

continue to be sidetracked by emotive and uninformed arguments, unless government can develop rational and just policies based on reliable information.

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IVF

The egg bank

KATHY MUNRO reports that new techniques allowing the mass production of mature, unfertilised eggs raise important ethical and legal questions.

Numerous legal, ethical and public policy concerns have arisen since the first *in vitro* fertilisation (IVF) baby was born 16 years ago. In 1982 the National Health and Medical Research Council (NH&MRC) issued guidelines and more recently Victoria, Western Australia and South Australia, have enacted legislation to guide and control clinical research in this field. Since then there has been a recognition that existing provisions require revision to reflect the current state of IVF and embryo transfer (ET) research in Australia.

All existing guidelines and legislation focus primarily on the ethics of storage and disposition of and experimentation on embryos or fertilised gametes after fertilisation. It has been assumed that there are few ethical concerns surrounding gametes prior to fertilisation and so the current system does not ascribe comparable importance to the recording and monitoring of research using unfertilised gametes, particularly ova.

There is now a need for these guidelines and regulatory frameworks to address the manipulation, storage and disposition of ova, through a new technique, known as *in vitro* maturation (IVM). This technique allows scientists to take unripe eggs from women's ovaries and artificially mature and fertilise them in a laboratory. Usually only one egg ripens in the ovary every month. Using IVM it is now possible to collect large numbers of mature eggs.¹ Current frameworks are ill-equipped to accommodate the important ethical and regulatory questions which IVM raises.

The creation of ova as experimental material

The development of IVM technology is significant because for many years research scientists in the field of reproductive technology were frustrated about the lack of ova available as experimental material.² Prior to this development the only sources of donated ova were from women who underwent hysterectomies, women who were superovulated for the specific purpose of ova donation, and women on IVF programs. The increased availability of ova is likely to expand the demand and hence the commodification of ova, potentially leading to further fragmentation of women's reproductive capacities.

Ditta Bartels observed that in spite of the current shortage of ova, considerable advances have been made in the genetic testing of embryos and suggests that technologies such as IVM move the research beyond the context of infertility and into that of genetic engineering by providing a greater pool of embryos for experimentation.³

The spirit of existing regulatory frameworks (e.g. *Infertility Medical Procedures Act 1984* (Vic.) and the *Human Reproductive Technology Act 1991* (WA)) is premised on the undesirability of deliberately creating embryos as research material. However, with IVM it is now possible to obtain an unlimited supply of research ova without interfering with existing regulations on embryos.

Ova banking

The development of IVM and US research into the freezing of unfertilised eggs means that ova banks, run like sperm banks, will soon be possible.⁴ Legal reform addressing the consequences will be essential. Ova banking will be fraught with many of the difficulties currently confronting sperm banks, such as awareness of and adherence to professional guidelines, record keeping practices, donor recruitment, limitations on the number of donations and payment to donors.

Like most other forms of ova donation, ova banking requires that women must undergo invasive surgical procedures in order to donate their reproductive material. These procedures are vastly more hazardous than the act of masturbation required to obtain gametes from men.

Given the ethical concerns previously expressed by the NH&MRC about the safety of using frozen-thawed human ova,⁵ there should be specific requirements for IVF units to report use of this new technique to the National Perinatal Statistics Unit. Similar information to that currently required by the regulations of ss.29(6) and 29(9) of the *Infertility Medical Procedures Act 1984* (Vic.) could be provided, with some modification to reflect the recent developments in gamete retrieval and donation.

Ova from cadavers and aborted fetuses

In 1993 a scientist in Scotland disclosed to the media that he had approached the British Human Fertilisation and Embryology Authority for permission to use the eggs of aborted fetuses as a source of donated eggs in IVF programs.⁶ In the same report other researchers stated their belief that transplanting the ovaries from young healthy women who have died suddenly, may be a preferable option to using eggs from aborted fetuses.

In an interview early this year, Professor Carl Wood of Monash IVF remarked: 'It needs to be debated but I think it's a possible source for women who otherwise can't get donor eggs'.⁷ Such comments are of concern because they suggest the demand for donor ova is generated by infertile women, despite considerable evidence that this demand for eggs is actually driven by researchers.

The use of ova from aborted fetuses raises complex ethical and legal questions relating to dispositional authority and consent. Under the existing NH&MRC guidelines on ovum donation, consent is required from the ova donor. Clearly when the existing guidelines were developed no one had entertained the possibility of obtaining ova from aborted fetuses. It is therefore critical that dispositional authority for

the use of foetal tissue is clearly vested in the woman who carries the foetus.

This view is premised on the understanding that a foetus is a part of a woman's body and is therefore not a separate entity until such time as it is born. Abortion, spontaneous or planned, does not constitute the act of birth, and therefore the foetus must be regarded as an extension of the woman's body, with dispositional authority for foetal tissue always vesting with the woman.

Serious consideration must also be given to the effect on children created from rejected foetal tissue. The emotional experimentation involved is unacceptable. As was stated very eloquently in a recent editorial of the *Australian* on this subject:⁸

There is a clear connection between the biological process and human psychological development. Our sense of personal identity and relation to others is directly affected by how we understand our origins. To have been the child of an aborted foetus or from eggs taken from the body of a woman who had died, offers an alarming scenario, both in explanation and identity.

The fact that the technology may potentially provide benefits in a few rare and obscure cases must not be taken to provide a rationale for its more wide-ranging acceptance. Legislation on organ donation must be amended to specifically exclude donations of reproductive tissue, and particularly gametes of deceased persons.

Conclusion

In the light of the issues raised in this discussion, the current guidelines and legislation relating to IVF and ET must, as a matter of urgency, also address the implications of IVM techniques, placing a moratorium on them until such time as these issues are adequately resolved. This is clearly an area where the advances in medical science have overtaken the capacity of governments to respond to the questions raised by the technology.

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The views expressed are those of the author and do not necessarily reflect those of the Queensland Government.

References

1. Boreham, G., 'New IVF Technique is cheap and simple', *Age*, 2.9.93, pp.1-2.
2. This sentiment was expressed by Alan Trounson of the Monash University IVF Centre, at the Conference of the Victorian Standing Review and Advisory Committee on Infertility, Embryo Experimentation and Beyond: 'What Does the Future Hold for Our Children?', held in Melbourne on 29 September 1987 and cited in Bartels, D., 'Built in Obsolescence: Women, Embryo Production, and Genetic Engineering', (1988) 1(2) *Reproductive and Genetic Engineering*, 141-152.
3. Bartels, D., above.
4. Toth, T.L., Lanzendorf, S.E., Hassen, W.A., Veek, L.L., Jones, H.W., 'Cryopreservation of Immature Primate Oocytes Collected from Unstimulated Ovaries', *Abstracts of the Scientific Oral and Poster Sessions, Annual Meeting of the American Fertility Society*, 1992, s.177.
5. Correspondence sent by NH&MRC to all Institutional Ethics Committees on *Consideration By Institutional Ethics Committees of Research Protocols Involving Frozen-Thawed Human Ova*, November 1986.
6. Quinn, S., 'Fertile Argument', *Courier Mail*, 7.1.94, p.17.
7. Dow, S., 'Public To Adjudicate On Use of Foetal Eggs', *Australian*, 4.1.94, p.3.
8. 'Keeping Up With Birth Technology', *Australian*, 12.1.94, p.10.

ADR

Resolution or resoluteness?

JULIE MARGARET reports on the first attempt in Adelaide at mediating an outcome in a social security appeal.

The many tiers of the Social Security Appeals system are well known to those familiar with income support law. Clearly, the requirement that appellants and respondents must progress through various steps before an appeal is finalised, means inevitable delays in the delivery of 'justice' to the users of the system. As with other areas of the legal system where such delays occur, mediation has also entered the social security arena, as a possible solution to the prolonged litigation and extra costs which may be incurred through the appeals system.

However, although mediation holds out some improvement in the process of resolving social security disputes, there are serious questions which must be raised about the extent to which it is the cure for the ills of the social security appeals system. As others have already observed in other contexts, mediation (particularly between an individual and government departments) does not necessarily address power and economic imbalances, which can make 'negotiated' outcomes less than beneficial for the individual. These issues have come to the fore with the first attempt at mediating an outcome in a social security appeal in Adelaide.

Mediation and the DSS in Adelaide

In September 1993 the first mediation conference was held in Adelaide between the Department of Social Security (DSS) and a client. The matter related to the recovery of an assurance of support debt. The debt had been incurred by the client solely because of administrative errors on the part of the DSS and a failure to follow its own guidelines. The Social Security Appeals Tribunal found in favour of the client and decided to waive the debt. The DSS then appealed to the Administrative Appeals Tribunal.

This was the first occasion that the DSS had requested or attended mediation in Adelaide. It appears that the idea to do so arose after a suggestion from a visiting DSS advocate from Sydney.

A skilled AAT mediator (flown in from Melbourne for the day) explained that mediation aimed at getting the parties to hear each side of the case in order to reach mutual agreement. It is questionable whether such mutuality was reached, although a resolution was finally made to vary the SSAT decision. The process took almost five hours to complete, with the parties being placed in separate rooms for most of that time, the mediator working between the parties, and apologising to the client on numerous occasions in respect of the time taken, and with regard to DSS pedantry.

Client frustration at the length of time taken, and petty resistance tactics by the DSS, rather than any noticeable