

Lesbian Motherhood and Access to Reproductive Technology

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L'auteure nous donne une courte histoire sur la discrimination homophobique qui frappe les familles lesbiennes et révisé la loi sur l'Assistance à la procréation et son impact sur les lesbiennes qui veulent avoir accès à l'insémination artificielle. L'auteure soutient qu'imposer des critères différents aux lesbiennes qui désirent l'insémination est discriminatoire et qu'un élargissement de la législation et de la médicalisation devrait garantir l'accessibilité à la fertilité pour toutes les femmes sans distinction.

Moral philosopher John Harris has written: "Reproductive choice is an idea that is respected more in the breach than in the observance."¹ When women, particularly single or lesbian women, attempt to exercise choice and access to fertility services they often encounter resistance and discrimination. Yet, despite these difficulties, planned lesbian families² are a growing trend even termed by some observers as a "lesbian baby boom."³ Very little has been written about lesbian families and even less has been written on the impact of Canada's new *Assisted Human Reproduction Act* on this vulnerable group of women.

Non-discriminatory access to fertility services and assisted reproductive technologies (ARTs) is important to all women, but particularly for lesbians who often encounter discriminatory treatment when exercising reproductive autonomy and choice. Although ARTs include a wide range of procedures and available treatment options, the focus of this article will be primarily on Assisted Insemination Using Donor Sperm (AID).⁴ Assisted reproductive technologies have significant social and ethical implications, not least of which is the important reality that "the desire to have a child is significantly influenced by societal assumptions about women's mothering role."⁵ As Susan Sherwin has thoughtfully analyzed, it is important to consider that these technologies, rather than challenging the assumption that women's destinies are best fulfilled in the role as wife and mother, may in fact entrench and legitimize these roles.⁶ However, lesbian

parenthood defies traditional patterns of patriarchal heteronormativity. Lesbian motherhood, through the use of AID, represents the ability to "transcend [biological] restrictions to seek ends by means devised by choice rather than by physical determinism," which is rightly perceived as "a human and spiritual victory."⁷

The Canadian Approach to Non-Discrimination

Beginning in 1985 with the Ontario Law Reform Commission on Human Artificial Reproduction a shift began "to place artificial insemination under the control of licensed medical practitioners" and access to clinical services for single heterosexual women and lesbians became an essential issue.⁸ During this time a number of jurisdictions legislated restrictive access, which excluded patients other than married women. Access to fertility treatment, particularly artificial insemination, by single women or lesbians was explicitly discussed in few jurisdictions, and notably it was rejected in practically all of them.⁹

After four years of research and consultation the Royal Commission on New Reproductive Technologies released its final report in 1993. The report recommended that "sperm should be provided to individual women for self-insemination without discrimination on the basis of factors such as sexual orientation, marital status, or economic status."¹⁰ The Commission also recommended that the criteria for determining access to AID procedures should likewise be administered without discrimination on a non-medical basis.¹¹ The Royal Commission report supports the practice of self-insemination as an alternative to clinical insemination for both couples and women without a male partner. After the release of the Report by the Royal Commission the government introduced Bill C-47, the *Human Reproductive and Genetic Technologies Act*.¹² Interestingly this Bill did not contain any provisions ensuring non-discrimination in accessing fertility services.

While the legislation on reproductive technologies may have been silent at this time, the British Columbia Council of Human Rights held in *Korn v. Potter*¹³ that a physician may not refuse to provide fertility treatment to lesbians. On April 20, 1993, Tracy Potter and Sandra Benson meet with Dr. Korn to seek advice on artificial insemination by donor. At this time, Dr. Korn advised Potter and Benson that he did not provide artificial insemination services to lesbians. In 1986 he had been subpoenaed as a witness in a trial over child support when a lesbian couple separated.¹⁴ Dr. Korn had provided the

refused fertility treatment for lesbians. Although the protection afforded by human rights legislation is significant, this type of resolution can be a lengthy and expensive process. Also, this process is complaint driven and individualized. It is therefore important that the legislation governing assisted human reproduction takes positive steps in enunciating a principle of non-discrimination.

The government was determined to create law on reproductive technologies and embryonic research. In 2001, when the legislative consultation process began again, the House of Commons Standing Committee on

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artificial insemination procedure, and after his testimony he received a number of phone calls that criticized him for artificially inseminating lesbians. Dr. Korn provided Potter and Benson the names of two physicians who he thought would likely be able to help them. One of those physicians was amenable to the request and obtained sperm from a California sperm bank. Ms. Potter administered the successful insemination procedure and Ms. Benson became pregnant.

Ms. Potter and Ms. Benson filed a complaint with the College of Physicians and Surgeons of British Columbia on the basis that Dr. Korn's refusal to provide this procedure to lesbians was unethical and they asked that Dr. Korn be disciplined. After reviewing the complaint, the Council at the College of Physicians and Surgeons dismissed it, stating:

In absence of the need for either urgent or emergency medical services and in the circumstances this particular case, Dr. Korn had the right to refuse Tracy Potter as a patient.¹⁵

On July 19, 1993, Tracy Potter and Sandra Benson filed a complaint with the British Columbia Council of Human Rights, which alleged that Dr. Korn denied a service or facility customarily available to the public on the basis of their sexual orientation and/or family status, contrary to s.3 of the *Human Rights Act of British Columbia*.¹⁶ The member designate of the Council found this to be a valid complaint. Although Dr. Korn sought judicial review of that decision, Justice Holmes of the Supreme Court of British Columbia dismissed his petition April 2, 1996.

The court in British Columbia was willing to recognize discriminatory treatment on the part of a physician who

Health heard testimony from various stakeholders. Mona Greenbaum spoke to this committee on November 26, 2001 as the representative of the Lesbian Mothers Association.¹⁷ She described the exclusion that she and other lesbian mothers have faced, the health risks associated with exclusion, and concerns about further marginalization that lesbian mothers may experience under the new law. Ms. Greenbaum argued for inclusion stating "all women in Canada must have equal access to fertility clinics and sperm banks, regardless of their sexual orientation, marital status or fertility status." She also described the fact that a woman cannot receive testing in Quebec fertility clinics, let alone insemination, unless she is a wife. The difficulties in finding doctors and the necessity of importing sperm often cause women to seek donors about whom women may not have all the necessary medical knowledge, which thus can expose women to the risk of contracting HIV and other conditions.

The *Assisted Human Reproduction Act* was drafted in response to the House of Commons Standing Committee on Health's Report. In 2002, the Minister of Health introduced Bill C-56, which established a legislative and regulatory framework addressing issues relating to assisted human reproduction. The *Act* contained the following Principle:

2(e) persons who seek to undergo assisted reproduction procedures must not be discriminated against including on the basis of their sexual orientation or marital status.

In January 2003, Maurice Vellacott, Member of the House of Commons (Saskatoon-Wanuskewin) representing the Canadian Alliance party brought forward a motion to delete subclause 2(e). Maurice Vellacott felt that

the principle “should reflect a commitment to limit access to natural and secure families.”¹⁸ Another Canadian Alliance Member, Jason Kenney, also supported the motion to remove this principle, he stated:

The focus of this legislation ought not to be the putative rights, the rights claims of adults who seek to benefit from certain reproductive technologies, but rather the human beings, the children, who will be created by these technologies. It is their rights and their best interest which ought to principally govern this legislation....¹⁹

The Alliance motion was defeated March 26, 2003 by a vote of 57 to 172. The *Assisted Human Reproduction Act*, containing the principle of non-discrimination received Royal Assent on March 29, 2004. However, the principle of non-discrimination does not contain any reference to economic status as was recommended by the Royal Commission in their final report.²⁰ The principle also neglects to account for discrimination faced by people with disabilities and members of ethnic minority groups. Discrimination can be based on a number of grounds; sexual orientation is the focus of this paper, however equally significant social hierarchies exist.²¹ A meaningful principle of non-discrimination should include a broad range of enumerated grounds.

Criticisms of the *Assisted Human Reproduction Act*

Not only does the *Act* fail to provide an encompassing non-discrimination principle that would guarantee access to reproductive technologies to all women, the *Act* also raises significant concerns because of the severity of the criminal sanctions that may be imposed. Some positive aspects of this legislation are the recognition of the disproportionate impact that these technologies have on women, and the declaration that the health and well-being of women must be protected in the application of these technologies. Despite these progressive provisions, the severity of the criminal sanctions contained in the *Act* raise significant concerns.

The *Act* prohibits various activities, from human cloning to commercial surrogacy arrangements, and specifically it contains the following prohibition:

7. (1) No person shall purchase, offer to purchase or advertise for the purchase of sperm or ova from a donor or a person acting on behalf of a donor.

Additionally, the *Act* contains a number of controlled activities, and specifically it controls the following:

10. (1) No person shall, except in accordance with the regulations and a licence, alter, manipulate or treat any human reproductive material for the purpose of

creating an embryo.

(2) No person shall, except in accordance with the regulations and a licence, alter, manipulate, treat or make any use of an *in vitro* embryo.

(3) No person shall, except in accordance with the regulations and a licence, obtain, store, transfer, destroy, import or export

(a) a sperm or ovum, or any part of one, for the purpose of creating an embryo; or

(b) an *in vitro* embryo, for any purpose.

Finally, the *Assisted Human Reproduction Act* penalties are as follows:

60. A person who contravenes any of sections 5 to 9 is guilty of an offence and

(a) is liable, on conviction on indictment, to a fine not exceeding \$500,000 or to imprisonment for a term not exceeding ten years, or to both; or

(b) is liable, on summary conviction, to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding four years, or to both.

61. A person who contravenes any provision of this Act, other than sections 5 to 9, or the regulations is guilty of an offence and

(a) is liable, on conviction on indictment, to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding five years, or to both; or

(b) is liable, on summary conviction, to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding two years, or to both.

Based on these provisions a lesbian who paid to obtain sperm could be sentenced to up to ten years in prison and/or face a fine of up to \$500,000. The central rationale for this prohibition is an important one—the prevention of commercialization of reproductive materials and the commodifying of human life. Patrick Healy considered the prohibitions recommended by the Royal Commission, which have been largely adapted into this legislation, and he questioned “whether the type of conduct that the Commission seeks to suppress is adequately described as sale.”²² If we presume, as Healy does, that these prohibitions have at their object the use or transfer of reproductive materials for a commercial gain then the extent of section 7(1) might be too broad. Healy observed that it was “axiomatic in the Commission’s view of legal measures that the probability of realizing policy objectives rises in direct proportion to the intensity of legal control.”²³ The legislation has been drafted with the similar premise that the best way to prevent the potential harmful effects of certain activities is to provide severe criminal sanctions.

The general rationale for the use of the criminal law is the protection of society from harm. Harm must therefore be clearly defined; a solid consensus must exist about what

conduct is so generally offensive or unsafe that the application of criminal sanctions is necessary. Criminal law not only requires restraint, but also a consideration of the possible implication inherent in its application to diverse social groups. The principle of restraint suggests that criminal law "should be used only when the magnitude of the threatened harm justifies firm repression and when no other, and lesser, form of legal control can adequately achieve the same result."²⁴

Criminal sanctions are inflexible, invasive and can create a situation where potentially harmful activities

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continue to occur, but in a context which is completely unregulated and dangerous. Finally, criminal sanctions tend to be more harshly applied to disadvantaged members of society.²⁵ For that reason, it is suggested that the prohibition listed in s. 7(1) of the *Assisted Human Reproduction Act* may be too broad. A woman who purchases sperm in order to conceive a child may be more effectively prevented from doing so by regulating the activity and ensuring that discriminatory treatment does not occur when seeking fertility services. The appeal to severe criminal sanctions in this instance is overly broad and cannot be justified in a society that also respects human autonomy.

The controlled activities provision s. 10(3)(a) requires that people only obtain or import sperm with a license and within the proper regulations. The regulations for this *Act* have not been drafted. For the interim, regulations governing semen and assisted conception exist under separate legislation. The effect of these regulations on lesbians will now be examined within the context of a recent legal challenge.

The Processing and Distribution of Semen for Assisted Conception Regulations

The *Assisted Human Reproduction Act* is not the only legislation to govern in the area of assisted conception. Enabled by the federal *Food and Drug Act*²⁶ the *Processing and Distribution of Semen for Assisted Conception Regulations*²⁷ also remain in force.

The *Regulations* define "assisted conception" as a "reproductive technique performed on a woman for the purpose of conception, using semen from a donor who is not her spouse or sexual partner." If a woman seeks insemination by an anonymous donor or even by a known donor, for instance a brother-in-law or a friend, the semen

will be subject to a quarantine period. The quarantine is meant to minimize the risk of disease transmission through donated semen. Pursuant to section 4(1)(b) the semen must be quarantined for a minimum of six months. Additionally, the donor must undergo testing and re-testing as set out in the Health Canada Directive: *Technical Requirements for Therapeutic Donor Insemination*²⁸ under the heading "Repeat Screening and Quarantine." The testing and re-testing will only take place if the donor is not with a group of men set out in the Directive under the heading of "Exclusions." The excluded donor list is lengthy and includes men over the age of 40,²⁹ and men who have had sexual intercourse with other men, even once, since 1977.³⁰

In 2003, the *Regulations* and the Health Canada Directive were challenged as discriminatory under sections 7 and 15 of the *Charter of Rights and Freedoms*.³¹ Jane Doe, a lesbian, wanted to conceive a child with semen donated by a gay friend, B.³² His donated semen had previously been used to inseminate Jane's family partner, W, and a daughter was eventually born. Jane had experienced some problems self-inseminating due to a blocked fallopian tube and she required medical assistance in order for an intrauterine insemination procedure to be performed. Jane wanted B's semen used in the procedure. Two physicians refused Jane's requests because B was an excluded donor under the *Regulations* and the Directive because he was over 40 and he was gay.

Jane argued that the *Regulations* contravened section 7 and 15 of the *Charter* because they "granted an exemption to heterosexual women seeking to use semen donated by a spouse or sexual partner and not to lesbian women seeking to use the semen of a known donor."³³ Jane sought the addition of the words "or other designated donor of the woman's choice" to the definition of assisted insemination. Health Canada had agreed to allow Jane the use of B's semen, notwithstanding that B was gay and over 40, when a decision was reached under the "Donor Semen Special Access Program." Although B's semen would still have been subject to the mandatory minimum six-month quarantine and the testing and re-testing of any other anonymous donor. Jane was able to conceive following an operation to remove uterine polyps and she gave birth to a son before this action was commenced.

Justice Brennan ruled the issue moot because Jane Doe no longer required the remedy sought. In declining to exercise his discretion to rule on the issue Justice Brennan cited *Borowski v. Canada*³⁴ where Justice Sopinka held:

The court must be sensitive to its role as the adjudicative branch in our political framework. Pronouncing judgements in the absence of a dispute affecting the rights of the parties may be viewed as intruding onto the role of the legislative branch.³⁵

Justice Brennan was cognizant of the legislative activity

dealing with reproductive technologies that was occurring at the time. In declining to rule on the issue Justice Brennan also made the observation

that there is good evidence that a women without a fertile sexual partner, whether heterosexual or lesbian, who chooses to undergo artificial insemination, is likely to have given careful consideration to her own health and the health of the child she hopes to conceive.³⁶

As discussed above, researchers have found that children conceived by donor insemination to lesbian parents were highly desired and thoughtfully conceived.³⁷ It is also relevant to consider that lesbians often have a difficult time finding a sperm donor, and when they decide to go to a fertility clinic they are often confronted with long waiting lists.³⁸ The desire to seek insemination through a known donor is therefore probably very common for lesbians. Yet, Justice Brennan also held that “the process should be the same for all “assisted conceptions”—by definition those which use donor semen not from a spouse or sexual partner.”³⁹ Semen from a spouse or sexual partner is excluded in the definition, and is not subject to the six-month quarantine. Justice Brennan assumed that the reasoning behind this exclusion was that a woman would already have been exposed to any communicable disease through sexual intercourse (although, in Jane Doe’s case she would have already been exposed to any health risk through the multiple attempts at self-insemination).

In the instance of anonymous donor insemination, quarantine of semen, as well as testing and re-testing of the donor is clearly appropriate. Yet, if a woman chooses to attempt insemination with a person she knows and trusts, should the law prevent such a reproductive choice? The disparate treatment of lesbian women compared with heterosexual women, created by the definition of “assisted conception” from the Regulations, is not justified. Moral philosophers Jonathan Glover and John Harris suggest that when, as a society, we do not judge the position of fertile parents, we cannot impose restrictions on parents who seek the assistance of reproductive technologies to conceive.⁴⁰

While testing and quarantine services should be available for women using known donors, and mandatory for sperm from anonymous donors, requiring this procedure when it is not required for all other known donors is discrimination against lesbians. The exclusion of every gay male, or any man who has had intercourse with even one man since 1977, is entirely too broad. The intention of this exclusion is the important goal of preventing disease transmission through donated semen. Yet, incredibly, reproductive technologies are now being successfully used on couples wishing to conceive where the male partners are known to be HIV positive without transmission of the disease.⁴¹ These procedures have only been completed on

heterosexual husbands and wives.

Broad exclusions of entire categories of people cannot and should not be justified. Respecting human autonomy, particularly women’s autonomy in the context of reproductive technologies, is fundamental. Elizabeth Comack and Gillian Balfour suggest that:

Far from being an impartial and objective enterprise, law deals in ideology and discourse—through meaning and assumptions embedded in the language that it uses, through its ways of making sense of the world

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and through its corresponding practices.⁴²

The social context is highly relevant to the meaning and making of law. Discrimination can be explicit and, perhaps more perniciously, it can exist in seemingly neutral provisions.

Conclusion

The criminal sanctions contained in the *Human Assisted Reproduction Act* are excessive. Although certain uses of reproductive materials should be prohibited, the use of severe criminal sanctions is not the most effective way of addressing the broad list of prohibitions. These criminal sanctions may lead to unintended consequences and criminal sanctions being imposed on marginalized groups of women.

The law, like medicine, is not neutral and it impacts differently on different groups in society. This essay has reviewed a short history of homophobic discrimination faced by lesbian families. It also reviewed the legislative history of the *Assisted Human Reproduction Act*, which contains a principle supporting non-discrimination; the perspective of this paper is that this principle must be expanded. AID is continually used in Canada and it should be available to all Canadian women. Non-medical criteria should never be used to discriminate against a potential parent, as these criteria are not applied to the majority of heterosexual married women. To set up separate criteria for lesbian women who require AID is to discriminate against them.⁴³ The increased medicalization and legislation in this area requires a corresponding guarantee of access to fertility service to all women.

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¹John Harris and Soren Holm, eds., *The Future of Human Reproduction: Ethics, Choice and Regulation* (Oxford: Clarendon Press, 1998) at pg. 5.

²A term used to describe a relatively new family type: a family planned by two lesbian mothers as opposed to lesbian families where children were born in a formerly heterosexual relationship. As described in Henny M. W. Bos and Frank van Balen and Dymphna C. van den Boom, "Planned Lesbian Families: Their Desire and Motivation to Have Children" (October 2003) 18:10 *Human Reproduction* 2216.

³Nanette Gartrell, Amy Banks, Nancy Reed, Jean Hamilton, Carla Rodaas, Amalia Deck, "The National Lesbian Family Study: Three Interviews With Mothers of Five-Year-Olds" (October 2000) 70:4 *American Journal of Orthopsychiatry* 542 at 542. See also Jacquelyne Luce, "Imaging Bodies, Imagining Relations: Narratives of Queer Women and 'Assisted Conception'" (Spring 2004) 25:1 *Journal of Medical Humanities* 47 at 48.

⁴The first recorded human assisted insemination took place in London in 1793. For further discussion of the history of assisted insemination see *Royal Commission on New Reproductive Technologies, Donor Insemination: An Overview* by Rona Achilles (Ottawa: Royal Commission on New Reproductive Technologies, 1992).

⁵Laura Shanner and Jeffery Nisker, "Bioethics for Clinicians: 26. Assisted Reproductive Technologies" (May 29, 2001) 164:11 *Canadian Medical Association Journal* 1589 at 1591.

⁶Susan Sherwin, *No Longer Patient: Feminist Ethics and Health Care* (Philadelphia, Temple University Press: 1992) at 132.

⁷Joseph Fletcher, *Morals and Medicine* (Boston: Beacon Press, 1954) at pg. 116-117.

⁸*Supra* note 53 at 105.

⁹Robert H. Blank, *Regulating Reproduction* (New York: Columbia University Press, 1990) at 151.

¹⁰*Supra* note 48. Recommendation 94 (f).

¹¹*Ibid.* Recommendation 99 (d).

¹²Bill C-47, the *Human Reproductive and Genetic Technologies Act*, online: at Parliament Archives <http://www.parl.gc.ca/bills/government/C-47/C-47_1/17946bE.html>.

¹³*Korn v. Potter* (1996) 134 D.L.R. (4th) 347 (B.C.S.C.)

¹⁴*Anderson v. Luoma* (1986), 50 R.F.L. (2d) 127.

¹⁵*Korn, supra* note 64 at 14.

¹⁶*Ibid.* at 16.

¹⁷A transcript of Mona Greenbaum's testimony before the Standing Committee on Health can be obtained at <<http://www.parl.gc.ca/infoCom/37/1/HEAL/meetings/evidence/healev44-e.htm>>

¹⁸Edited Hansard, Maurice Vellacott, January 28, 2003, online: Parliament of Canada <<http://www.parl.gc.ca/>

37/2/parlbus/chambus/house/debates/047_2003-01-28/han047_1100-E.htm>.

¹⁹Edited Hansard, Jason Kenney, January 28, 2003, online: Parliament of Canada <http://www.parl.gc.ca/37/2/parlbus/chambus/house/debates/047_2003-01-28/han047_1205-E.htm>.

²⁰*Supra* note 43. Recommendation 94 (f).

²¹Davina Cooper and Didi Herman, "'Getting the Family Right': Legislating Heterosexuality in Britain, 1986 – 1991" (1991) 10 *Canadian Journal of Family Law* 41. Similar concerns are raised by Professor Diana Majury (Representing NAWL) presenting to the Sub-Committee on Bill C-47, *The Human Reproductive and Genetic Technologies Act*, April 10, 1997, online at: Parliament of Canada <http://www.parl.gc.ca/committees352/srta/evidence/07_97-04-10/srta07_blk101.html>.

²²Patrick Healy, "Statutory Prohibitions and the Regulation of New Reproductive Technologies under Federal law in Canada" (1995) 40 *McGill Law Journal* 905 (QL).

²³*Ibid.*

²⁴*Ibid.*

²⁵"Feminist Perspective on the Draft Federal Assisted Human Reproduction Act" (Winter 2002) 21:1 *Jurisfemme*, online: NAWL <<http://www.nawl.ca/v21-no1.htm>>.

²⁶*Food and Drugs Act*, R.S.C. 1985, C. F-27.

²⁷*Processing and Distribution of Semen for Assisted Conception Regulations*, S.O.R./96-254.

²⁸Health Canada Directive: Technical Requirements for Therapeutic Donor Insemination (Ottawa, Health Canada, July 2000) online: <http://www.hc-sc.gc.ca/hpfb-dgpsa/bgtd-dpbtg/semendirective_e.pdf>.

²⁹*Ibid.* Section 2.1 (d)

³⁰*Ibid.* Section 2.1 (e)(i).

³¹*Charter of Rights and Freedoms*, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act* 1982 (U.K.), 1982, c. 11.

³²*Jane Doe v. Canada (Attorney General)*, [2003] O.J. No. 5430 (Ont. Superior Court).

³³*Doe, ibid.* 8.

³⁴*Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342.

³⁵*Borowski, ibid.* at pg. 362.

³⁶*Doe, supra* note 83 at 22.

³⁷*Supra* note 32.

³⁸Henny M. W. Bos and Frank van Balen and Dymphna C. van den Boom, "Planned Lesbian Families: Their Desire and Motivation to Have Children" (October 2003) 18:10 *Human Reproduction* 2216.

³⁹*Doe, supra* note 83 at 17.

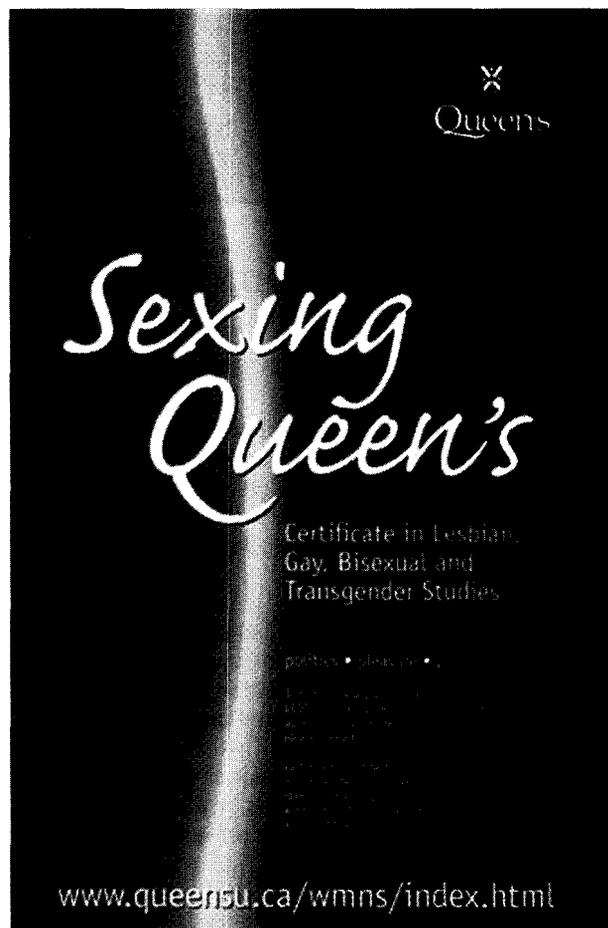
⁴⁰Jonathan Glover, *What Sort of People Should There be?* (Harmondsworth: Pelican, 1984) and John Harris, *The Value of Life* (London: Routledge, 1985), 150-6; *Wonderwoman and Superman* (Oxford: Oxford University Press, 1992) 73-8 as cited in Margaret Brazier, "Reproductive Rights: Feminism or Patriarchy?" in John

Harris and Soren Holm, eds., *The Future of Human Reproduction: Ethics, Choice and Regulation* (Oxford: Clarendon Press, 1998) at 73.

⁴¹H.W.G. Baler, A. Mijch, S. Garland, S. Crowe, M. Dunne, D. Edgar, G. Clarke, P. Clarke, P. Foster and J. Blood, "Use of Assisted Reproductive Technology to Reduce the Risk of Transmission of HIV in Discordant Couples Wishing to Have Their Own Children Where the Male Partner is Seropositive With an Undetectable Viral Load" (2003) 29 *Journal of Medical Ethics* 315.

⁴²Elizabeth Comack and Gillian Balfour, *The Power to Criminalize: Violence, Inequality and the Law* (Halifax: Fernwood Publishing: 2004) at 9.

⁴³Deborah C. Poff "Reproductive Technology and Social Policy" in Christine Overall ed., *The Future of Human Reproduction* (Toronto: The Women's Press, 1989) 216 at 222.



About the Guest Editors...

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