



CURRENT AND EMERGING ISSUES IN FERTILITY LAW

A unique program offering in-depth and practical guidance by a multidisciplinary faculty of experts so you can effectively advise your clients on the complexities of fertility law.

- A primer on fertility law: understanding the key concepts
- Current issues in the law of surrogacy: A cross Canada check-up
- What changes can we expect to see from Health Canada around reimbursing egg donors and surrogates?
- Do ART (assisted reproductive technology) clinicians have an obligation to children-not-yet-born in screening parents for their suitability to parent?
- Implications of the trend towards provincial public funding for a broad range of ART services

Register today at:

osgoodepd.ca/fertility

Program Chairs:

Sara Cohen, Fertility Law
Canada™ at D2Law LLP

Ellen K. Embury, Dunphy Best
Blocksom LLP

Date and Time

February 5, 2018

8:30 a.m. – 4:00 p.m. EST

In Person or Webcast

Online Replay: March 9, 2018

Location

**Osgoode Professional
Development**

1 Dundas St. West, 26th Floor
Toronto, ON

Current and Emerging Issues in Fertility Law

Practitioners in a variety of practice areas are increasingly being asked for legal advice on fertility law matters. From questions about the basics of IVF, jurisdictional differences, funding & equality challenges and questions of ethics, understanding this rapidly developing area is critical. As the law continues to evolve, counsel must ensure they are up-to-date on the latest case law, as well as legislative, jurisdictional and procedural trends and changes.

This OsgoodePD program was designed to provide in-depth discussion and analysis of some of the more challenging aspects of fertility law, while still providing a good overview of the key concepts for those who are new(er) to this area.

Our expert faculty will provide thoughtful analysis on:

- The latest legal developments in fertility law and their impact – from across Canada
- The reimbursement model : an update from Health Canada
- Funding & equality issues & challenges around claiming expenses
- Ethical dilemmas: what obligations do ART clinicians have?
- The most pressing “hot” issues fertility law practitioners are seeing today

Who Should Attend?

- Family law lawyers
- Fertility law practitioners
- Wills and estates lawyers
- Health lawyers
- General practitioners
- Immigration lawyers

Past participants say it best:

“Being new to the fertility world, it was nice to be introduced to a variety of issues in the field. The primer was very informative and helpful.”

Nadine Martin, Conceptia Clinic

Agenda

8:00 a.m. – Registration

8:30 a.m. – Optional Primer

Fertility Law: Understanding the Key Concepts

Sara Cohen, Fertility Law Canada™ at D2Law LLP

Dr. Marjorie Dixon, MD, FRCSC, FACOG, REI, CEO & Medical Director of Anova Fertility & Reproductive Health

If you are new(er) to the area, or need a refresher, this optional primer will give you an up-to-date framework that will serve as a basis for what comes later in the day including:

- What is fertility law?
- Introduction to the *Assisted Human Reproduction Act* and regulations
- Surrogacy and the law: a background
- Sperm, egg and embryo donation: the law
- Understanding IVF – a primer
- Legal parentage across Canada: the legal framework for parentage of children born via assisted reproductive technologies

9:15 a.m. – Conference Begins

Welcome from the Chairs

Sara Cohen, Fertility Law Canada™ at D2Law LLP

Ellen K. Embury, Dunphy Best Blocksom LLP

9:20 a.m.

Current Issues in the Law of Surrogacy: A Cross Canada Check-Up

Moderator:

Ellen K. Embury, Dunphy Best Blocksom LLP

Panelists:

Doreen Brown, Green, Glazer, Nadler, Danino

Sara Cohen, Fertility Law Canada™ at D2Law LLP

Lawrence A. Kahn, QC, C.Med., C. Arb., C.Fam.Arb., Kahn Zack Ehrlich Lithwick LLP

Jocelyn Léger-Nowlan, Tandem Family Law

This panel of experts will provide a concise update on the current state of surrogacy and the law across the country, by answering these key questions:

- Does the surrogate need to be on the birth certificate?

- Does the partner's name need to be on the birth certificate?
- How quickly can parents obtain a birth certificate which includes the names of both intended parents on it?
- How quickly can they be on a plane after the birth?
- Are there any unique issues/rules in your jurisdiction?
- How do you advise your client on the law and their legal obligations?
- Tips, tools and best practices for lawyers advising on these matters

10:20 a.m.

Discussion & Q&A Session

10:45 a.m.

Refreshment Break

11:00 a.m.

An Update from Health Canada

Fertility law practitioners across the country want clarity around the current expense reimbursement model and the rules in place. In this session, hear directly from Health Canada on:

- What is the current expense reimbursement model in Canada?
- How is a "reasonably reimbursable expense" defined?
- What are the changes Health Canada is proposing to make around reimbursing egg donors and surrogates?
- What other changes are anticipated around the *2004 Assisted Human Reproduction Act*?

11:45 a.m.

Discussion & Q&A

12:00 p.m.

Luncheon & Keynote Address: *"Lessons Learned: Compensated Surrogacy and Gamete Donations Done Ethically"*

Susan L. Crockin, JD, Crockin Law & Policy Group, PLLC; Scholar, The O'Neill Institute for National and Global Health Law; Adj. professor, Georgetown U. Law Center; Affiliate faculty in residence, Kennedy Institute of Ethics Georgetown University, Washington, DC

1:00 p.m.

The Gatekeepers? Dilemma: Balancing Adults' Access to ART Against Children's Best Interests

Shawn Winsor, MHSc, PhD(c), Vanier Canada Scholar, Centre for Health Economics and Policy Analysis, McMaster University; Lecturer, Dalla Lana School of Public Health, and Member, Joint Centre for Bioethics, University of Toronto

- Do ART (assisted reproductive technology) clinicians have a duty to children-not-yet-born to screen prospective parents to their clinic for suitability to parent?
- If so, what would those suitability criteria be?
- Are prospective parents owed a duty by ART clinicians to not have their quest to have children interfered with, in the same manner as those who are not infertile?
- What obligations do lawyers representing the parties have?

In exploring these questions, Shawn Winsor will scan the current policy landscape in Canada, its relevant law, and introduce us to influential research done around the attitude of ART clinicians' and their views of who should get access to ART and who should not.

Lastly, now that more provinces are choosing to publicly-fund a broad range of ART services, the implications of this on a clinicians' ability to screen patients will also be addressed.

1:30 p.m.

Discussion & Q&A

1:45 p.m.

Fertility Law: Funding & Equality Issues

Amir Attaran, Professor, Faculties of Law and Medicine, University of Ottawa

Andy Inkster, Health Promoter, LGBTQ Parenting Network, Sherbourne Health Centre

Errol H. Tenenbaum, Robins Appleby LLP

The focus for this session will be on federal versus provincial funding & equality tax issues around fertility, including:

- What fertility and surrogacy expenses can someone claim? Medical? Legal? Surrogate expenses?
- What can be claimed federally? Provincially?
- Jurisdictional differences – where can you obtain a medical credit or make a claim for legal fees?

- What is the rationale for a difference between expenses that can be claimed for an adoption and those relating to surrogacy?
- What questions should be asked in other jurisdictions?
- Understanding the shortcomings around LGBTQ funding in Ontario
- Understanding and advising clients in relation to the claiming of expenses
- What is your duty when there are questionable expenses/financial contributions which may be prohibited?

2:30 p.m.

Discussion & Q&A

2:45 p.m.

Refreshment Break

3:00 p.m.

Hot Issues in Fertility Law

To close out the program, this panel will review the key issues from the day, while highlighting hot issues to keep your eye on, including:

- Reciprocity between provincial health care plans – why are some clients being billed by other Canadian jurisdictions? What can be done to avoid this? How do you advise your clients?
- Questions surrounding the disposition of embryos/eggs after marital breakup or death
- What obligations do clinics have in these circumstances?
- Are we seeing any significant movement across the country around trying to change parentage laws?

3:45 p.m.

Discussion & Q&A

4:00 p.m.

Program Ends



Chairs

Sara Cohen, Fertility Law
Canada™ at D2Law LLP

Ellen K. Embury, Dunphy
Best Blocksom LLP

Keynote

Susan L. Crockin, JD, Crockin Law & Policy Group, PLLC;
Scholar, The O'Neill Institute for National and Global Health
Law; Adj. professor, Georgetown U. Law Center; Affiliate
faculty in residence, Kennedy Institute of Ethics, Georgetown
University, Washington, DC

Faculty Includes

Amir Attaran, Professor,
Faculties of Law and
Medicine, University of
Ottawa

Doreen Brown, Green,
Glazer, Nadler, Danino

Sara Cohen, Fertility Law
Canada™ at D2Law LLP
Ottawa

Dr. Marjorie Dixon, MD,
FRCS, FRCOG, REI, CEO
& Medical Director of Anova
Fertility & Reproductive
Health

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Andy Inkster, Health
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Lithwick LLP

Jocelyn Léger-Nowlan,
Tandem Family Law

Errol H. Tenenbaum,
Robins Appleby LLP

Shawn Winsor, MHSc,
PhD(c), Vanier Canada
Scholar, Centre for Health
Economics and Policy
Analysis, McMaster
University; Lecturer, Dalla
Lana School of Public
Health, and Member,
Joint Centre for Bioethics,
University of Toronto

Registration Details

Fee per Delegate

\$525 plus HST

Fees include attendance, program materials, continental breakfast,
lunch and break refreshments. Group discounts are available. Visit
www.osgoodepd.ca/group-discounts for details. Please inquire about
financial assistance.

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