the role of the Canadian regulation on gamete donation (*Assisted Human Reproduction Act, 2004*) in protecting donor autonomy. Eleven fertility specialists (e.g. fertility doctors, counselors) and 7 (past or prospective, known or anonymous) egg donors were interviewed. Data were also collected from 67 online donor advertisements. A measurable characterization of autonomy was developed and used to analyze the data.

## Background

A rising demand for egg donors has been brought about by the increased use of assistive reproductive technologies (ARTs). Egg donation is a complicated, painful and invasive process, including risks to a woman's physical health and mental well-being.

### Feminist concerns around reproductive autonomy

ARTs have raised concerns regarding women's reproductive autonomy - concerns that are exacerbated by the role of compensation. Two main categories of debates pertaining to egg donation are:

- (1) nature of egg donation market: the profit-driven nature of the market causes a conflict of interest for clinicians. Subsequently, donors may be seen as a tool for another woman's pregnancy and may not be properly informed or cared for.
- (2) coercion: pressures for women to fulfill an altruistic imperative, or coercion by financial incentive

### The Canadian Assisted Human Reproduction Act, 2004

In Canada, egg donation is regulated by the *Assisted Human Reproduction Act, 2004* (AHR Act). The Act's principles emphasize the protection of the 'health and well-being' of women and the promotion of free and informed consent. Under the AHR Act, Canadians cannot purchase, offer to purchase or advertise for the purchase of gametes from a donor, or from a person acting on behalf of a donor. Only reimbursement of 'receiptable expenditures' is permitted. Seemingly, the AHR Act is attempting to address feminist concerns surrounding reproductive autonomy. Recent investigative journal articles have brought to light stories of Canadian donors receiving compensation for their egg donation from intended parents (IPs), clinics and agencies in Canada, despite the ban on compensation. The Act's principles of protecting the well-being of donors are perhaps not being fulfilled.

## Goals of the study

The goals of this study are summarized in the following three research questions:

- (1) If Canadian women are seeking to gain compensation for egg donation, for how much and is this amount greater than might be legally permitted under section 12 of the Act?
- (2) Are the women entering into an autonomous decision to donate their eggs? If they are receiving compensation, does this impact on the autonomy of the decision to donate their eggs?
- (3) What are the concerns surrounding the current regulation of egg donation in Canada?

## Methodology

### Characterizing autonomy

A list of three features of autonomy was created that was used to assess women's autonomy in their decision to donate their eggs. The three features of autonomy include:

- (1) Responsibility in decision-making, and responsibility of others to promote a donor's autonomy (Maclean, 2009),
- (2) A decision for the donor's 'own good' (Feinberg, 1982), as assessed through Chamber (2008)'s disadvantage factor and
- (3) Self-determination in making the decision (Feinberg, 1982; Maclean, 2009) assessed through internal and external critical reflection (Dworkin, 1988) and including consideration of moral, political and social issues (Young, 1986).

### Collection of empirical data

#### Semi-structured interviews

Interviews were conducted either in-person or via Skype telephone with 11 fertility specialists (e.g. fertility doctors, counselor), and 7 past or prospective unknown or anonymous egg donors.

#### Advertisement Analysis

Data was collected from 67 online donor advertisements, placed by donors seeking to recruit intended parents.

## Results

### Research question#1 - Compensation

- Donor compensation is occurring in Canada, to what extent is unclear
- Average compensation is between 3000-6000 CAD dollars

### Research question#2 - Assessment of Autonomy

#### 1. Responsibility

Many of the donors were not self-informed or well informed by others. Donors had little understanding of the legislation, and had given the mental health risks minimal consideration.

#### 2. 'Own good'

Egg donors who were interviewed appeared to satisfy the condition of 'own good'. However, fertility specialists referred to the motivations of a minority of donors for whom they felt that the donation did not contribute to their well-being.

#### 3. Self-determination (as evaluated through critical reflection)

The donors were a largely self-determined group of women, except for two donors whose decisions did not appear to have been made freely. Fertility specialists also contributed a small handful of examples of donors influenced by a number of factors.

### Overall autonomy

The table below illustrates an overall assessment of autonomy for each of the 7 donors based on whether or not they fulfilled the requirements of the three features. The majority (possibly 5 donors) appear to have entered or are entering into an autonomous decision to donate their eggs.

Overall assessment of autonomy

| Donors & prospective donors | Features of Autonomy |                             |                         |                       |                       | Total Score |
|-----------------------------|----------------------|-----------------------------|-------------------------|-----------------------|-----------------------|-------------|
|                             | Responsibility       |                             | 'Own good' (well-being) | Self-determination    |                       |             |
|                             | In making decisions  | Autonomy enhanced by others |                         | No internal influence | No external influence |             |
| D01                         |                      | X                           |                         |                       | X                     | 2/5         |
| D02                         |                      | X                           | X                       | X                     | X                     | 4/5         |
| D03 (c)                     | X                    |                             |                         |                       |                       | 1/5         |
| D04 (c)                     | X                    | X                           | X                       | X                     | X                     | 5/5         |
| PD05                        | X                    | P                           | X                       | X                     | X                     | 4-5/5?      |
| PD06                        |                      | P                           | X                       | X                     | X                     | 3-4/5?      |
| D07                         | U                    | X                           | X                       | X                     | X                     | 4/5?        |

X = fulfills criteria of feature  
 U = unknown (not mentioned by donor)  
 P = prospective donor, and because of this they have not yet been informed  
 (c) = compensated

### Research question#3 - Concerns surrounding regulation of egg donation

- Many concerns were expressed regarding the regulation of egg donation in Canada, including: lack of clarity of the legislation, legislation not protecting donors, and little regulation of clinics.

## Conclusions

- Compensation is occurring, but infrequent that compensation amounts are coercive
- Majority of donors are autonomous, but possible subgroup of donors who are not (limited in responsibility and self-determination)
- AHR Act is not facilitating autonomy, and should focus on concerns other than compensation. For instance, pressures on donors from altruistic relationships, clinics and agencies.

## References

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