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To <andrew.homer@parliament.vic.gov.au>
Subject: Assisted Reproductive Treatment Bill submission

To the Senior Legal Adviser, Mr. Andrew Homer
Scrutiny of Acts and Regulations Committee

Dear Mr. Homer,

Please find enclosed an attachment which includes my submission to you regarding my concerns about the rights of donor conceived person as outlined in the Assisted Reproductive Treatment Bill 2008 that is currently with the Upper House.

I have enclosed 3 documents:

1. My personal story which discusses the lack of rights for donor conceived people.
2. A compilation of submissions made by Tangled Webs to the Victorian Law Reform Commission as well as information sent to all members of parliament.
3. An article by Margaret Sommerville titled Brave New Babies.

Please confirm that you have received this attachment.

Thank-you

Sincerely

Romana Rossi

**SUBMISSION TO THE SCRUTINY OF ACTS AND REGULATIONS
COMMITTEE**

RE THE ASSISTED REPRODUCTIVE TREATMENT BILL 2008

ROMANA ROSSI

My name is Romana Rossi and my husband Grant Cairns and I have a 15 year old son named Des who was conceived using anonymous sperm donation. When Des was 6 years old he met his biological father, Kevin Morrison.

Thank-you for the opportunity to tell my story and to express my views about donor conception. Our 15 year old son Desmond was conceived on August 21, 1992 and was born on May 14, 1993. Our journey to be a family with children started in 1991 when we accessed assisted reproductive technology in the form of donor insemination using anonymous donor sperm. In 2000 Desmond met his biological father and family and we continue to see them on a regular basis.

When Desmond was born, his rights were not recognised in law; he is a donor offspring conceived under an act of parliament that gave more rights to us and his donor than to him. It would seem obvious to any reasonable person, that every person should have the right to know who their biological family is. It is in fact ratified in the United Nations Charter on the Convention on the Rights of the Child that every person has the right to know their family.

Nevertheless, the medical profession, governments and our society conspire against the rights of donor conceived persons. Most parents who have donor offspring do not tell their children about their real identity and the few who do, most allow the donor to have only a shadowy existence of "some nice man/woman". Others deny that their child will need to know their family. My husband and I thought like this too; at the beginning. Our awakening in this matter was gradual; **we thought at first that our only job with regards to donor conception was that we would tell Desmond about his donor origins and that would be enough.** And tell him we did, from the beginning in the form of stories and pictures and conversations.

At first we assumed that this meant nothing to Desmond. But inevitably at 2 years and 8 months of age, the first big question arrived at the dinner table when one ordinary evening Desmond turned to his dad and asked "Are you my real father?" My husband answered in the affirmative but also informed him that he had 2 dads: the biological one who gave us the sperm to create him, and himself; the man who changed his nappies, plays games with him and looks after him.

Nearly another 2 years passed before the next big question: "**Who is the donor, dada?**" Desmond asked one day while his father was buttoning up his coat as we rushed out the door. But this time his dad had to answer in the negative: "I don't know mate- a man who wanted

to help us to have children.” “Do you know him dada?” Desmond further inquired. “No” was the only answer we could give him.

My husband didn't forget that conversation because one evening he expressed the important suggestion that we should search for the donor. We felt that it was critical to Desmond's identity and to his self-esteem to know who the donor was. We were worried that identifying information might be lost or worse, that the donor could die before Desmond had the chance to meet him.

On May 13, 2000: the day before his 7th birthday, Desmond met his biological father. Kevin Morrison and his extended family are now part of our lives. We celebrate Xmas and Easter and birthdays together. We see Kev and his family on a regular basis. In a real sense they are now part of our family.

We do not know what the future will hold, but my husband and I agree that we have a duty of care for Desmond that goes beyond nurturing and parental love. **Most people want to believe because our children are wanted and loved that this is enough. But duty of care is much broader than that.** My husband and I wanted to ensure that his true identity is openly accepted and embraced and that we do not make decisions that preclude any choice he may wish to make in the future. And make no mistake, when parents make the decision not to tell their children of their donor origins, and/or more importantly they deny their children their biological family from birth, they are precluding choices that their children would otherwise have. **We came to realise that fundamentally the donor conception process is flawed because it deprives people of their biological family. It is very difficult to form a parental/child relationship with someone you meet in adulthood.** The donor conception community likes to believe that biology does not matter; we really want to believe that it is the nurturing and love that counts but we do not love enough to include the biological family.

The Victorian Law Reform Commission purported to take the best interest of the child into consideration. But they were never mandated to do it. It was never within the scope of the Commission **to look at donor conception as an adoption nor to seek to ban it.** The Assisted Reproductive Treatment Bill 2008 currently before the Upper House also makes this mistake. But I will argue that not doing so was never going to be able to uncover and then inform us of the lifelong impact of their conception on donor conceived people or their parents for that matter. **Unfortunately for donor conceived people the mandate of the commission was to investigate equal opportunity issues for the discriminated against and privacy issues for the not discriminated against but it never looked at donor conception as a social justice issue for the people born from this medical practice.** This does not represent the best interest of the child. In fact the VLRC used only a handful of researchers, who used only a small sample of children who were aged usually 5 and under, and the questions were fielded to their parents; “yes my children are happy” was always going to be the end result of their findings. **As a result of this, the VLRC recommends increasing the use of donor conception but still keeping the old system of denying donor conceived people, the right to know and love all of their family from birth.** Donor Conception today is in the same awful state as adoption was thirty years ago. The adoption experience has taught our community the horrors of unknown genetic origins, secrecy and depriving people of their genetic family. Donor Conception is perceived as a

medical procedure when in fact, like adoption, it should be heavily regulated by legislation and run by social workers who have been trained in this area. Treating donor conception as an adoption would return some of the rights that donor conceived persons are not given because of the nature of their conception.

Currently the practice comes under the umbrella of a medical procedure to solve the medical problem of infertility. The quantum leap to acknowledging that donor conception is similar to adoption is difficult for us who use it to create our children; first of all the child does not exist when one enters into treatment so how can that person have rights, and secondly there is no relinquishing of a fully viable human being like in adoption, just a few gametes. Furthermore usually one parent is related. **But, the end result to the people born from these procedures is emotionally the journey of adoption: someone has relinquished their genetic code to create that person, but does not parent.** The donor-conceived person is denied access to their biological family and as the long history of adoption informs us, the repercussions are profound. I believe that if we are going to use a technology or process that creates a human being then at least, as a righteous community, we should give them the basic right to know their biological family from birth. Our nation recognised this when we recently acknowledged the tragedy of taking children away from their families by apologising to the Stolen Generation.

At minimum, I would like all the members of the donor conception community to have the same benefits, rights and obligations as the adoption community: These are:

1. **All names of parents on the birth certificate.** Victorian adoptees have truthful birth certificates. The fact that donor-conceived persons do not have this means that it is easier for parents to follow the advice of many medical professionals who tell them “If you want to, you can go home and forget about this (the fact that they used donor gametes)”.
2. **Retrospective legislation** so that all donor conceived persons can access identifying information no matter when they were conceived. Victorian adoptees have this right.
3. **Visitation rights** for the donor conceived person with their biological family; just like in adoption with birth parents. Many donor conceived persons express great distress at not being raised by their biological family and on missing out on this important relationship.
4. **Taking the process away of selection and counselling from the medical fraternity and giving it over to a government bureaucracy such as the Infertility Treatment Authority who has the expertise to deal with the lifelong issues of donor conception and is not a body that is in the business of providing the service.** The medical profession has a vested interest in allowing candidates to enter their programs, often very unprepared for the process. There is a conflict of interest. I can tell you stories of couples who have been rejected by the adoption process and therefore chose to use donor conception because of the lack of screening. These couples were rejected because the adoption workers felt that these couples had not come to terms with their infertility and would therefore make poor candidates to raising children not biologically related to them. Other couples did not seek adoption because in Australia all adoptions are open and these couples did not want

interference from another party. And it should be noted that there are no closed adoptions in Australia because we recognise as a society that people need to know their family from the beginning.

5. **The same rigorous selection, education and counselling as the adoption process:** I can attest personally to the fact **the counselling process is grossly inadequate and follow up is non-existent.** Infertility counsellors do not have any training in the post - adoption field and do not have a sound understanding of the lifelong problems associated with donor conception. Their strengths lie in dealing with the grief of infertility prior to giving birth. **The clinics are focused only on treatment and success is measured in terms of having a baby not dealing with what happens afterwards. The counselling is parent oriented, not child centric.** Often their clients are in treatment before the counselling begins. There is no follow-up upon birth of the child and there is no regulation regarding reporting of pregnancy and births. When we wanted to meet Kev, the social worker said to us, ‘we have never done this before...’ My husband and I are very grateful that she facilitated our first meeting with Kev, despite a complete lack of protocols for this process. Fortunately we were able to turn to the adoption community for our answers.

6. **Ongoing support** like the kind offered at the ITA and at Vanish, grief counselling and support groups.

I understand now the complexities of Donor Conception in ways that were not understood or explained to me at the time we created our son. **We will always put his best interests and rights before our own; and it is why his social father (my husband) and I have made available to him, as early as possible in his life, his biological father and paternal relatives.** Most donor conceived persons are denied this option, and even Desmond has still been denied information and access to his half-siblings (we believe there are 5 siblings). However, Donor Conception is still a difficult journey for a young man and one which presents many challenges throughout our lifetimes. We have each needed support along the way; and have not been too proud to accept help as required. As a society we need to change our practice of denying the rights of people who had no choice in the manner of their conception.

When I see the difficulties that Desmond negotiates to make sense of his donor origins, and when he returned home as a 7 year old from ‘Show and Tell’ at school where he had announced that he is a donor boy and appealed to me with, “Mama I just want to be an ordinary boy” I know that I have burdened him. Given the time again I would not inflict this on anyone never mind someone I love more than myself. I would like to say to all donor conceived people and especially to Desmond, “I am sorry”.

I have expressed views which have been formed by firstly being a parent of a donor conceived person, of being a past Coordinator of the Donor Conception Support Group-Victorian Branch for nearly 8 years, a member of Vanish, and a founding member of Tangled Webs: an organisation which challenges donor conception. I have also participated in

research in this field. This experience has brought me into contact with hundreds of people from the donor conception community. I have listened and heard the stories of many of these people and this has helped me to form these opinions. **Mostly though I have listened to courageous donor conceived people who tell us that being denied knowledge of and access to their biological family, hurts them.**

Please do not hesitate to contact me if you have further enquiries: Romana Rossi at 9435-0976 or romanarossi@hotmail.com.

This submission is a compilation of other submissions made by Tangled Webs to the Victorian Law Reform Commission as well as information sent to all members of parliament.

In this submission I will be discussing the following 3 issues;

Issue 1: The Assisted Reproductive Treatment Bill 2008 (ART Bill) does not address the best interests of people born through Donor Conception (DC) because its focus is on expanding the eligibility criteria for access to assisted reproduction and adoption and not on the rights of donor conceived people to know their family.

Issue 2. The ART Bill was based on the recommendations of the Victorian Law Reform Commission's (VLRC) recommendations but the scope of the VLRC was too narrow; relying on the research of one 'team' of researchers who used a sample of young children only thereby giving the Bill a biased and incorrect base.

Issue 3. The language contained in some of the guiding principles and recommendations related to DC is too ambiguous, allowing an interpretation that will not protect the rights of donor conceived persons who did not/can not have a say in decisions made regarding their conception.

Issue 1. Flawed Premise:

The practice of DC intentionally denies people the right to know one or both of their genetic parents or to be raised by them. The ART Bill that has been presented is looking at expanding access to ART for people who have been excluded to date. DC as an ethical and/or humane practice is never questioned. The question should not be whether adults of a particular group in the community (heterosexual couples, same sex couples, single people) will make good parents or are being discriminated against but rather what does it mean for the donor conceived person to not know their genetic parents and extended family.

Because the Bill does not implicitly state that it recognises DC as an adoption or at the possibility of restricting/banning the procedure altogether means that the rights of children as outlined by the United Nations Convention on the Rights of the Child (UNCROC) to 'know their family' is being denied. DC is the intentional separation of children from their family and the Bill does not include this critical issue in its presentation thereby negating 'the best interests of the child'.

Issue 2. Narrow scope denies the best interest of the child:

The Bill focuses on donor conceived people as “children”; this narrow focus on “children” inhibits the true picture of the long term effects of DC on people born through this procedure.

- A person does not cease to be donor conceived once they reach the age of majority and that the issues facing donor conceived adults are different and much more complex than those of a donor conceived child.
- People who are donor conceived tend not to express their feelings regarding their conception especially if they are negative, until they are well into adulthood and are independent of the parents who raised them. The fear of course is that their need to know their identity may actually alienate the only family they know.

Issue 3. Requests for changes to recommendations:

The language of the guiding principles and recommendations is ambiguous. The Bill does not support or uphold the guiding principles in practice.

Birth Registration

AMMENDMENTS TO THE ASSISTED REPRODUCTIVE TREATMENT BILL 2008

1. Birth Registration (part 6,7, 14, iv, 15

Birth Certification to be truthful and record genetic parents on one certificate and legal parents on another. Parents should NOT be able to retrospectively modify parentage on birth certificates to exclude genetic father. It will also be possible to retrospectively modify birth certificates. It will be possible (via court order) therefore to remove a parent's name from the birth certificate e.g. the biological father. Legal parentage for Donor Conceived people should transfer in the same way it does for adoptees, thereby preserving and acknowledging links with genetic parents. Focus is then on best interests of child rather than interests of commissioning parents.

Website for DC birth certification for the UK which can be accessed via this link: <http://www.dcbirthcertification.org/node/4>

Furthermore:

- current birth certificates of donor conceived people are false and do not reflect the truth of their parentage/identity. As a person's sole primary document of identity, birth certificates must be a truthful representation of a person's identity and must list the identities of the genetic parents in addition to the recipient parent(s).

The UK is also looking at this:

http://www.centreforsocialjustice.org.uk/client/downloads/CSJ_InformationAboutBiologicalParents_20071221.pdf

I am not arguing to remove the legal parents from the birth certificate, but instead to provide the additional 'by donation' information that will provide the missing, but essential, genetic record for the child if they wish to find out more about their biological parents at adulthood. The priority must be to ensure this option is available for donor conceived children in the same way that it is for adopted children.

Also on birth certificates, Mary Warnock (of the Warnock Report): (House of Lords 21 January 2008): "... if we are serious about the welfare or the good of the child being the most important consideration in offering treatment to women or couples who want it, we must try to ensure that children are not brought up under a misconception about their genetic parenthood. That is one of the most obvious cases of immoral treatment of a child, and it can be embarked on only by parents who are thinking more of themselves than of the good of the child. Nearly all people who adopt children nowadays tell their children at a very early stage that they are adopted. I think that we should take on that model for the treatment of children born by donation and not concentrate on confidentiality or the wishes of the parents. In this case, it is very important to assert as strongly as possible that the child's interests come first."

- to provide the donors' identity when registering the birth of a child with the Registry of Births Deaths and Marriages as well the donor registers.

Unless the disclosure of the donors' identity is made obligatory it is most likely the donor conceived person will be unable to trace their genetic parent(s) if they wish to do so in the future.

Eligibility: Marital Status and Infertility (page 66-67)

Marital Status (page 67) & Infertility (Unlikely to Become Pregnant) (page 67)

The ART Bill will increase availability of donor services and will result in the increased use of donor gametes in order to conceive and sanction the belief that there is a "right to a child" especially when a person is unable to conceive without the assistance of a donor.

This is based on the UNCROC that:

- **No-one has the right to a child. To claim the right to a child is to treat that child, another human being, as an end to satisfying one's own desires, as an object and not as a person.**
- **To claim the right to a child is to claim jurisdiction over another human being's life when they have no say in the matter, when they have not given their consent, informed or otherwise.**
- **The fact that DC children cannot give consent because they are not yet alive is not an argument for putting their interests to one side; rather it is a powerful**

argument for ceasing the practice of DC altogether, or at the very least for being extremely careful about and limited in the ways we practice it.

- **Donor Conception by its very nature is the pre-emptive relinquishment of a child and intentional separation of them from their genetic parents as facilitated by legislation. TangledWebs considers the removal of the marital status and infertility requirement as the implicit sanctioning of the practice of donor conception by the government.**
- **It is not in a child's interests to be separated from their genetic parents unless there are qualifying reasons for why such a separation should take place. Eg. For the child's care and welfare. This position is supported by the UNCROC and by the Victorian Adoption Act of 1984, where a court must be satisfied that "the welfare and interests of the child will be promoted by the adoption" Section 15 (1) (d).**
- **Rather than expand the availability of donor conception services we request that the government first examine whether the interests of a child/adult can be served by separating them from one (or both) of their genetic parents. Such separation is inextricable from the practice of donor conception.**

Retrospective legislation

Page 48 : Section 59 states

59 Disclosure of information to persons born as a result of donor treatment procedure

On receipt of an application under section 56 from a person born as a result of a donor treatment procedure, the Registrar must disclose to the person identifying information about another person if—

- (b)the applicant was conceived—(i) using gametes donated after 31 December 1997; or
- (ii) the person was conceived using gametes donated between 1 July 1988 and 31 December 1997 and the donor has given consent to the disclosure.

- all donor conceived people have a right to identifying information regarding their genetic parents and that this view is supported by the UN Convention on the Rights of the Child (UNCROC). It is also supported by the Victorian Adoption Legislation of 1984 which retrospectively awarded all adoptees the right to identifying information regarding their parents.**
- by not awarding all donor conceived people this same right the government implicitly sanctions the inequality of rights between donor conceived people.**
- there should also be a legal requirement for parents to disclose donor conception status. Currently most donor conceived people (70% -90%) are never told of their donor conception.**

- **The first guiding principle of the Bill can never be achieved in practice and legislation which institutionalises the separation of children from their genetic parents when it can't be satisfied to be in their interests or for their welfare is reprehensible.**
- **The government should adopt any legislative changes that are in the interests of children who have already been conceived, without automatically expanding donor conception availability.**

It is impossible to argue that it is in the interests of a person to be separated from their genetic parent(s) via donor conception/surrogacy because they have not yet been conceived.

To not require information that a donor conception took place and to not give the donor(s) identity is not only contrary to the first and third guiding principles but also the UN Convention on the Rights of the Child and renders the government complicit in the deliberate deception of a donor conceived person's true identity: Access to identifying information for ALL donor conceived people:

It is impossible to argue that it is in the interests of a person to be separated from their genetic parent(s) via donor conception/surrogacy because they have not yet been conceived.

B. Donor Access to Information

(iii)The donor's rights to obtain information under Divisions 2 and 3 of Part 6; and

Donors should be able to apply for identifying information about children conceived using their gametes.

- Currently donors are able to access identifying information about their offspring. This provision should remain because it is the only provision in the legislation likely to encourage recipient parents to disclose. To remove this provision will be taking away the right to this information by donors **retrospectively**.
- The Bill does not recommend making identifying information available to all donor conceived people because doing so would require this right to be retrospective. Their position was that to do so would be unfair on donors who donated under the impression they would not be identified.

3. Eligibility for Surrogacy (page 170)

Surrogacy to be disallowed.

Surrogacy arrangements cannot ever serve the interests and welfare of a child/adult and it is contra to guiding principles.

4. Posthumous Conception:

PART 5 Post humous conception to be disallowed; it is contra to guiding principles.

5. Service provided by GP's: Part 6 section 52

PART 2 section 7 - 8. Disallow procedures (artificial insemination) to be done by private GP's.

This is a massive step backwards and tantamount to deregulation.

Brave new babies

by Margaret Somerville (12 September 2008)

Reproductive technologies are creating children who have no real biological parents. They deserve better.

Some old and new phenomena – adoption is old, reproductive and genetic technologies and same-sex marriage are new – have recently thrown the issue of children's rights with respect to their biological origins, biological families and family structure into the public policy spotlight and public square debate.

Adoption has long challenged children's rights with respect to their biological families. Early in the 20th century, societally condoned sperm donation presented a similar challenge. In the last 30 years new reproductive and genetic technologies (NRTs) have brought, and will continue to bring, unprecedented challenges. And, most recently, same-sex marriage has done so.

Over the millennia of human history, the idea that children – at least those born into a marriage – had rights with respect to their biological parents was taken for granted and reflected in law and public policy. And children's rights with respect to their biological origins was not an issue when there was no technoscience that could be used to manipulate or change those origins: a baby could only be conceived *in vivo* through sexual reproduction. But with NRTs that is no longer the case.

So, what are our obligations to children with respect to their biological origins and biological families? What protections do children need and deserve?

They describe powerful feelings of loss of identity through not knowing one or both biological parents... They ask, "How could anyone think they had the right to do this to me?"

I propose that the most fundamental human right of all is a child's right to be born from natural biological origins and that children have human rights with respect to their biological parents and families and that these rights must be recognized.

The articulation of human rights is an ongoing process. Children must move from being the "voiceless citizens" to becoming the new kids on the human rights block and nowhere is that more important than with respect to rights regarding their biological origins and biological families.

New rights for children

Whatever the broad impact on society of NRTs, these technologies result in children being born: What do we owe those children ethically? So far, we have largely failed to address this question. Our ethical focus on NRTs has been almost entirely on adults' rights to access these technologies to found a family. But as the first cohort of children born as a result of NRTs reaches adulthood and connect with one another through the internet, they are changing our focus. We are now asking, what are their rights with respect to the nature of their genetic heritage and knowledge of what that heritage is?

Issues of children's rights with respect to their genetic identity, their biological families and the nature of their genetic origins arise, in one way or another, in the contexts of adoption, the use of new reproductive technologies, and same-sex marriage. The connection among these contexts is that they all unlink child-parent biological bonds. Each context raises one or more of three important issues: children's right to know the identity of their biological parents; children's right to both a mother and a father, preferably their own biological parents; and children's right to come into being with genetic origins that have not been tampered with.

Children's rights to know the identity of their biological parents

It is one matter for children not to know their genetic identity as a result of unintended circumstances. It is quite another matter to deliberately destroy children's links to their biological parents, and especially for society to be complicit in this destruction. It is now being widely recognized that adopted children have the right to know who their biological parents are whenever possible, and legislation establishing that right has become the norm. The same right is increasingly being accorded to children born through gamete (sperm or ovum) donation. For instance, the United Kingdom has recently passed laws giving children this right at 18 years of age.

The impact of NRTs on children born through their use, other than that on their physical health, has been largely ignored; it has been readily assumed that no major ethical or other problems arise in creating children from donated gametes, and that opposition to the creation of these children is almost entirely based on religious beliefs. Such assumptions have been dramatically challenged in the last two years as the first people born through the use of these technologies reach adulthood, become activists, and call for change. They describe powerful feelings of loss of identity through not knowing one or both biological parents and their wider biological families, and describe themselves as "genetic orphans." They ask, "How could anyone think they had the right to do this to me?"

The ethical doctrine of anticipated consent is relevant in deciding what we owe ethically to children brought into being through NRTs. Anticipated consent requires that when a person seriously affected by a decision cannot give consent, we must ask whether we can reasonably anticipate they would consent if able to do so. If not, it's unethical to proceed.

So, ethically, we must listen to what donor-conceived adults are saying about gamete donation to decide whether we can anticipate consent to it. They – and adopted children – tell us of their profound sense of loss of genetic identity and connection. They wonder: Do I have siblings or cousins? Who are they? What are they like? Are they "like me"? What could I learn about myself from them? These questions raise the issue of how our blood relatives help each of us to establish our human identity. Humans identify closely with their close genetic family, and it seems that we also identify with traits in our family members that we like (and we try to develop the same ones in ourselves), and that we dislike (and vow not to be like that – the positive power of negative identification). In short, from what many donor-conceived adults tell us we cannot anticipate consent to anonymous gamete donation – or, indeed, to gamete donation itself.

Ethics, human rights, and international law – as well as considerations such as the health and well-being of adopted and donor-conceived children – all require that children have access to information regarding their biological parents. And it is not just these children who have this right, but their future descendants as well. Children deprived of knowledge of their genetic identity – and their descendants – are harmed physically and psychologically.

Respect for children's rights in these regards requires that the law should prohibit anonymous sperm and ova donation, establish a donor registry, and recognize children's rights to know the identity of their biological parents and, thereby, their own biological identity.

It is a further question whether gamete donation itself is ethically acceptable. Many of us have come to see it as acceptable for couples who do not regard it as immoral. But some donor-conceived adults adamantly disagree. Whether it should be available to same-sex couples or single women is a much more contentious issue.

Children's rights to both a mother and a father

This right brings us to the issue of same-sex marriage, which has been legalized in Canada and some other countries. Under both article 16 of the United Nations *Universal Declaration of Human Rights* and domestic law, marriage is a compound right: the right to marry and to found a family.

Giving same-sex couples the right to found a family unlinks parenthood from biology. In doing so, it unavoidably takes away all children's rights – not just those brought into same-sex marriages – to both a mother and a father and their right to know and be reared within their own biological family. It does so because marriage can no longer establish as the norm the natural, inherently procreative relationship between a man and a woman, and the rights of children that flow from that norm, in particular, the rights of children to both a mother and a father, who are their own biological parents unless an exception is justified as in the "best interests" of a particular child, as in adoption.

The primary rule becomes that a child's parents are who the law says they are, who may or may not be the child's biological parents. That is, the exception to biological parenthood, which used to be allowed for through adoption law, becomes the norm. In other words, same-sex marriage radically changes the primary basis of parenthood from natural or biological

parenthood to legal (and social) parenthood as the Canadian *Civil Marriage Act* expressly legislates. That change has major impact on the societal norms, symbols and values associated with parenthood.

The same issue of children's rights to both a mother and a father is raised by society's involvement in intentionally creating single-parent households, for example, by funding single women's access to artificial insemination.

Same-sex marriage advocates argue that children don't need both a mother and a father, and "genderless parenting" is just as good, or even better than opposite-sex parenting, because all children are wanted children. Research is showing, however, that men and women parent differently and other research that certain genes in young mammals are activated by parental behaviour (epigenetics – the interaction of genes and environment). Science may well show us that complementarity in parenting (having both a mother and a father) does matter for children's well-being in ways we have not previously understood.

One argument against same-sex marriage raised in the Canadian cases was that same-sex couples could not found a family naturally and, therefore, marriage was not an appropriate way to publicly recognize their committed relationship. The Court of Appeal of Ontario responded, however, that these couples could use reproductive technologies to found a family. The common thread between same-sex marriage and reproductive technologies is that both disconnect procreation from sexual intimacy between two humans: Same-sex marriage involves sexual intimacy with no possibility of procreation; reproductive technologies involve procreation with no sexual intimacy.

The debate on legalizing same-sex marriage in Canada focused almost entirely on adults and their right not to be discriminated against on the basis of their sexual orientation. The conflicting claims, rights, and needs of children were barely mentioned. It's worth noting that legally recognizing civil unions, unlike the recognition of same-sex marriage, does not negate children's right to both a mother and a father, because it does not include the right to found a family. For that reason, it represents the most ethical compromise between respect for the rights of homosexual people not to be discriminated against and the rights of children with respect to their biological families.

Children's rights to be born from natural biological origins

In the more than 25 years since Louise Brown, the first "test tube baby," ushered in the brave new world opened up by NRTs, advances in the technologies have made more and more previously impossible interventions possible. Those "advances" make it necessary to formulate new rights for children in relation to their biological origins that would have been unimaginable until very recently.

A child's right to be conceived with a natural biological heritage is the most fundamental human right and should be recognized in law.

Children have a right to be conceived from untampered-with biological origins, a right to be conceived from a natural sperm from one identified, living, adult man and a natural ovum from one identified, living, adult woman. Society should not be complicit in – that is, should not approve or fund – any procedure for the creation of a child, unless the procedure is consistent with the child's right to a natural biological heritage.

The addition of the words man and woman in defining the right to a natural biological heritage, rather than simply referring to sperm and ovum, as would be more common, is not superfluous. It is theoretically possible to create an embryo with the genetic heritage of two women or two men, including by making a sperm or ovum from one of the adult's stem cells and using a natural gamete from the other person, or making an "ovum" from an enucleated egg fused with a sperm and fertilizing it with another sperm, or perhaps by using two ova. The word "natural" excludes an opposite-sex couple using this technology to make an artificial sperm from an infertile man or artificial ovum from an infertile woman.

The requirement that the gametes come from adults preempts the use of gametes from aborted fetuses; it prevents children being born whose biological parent was never born. And the requirement that the donors be living excludes the use of gametes for *postmortem* conception. The right to bear children should not include the right to deny children at least the chance, when being conceived, of meeting their biological parents. Conceiving children with gametes from a dead donor, as an Australian court recently authorized, denies them this opportunity. In that case, as is so often true, the judge considered only the rights and wishes of the adults involved.

"Designer children" and societal values and institutions

I will not explore, here, the extensive literature on the ethics of designing our children by genetically altering – whether to enhance or disenchant – them when they are embryos. Rather, I want just to mention some important philosophically-based objections to doing that, which have not been widely discussed.

Because creating "designer children" involves genetic manipulation of human embryos, it destroys the essence of their humanness and, ultimately, the essence of the humanness of all of us. Genetic manipulation interferes with the intrinsic being of a person – with their very "self." As philosopher Søren Kierkegaard puts it, the designed person is not free to fully become themselves, which is the essence of freedom.

The power to fully become oneself requires that the person has non-contingent origins – they need to have a sense that they can go back and start again to remake or actualize their very self, and, in order to have that, they must not be preprogrammed or designed by another. German philosopher Jürgen Habermas agrees that designed persons no longer can own themselves, which is necessary to make their being and their lives fully their own – they are not free in their intrinsic being. They are deprived of the liberty that comes from the fact that no one has interfered with the essence of their being and that, as a result, their genetic makeup has come into existence through chance. Moreover, because these children are not equal to the designer, they are deprived of equality.

This loss of liberty and equality affects the humanness of all of us because, first, we would all be complicit in such manipulation by not prohibiting it. And second, because tampering with some people's origins destroys a necessary condition for establishing a moral base for a secular society – that all people must be free from others' interference in their intrinsic being, if they are to have the capacity to take part in the human interaction from which a shared morality arises.

The injustice of one generation imposing its will over another generation (if the first generation designs its own children) would also result in other losses that have implications far beyond those directly affected and the present. The use of these technologies by one

generation challenges the basic human rights of equality and freedom of future generations. And because the liberty and equality of all citizens is at the heart of democratic societal institutions and of the values which democratic societies promote, to create people who are neither free nor equal undermines those institutions and values. In short, not prohibiting "designer children" undermines the very foundations of our Western democratic societies.

Conclusion

All these rights of children are of the same basic ethical nature – obligations of non-maleficence, that is, obligations to *first do no harm*. Consequently, as a society, we have obligations to ensure respect for these rights of children. It is one matter, ethically, not to interfere with people's rights of privacy and self-determination, especially in an area as intimate and personal as reproduction. It is quite another matter for society to become complicit in intentionally depriving children of their right to know and have contact with their biological parents and wider family, or their right to be born from natural biological origins. When society approves or funds procedures that breach these rights of children and, arguably, when it fails to protect such rights of children – for instance, by failing to enact protective legislation – society becomes complicit in the breaches of rights that ensue.

Those obligations extend also to future generations. We should clearly recognize that any genetic procedure that will turn out to be harmful to the future child or to a future generation, or contrary to their interests, is morally unacceptable and should be prohibited.

Knowing who our close biological relatives are and relating to them is central to how we form our human identity, relate to others and the world, and find meaning in life. Children – and their descendants – who don't know their genetic origins cannot sense themselves as embedded in a web of people, past, present and future, through whom they can trace the thread of life's passage down the generations to them. As far as we know, humans are the only animals who experience genetic relationships as integral to their sense of themselves.

We are learning now that eliminating that experience is harmful to children, biological parents, families, and society. We can only imagine how much more damage might be done to a child born not from the union of a man's natural sperm and a woman's natural ovum, but from "gametes" constructed through biotechnology.

In conclusion to summarize, children's rights with respect to their biological origins are:

- For those origins to be natural;
- To know the identity of the progenitors of those origins; and
- To be in contact with those progenitors within a family structure
-- that is, to be reared by their biological mother and father
within their genetic family.

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http://www.mercatornet.com/articles/view/brave_new_babies/

accessed 22 September 2008.

Feeney research: <http://www3.interscience.wiley.com/journal/118506463/abstract>

<http://www.springerlink.com/content/q8d3wcq83y110g1j/>

This one is good, references a number of research papers:

<http://www.miparents.org/modules/smartsection/item.php?itemid=67>

There is also this article 'Children safer with biological parent' which references

research: <http://www.familylawwebguide.com.au/spca/index.php?page=news&type=view&id=355>

You might be able to find something on here: <http://center.americanvalues.org/?p=28>

It will also be possible to retrospectively modify birth certificates. It will be possible (via court order) therefore to remove a parent's name from the birth certificate e.g. the biological father.

Rupert did a paper on DC birth certification for the UK which can be accessed via this link: <http://www.dcbirthcertification.org/node/4>

I don't see any reason why the proposal can't be paralleled here.