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INTRODUCTION TO “RETHINKING ASSISTED CONCEPTION”

By Fiona Kelly*

The decision to produce a special theme edition of the Canadian Journal of Family Law devoted to rethinking assisted conception arose out of a project of the Women’s Legal Education and Action Fund (“LEAF”). In May of 2009, LEAF convened a sub-committee to respond to the constitutional challenge to the federal *Assisted Human Reproduction Act* (the “AHRA”) by the province of Quebec. Initially, LEAF had considered intervening in the case, but ultimately chose not to on the basis that consensus (or even general agreement) over the correct response to legislation such as the AHRA has proved difficult to achieve. At the same time, the Quebec reference provided an important opportunity for critical work highlighting the equality issues inherent in assisted human reproduction. Thus, instead of intervening in the case, LEAF brought together a group of scholars working on issues related to assisted reproduction to write a series of discussion papers addressing some of the key issues in the field. Topics included surrogacy, donor anonymity, legal parentage in the context of assisted reproduction, and at home insemination. The discussion papers form the basis of much of the content of this special issue.

While the Quebec reference served as a key impetus for this issue, its focus on assisted reproduction is particularly pertinent for a number of reasons. First, litigation in British Columbia (*Pratten v. Attorney General of British Columbia*) has raised the possibility of both the retroactive opening of donor records as well as a ban on future donor anonymity. Either event would have serious repercussions for families

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created via donor insemination, particularly those whose legal existence is already fragile, such as lesbian families and single mothers by choice. Second, at least one province, British Columbia, is in the process of reviewing its family law legislation with a view to including new provisions addressing the legal parentage of children conceived via assisted reproduction. The material contained in this special issue is likely to contribute to these ongoing legislative debates. Finally, the number and variety of families created via assisted reproduction continues to increase, creating new legal conundrums and legislative gaps. From the assignment of legal parentage in same-sex, single mother, and known donor families, to the rights of gamete providers, surrogates, and donor-conceived offspring, these issues demand the careful attention of lawyers, researchers, and policymakers.