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**AN OVERVIEW OF THE REGULATION REGARDING THE
COLLECTION AND PROVISION OF INFORMATION ABOUT
PERSONS INVOLVED IN SPERM DONATION IN JURISDICTIONS
OUTSIDE THE UK**

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I. Introduction

This report gives an overview of the legislation and regulation concerning the provision of information about persons involved in sperm donation in jurisdictions outside the UK. An effort has been made to include countries from different continents and with a different cultural background. Evidently, countries where donor insemination is forbidden or not practised are not listed. This is the case in countries where the legislation is inspired by Islam¹ like Egypt, Jordan, Saudi Arabia and Turkey².

The main issue in most discussions of the subject has been the release of the identity of the sperm donor. The countries are presented in three categories: anonymity guaranteed, identifying information when the donor consents to the disclosure of his identity and identification guaranteed. The distinction between the categories is not as neat as presented. Some of the countries (like Belgium) allow known donation although in general sperm donations are anonymous. It could be argued that these countries belong in the category ‘identification after consent’ but I have chosen to put them as ‘anonymous’ because of the preponderance of this rule within the procedure. Nevertheless, there is room for discussion when considering countries like the United States.

¹ Aboulghar, M.A., Serour, G.I. and Mansour, R.T. (1994) Ethics and assisted reproduction in Egypt, In Mori, T., Aono, T., Tomanaga, T. and Hiroi, M. (eds.) Perspectives on assisted reproduction, Rome: Ares-Serono Symposia, 169-173.

² Jones, H.W., Jr. and Cohen, J. (2001) IFFS surveillance 01, *Fertility and Sterility* 76 (5), Suppl. 2: p. S16-S17.

For a number of countries (like Canada, New Zealand and The Netherlands) the presentation may be premature since the information is about law proposals instead of laws. Although I am not able to predict the future, I estimate the probability that the final law will contain the major clauses of the proposal as high.

The data have been collected by means of three general methods:

- search of the world wide web, mainly to get access to the full text of the (translated) legislation;
- detailed search of the International Digest of Health Law published by the World Health Organisation; and
- extensive search of the international literature for articles regarding legislation on medically assisted reproduction and donor insemination in particular.

II. Non-identifying information

The collection and provision of non-identifying information is less controversial because of the diminished link with the privacy of the donor. When no reference is made to the collection and provision of non-identifying information for some of the countries in the overview, this means that the legislation or regulation within this country does not contain any clauses on this point.

Concerning the release of non-identifying information, the following points are noteworthy:

- The information about the donor is generally divided in three categories: medical information, miscellaneous information (social information, psychological data and a description of the physical appearance of the donor), and his identity (name and address). Not every source of information is clearly established in the regulation. For instance, a country where no system exists to collect and/or provide information on the donor may have the rule that donors are matched

phenotypically to the partner of the recipient woman. The matching rule thus directly or indirectly provides the recipients with information about the donor.

- The release of the identity entails the possibility of personal contact between donor and offspring (or recipient). As a consequence, donor offspring who have access to the identity of the donor also obtain the possibility to gather other information about the donor by contacting him. Some countries introduce a stepwise release of information or have separate conditions for the provision of identifying and non-identifying information. When no mention is made in the law of countries that abolish donor anonymity of non-identifying information, this information is not separately provided or is supposed to be linked to the identity.

- Countries that do not give access to non-identifying (and/or identifying) information frequently accept two exceptions to this rule: when a child that results from donor insemination suffers from a genetic condition and genetic material as well as medical information from the donor is needed and when donor offspring wants to ascertain that he or she is not related to a future spouse.

- The interpretation of the legislations and regulations is complicated by the fact that some seem to use the term 'anonymity' to refer to the confidentiality of all information and not only to the confidentiality of the identity.

	Non-identifying information	No information	Not mentioned
Belgium		x	
Bulgaria		x	
Czech Republic			x
Denmark			x
France		x	
Greece		x	
Hong Kong	x		
Israel		x	
Italy			x
Japan			x
Kyrgyztan		x	
New South Wales			x
Norway			x
Portugal			x
Republic of South Africa	x		
Spain	x		
Western Australia	x		
Iceland			x
The Netherlands	x		
South Australia	x		
United States	x		
Austria			x
Canada	x		
Germany			x
New Zealand	x		
Sweden			x
Switzerland	x		
Victoria (Australia)	x		

Anonymity

- Belgium
- Bulgaria
- Czech Republic
- Denmark
- Greece
- Hong Kong
- Israel
- Italy
- Japan
- Kyrgyzstan
- New South Wales
- Norway
- Portugal
- Republic of South Africa
- Spain
- Western Australia

Identifying information with donor consent

- Iceland
- The Netherlands
- South Australia
- United States

Identifying information

- Austria
- Canada
- Germany
- New Zealand

- Sweden
- Switzerland
- Victoria (Australia)

III. Anonymity

Belgium

Medically assisted reproduction is not regulated by law in Belgium. Only Article 318§4 of the Civil Code determines that a husband who consented to artificial insemination or any other act aimed at procreation cannot dispute his paternity, except when the child is not the result of that act. Donor anonymity is necessary to exclude a paternity claim against the donor if this condition is not fulfilled. Moreover, the anonymity of the donor is guaranteed under the existing law by Article 458 of the Criminal Code. 'The physician responsible for the procurement and storage of the gametes has a duty of professional secrecy towards third parties'³.

Known donation is frequently applied for oocyte donation. In most clinics, recipients can choose between known and anonymous donation. In one centre, more than two third of the couples opted for known donors (mostly sisters and friends)⁴. The problem of legal maternity does not apply since the legal mother is the woman who gives birth to the child. In contrast, known sperm donation is practised but on a very limited scale and only in special circumstances. There is a large consensus to favour sperm donor anonymity.

In 1999-2000 a law proposal has been introduced in the Belgian Senate (31 July 2000, 2 – 540/1)⁵ concerning the regulation of the collection, preservation and

³ Nys, H. (1997), Belgium, In Nys, H. (ed.) *Medical law – Suppl. 9*, The Hague, London, Boston: Kluwer Law International, p. 115

⁴ Baetens, P., Devroey, P., Camus, M., Van Steirteghem, A. and Ponjaert-Kristoffersen, I. (2000) Counselling couples and donors for oocyte donation: the decision to use either known or anonymous oocytes, *Human Reproduction* 15 (2): 476-484.

⁵ van Kessel, I. (2000) Wetsvoorstel houdende regeling inzake de verzameling, het bewaren en het verstrekken van gegevens bij de donatie van gameten, Belgische Senaat 31 juli 2000, 2-540/1.

distribution of data related to gamete donation. This proposal in essence defends the “double track” system⁶. However, given the opposition by the medical practitioners and remarks made by the Minister of Health in the media, this proposal has little chance of passing in Parliament.

Concerning non-identifying information, recipients receive very little information on the sperm donor. In most cases, they are only told that an effort will be made to match the donor to the male partner (if applicable).

Bulgaria

Article 17 of the *Order No. 12 of 30 May 1987 on artificial insemination in women* states that ‘the physicians performing an artificial insemination shall:

2. assure the two spouses that, in the event of artificial insemination using genetic material from a third party, all the conditions guaranteeing the health of the child and the protection of the confidentiality of the insemination shall be fulfilled, and
3. be responsible for safeguarding the confidentiality of the insemination and for any breach of such confidentiality.

The second supplementary provision lays down that all data relating to artificial insemination are subject to professional confidentiality, in accordance with Sec. 91 of the *Law on public health*⁷.

No provisions were found regarding the collection of and access to non-identifying information.

Czech Republic

The conditions for artificial insemination are determined by the directive of the Ministry of Health No. 18/1982 of the Bulletin of the Ministry of Health⁸. Donor

⁶ Pennings, G. (1997) The “double track” policy for donor anonymity, *Human Reproduction* 12 (12): 2839-2844.

⁷ *International Digest of Health Law* 1990, 41 (1): 75.

material can be used if the semen of the husband proves to be inadequate. The donor is chosen by the physician and is anonymous.

No provisions were found concerning the collection of and access to non-identifying information.

Denmark

In the Order No. 728 of 17 September 1997 on artificial fertilization, it is stipulated that both the donor of oocytes (ch. 1, art. 11) and the donor of sperm (ch. 2, art. 15) 'shall remain anonymous with respect to the couple receiving the donation and the child'. In a similar vein, the donor shall not receive any information concerning the identity of the couple or the child⁹. After a discussion of the legislation in 1997 in Danish Parliament, it was decided that the practice would continue as before, thus guaranteeing anonymity¹⁰. Moreover, the *Law No. 460 of 10 June 1997 on artificial fertilization in connection with medical treatment, diagnosis, and research* states that known oocyte donation is forbidden (Art. 14(2))¹¹. Fertilization is forbidden if the identity of the oocyte donor is known to the recipients. Logically, the recipients cannot request that the oocytes of a specific donor are used for them.

In 1995, the Danish National Council of Ethics has issued a statement about the legislative proposal. The majority of its members has pronounced in favour of at least partial abolition of anonymity, on the grounds that the recipient of the donated sperm or egg must take responsibility for acknowledging the way the child was procreated. This includes granting the opportunity for the child to obtain information about its genetic parents. The change should not be retroactively but

⁸ den Exter, A.P. and Prudil, L. (2001) The Czech Republic, In Nys, H. (ed.) *Medical law – Suppl. 24*, The Hague, London, Boston: Kluwer Law International, pp. 57-58

⁹ *International Digest of Health Law* 1998, 49 (3): 490.

¹⁰ Lebech, A.M.M. (1997) Anonymity and informed consent in artificial procreation, *Bioethics* 11 (3-4): 336-340, p. 338.

¹¹ *International Digest of Health Law* 1997, 48 (3/4): 321-322.

only for future donations¹². However, the Minister of Public Health reacted with the pronouncement by affirming that there is ‘no question of adopting a more restrictive general approach to biotechnology’.

No provisions were found concerning the collection of and access to non-identifying information.

France

The rules governing gamete donation in France originate in the guidelines of the CECOS. These guidelines were designed to express the idea of a donation from a couple to a couple¹³. Three general principles of the donation are kept central: non remuneration (no payment), anonymity and safety. The French Federation of Centres for the Study and Storage of Sperm and Human Eggs (CECOS) reconfirmed this view in the new *Charter of Ethics* they adopted in 1997: ‘The recruiting of donors shall be organized under conditions that respect their freedom, the voluntary nature of their act, and their anonymity, and shall not entail any coercion or pressure.’¹⁴. The anonymity is also requested in art. 16-8 of the Civil Code¹⁵, Art. L. 665-14 of the Public Health Code and Art. 511-9 of the Penal Code. Art. L. 665-14 of the Law No. 94-654 on the donation of the human body, medically assisted procreation, and prenatal diagnosis (the so-called Bioethics law) says that ‘a donor may not know the identity of the recipient, nor the recipient that of the donor. Any information enabling the simultaneous identification of the person who made the donation of an element or product of his body, and the person who received it, may not be divulged. There may be no exemption from this principle of anonymity except in cases of therapeutic necessity’. This exception would apply in case of the detection of a genetic

¹² Danish National Council of Ethics (1995) Assisted reproduction – a report, The Danish Council of Ethics, Copenhagen, pp. 66-67.

¹³ Pennings, G. (1997) Gamete donation from couple to couple in the new French law, *Medicine and Law* 16 (4): 795-804.

¹⁴ *International Digest of Health Law* 1997, 48 (3/4): 413.

¹⁵ *International Digest of Health Law* 1994, 45 (4): 498.

disease in the child. In that case the general practitioner can obtain medical non-identifying information (Art. L. 673-7).

Directed or known donation is explicitly forbidden. The candidate recipients are strongly encouraged (the law states that bringing a donor cannot be made a condition for access) to bring a donor who will then be used for another couple while the donor brought by the other couple is used for them. This is the 'personalised anonymity' system¹⁶. Designation of the donation by the donor to a specific recipient (or known donation) is not allowed.

A donor file must be kept under conditions that guarantee confidentiality. The donor is identified by means of a code¹⁷. This donor file contains the following information in anonymized form: the personal and family medical history, the results of the compulsory health-related screening tests, the number of children born and the consent forms (Art. R. 673-5-8). Information concerning the identity of donors, the identification of the children born, and the biological links between them shall be kept in a room or safe specially designated for this purpose, to which only the practitioners authorized to carry out the activities shall have access.

No provisions were found regarding the collection of and access to non-identifying information.

Greece

There is very little specific legislation on assisted reproduction in Greece. Part of the regulation comes from the Central Council for Health which issued a document in 1988 which incorporated a number of points of the Report of the Council of Europe¹⁸. The Central Council specified that the mutual anonymity of donors and recipients is a condition for the acceptability of gamete donation.

¹⁶ Raoul-Duval, A., Letur-Könirsch, H. and Frydman, R. (1992) Anonymous oocyte donation: a psychological study of recipients, donors and children, *Human Reproduction* 7 (1): 51-54.

¹⁷ Decree No. 95-560, *International Digest of Health Law* 1995, 46 (3): 335.

¹⁸ Dalla-Vorgia, P. (1996) Assisted reproduction in Greece, In Evans, D. (ed.) *Creating the child*, The Hague, London, Boston: Martinus Nijhoff Publishers, 279-286, p. 280.

However, a number of other statements in that document render its position less clear. Thus it also states that the data should be accessible ‘for a possible genetic need’ and ‘for the protection of the right of the child to find out in the future of the mode of his conception and maybe the identity of his genetic parents’¹⁹. In general, however, donor anonymity is respected by most fertility centres. ‘Responsible physicians should follow the legal provisions and the duty of professional secrecy’²⁰.

No provisions were found regarding the collection of and access to non-identifying information.

Hong Kong

The Human Reproductive Technology Bill of 1999 regulates the practice of assisted reproduction in Hong Kong. The intent of the Bill is to protect the anonymity of the donor, the commissioning couple and the child born in consequence of the technology²¹. Some very strict exceptions are foreseen: the identity of the donor can be released when it is necessary to save or significantly extend the life of an individual. Even in that case, the consent of the donor will be sought (clause 31 (10)(a)). If it is not practicable to obtain the donor’s consent, his identity will be released for the purposes mentioned above (clause 31(10)(b)). The donor offspring is given the right to access information about whether or not he or she was born as a consequence of donor insemination (clause 30(3)(a)). They can also find out whether or not they are genetically related to his or her intended spouse in order to reduce the danger of accidental incest²². The Human Reproductive Technology Bill resulted in the Human Reproductive Technology Ordinance (cap. 561) but the sections related to access to and collection of

¹⁹ Dalla-Vorgia, 1996, *ibid*, p. 284.

²⁰ Koniaris, T.B. and Karlovatsitov-Koniari, A.D. (1998) Hellas, In Nys, H. (ed.) *Medical law – Suppl. 13*, The Hague, London, Boston: Kluwer Law International, p. 141.

²¹ Bills Committee on Human Reproductive Technology Bill (Minutes) 14 April 1999.

²² Human Reproductive Technology Ordinance, Register A, Ch. 561, Section 33, Part V: Access to information, Art. 4 (a) and (b). This section is not yet in operation.

information about gamete donors were not yet in operation when this report was written.

Finally, the donor offspring is also allowed access to certain non-identifying information although it is not specified which elements are meant by this²³.

Israel

Israel decided that legislation concerning assisted reproduction would be almost impossible because of the opposition between secular and religious people on the one hand and between different religious factions on the other hand. To avoid this conflict, regulation of the practice is performed by guidelines from the Ministry of Health²⁴. The first set of regulations, the Public Health (In Vitro Fertilization) Regulations date from 1987²⁵. Clause 15(a) determines that ‘a recognized department that performs IVF procedures shall not transmit information regarding the identity of the donor of the semen or the donor of the ovum’²⁶. The Israeli society protects donor insemination maximally. As few people as possible should be informed of how the child was conceived. The child itself cannot obtain information about its genetic father. Donor records, like other medical records, only have to be kept for 7 years²⁷.

In 1992, the Minister and the Director General of the Israel Ministry of Health distributed a memorandum formalizing obligatory donor insemination regulations²⁸. The regulations include several clauses in which secrecy and anonymity is emphasized. The design and formalization of the procedure is directed at preventing that information is passed between donors and recipients. The regulations specify that the donor and the woman must not know one another

²³ Legislative Council Brief, Human Reproductive Technology Bill, HWB/M/39/1 Pt. 9 96, p. 4.

²⁴ Mor-Yosef, S. and Schenker, J.G. (1995) Sperm donation in Israel, *Human Reproduction* 10 (4): 965-967, p. 966.

²⁵ *International Digest of Health Law* 1987, 38(4): 779-82.

²⁶ See also Carmi, A. (2000) Israel, In Nys, H. (ed.) *Medical law – Suppl. 20*, The Hague, London, Boston: Kluwer Law International, p. 124

²⁷ Mor-Yosef, S. and Schenker, J.G. (1995), *ibid*, p. 967.

and must remain strangers forever. The sperm bank manager is instructed to keep information about the donor, the woman and the sperm in separate files (cl. 9), and the donor's chart should be kept in a safe, accessible by the doctor only. ... The child should never be granted access to the donor's identity (cl. C-25) and all information about the donor should be concealed²⁹. Moreover, Israel is probably the only country where mixing sperm of the donor with sperm of the partner is promoted³⁰.

Strong measures are taken to prevent access to any kind of information, including non-identifying information.

Italy

In general, Italy does guarantee the anonymity of the donor. Like Belgium, however, there is no legislation regarding medically assisted reproduction. A law proposal which has been discussed in recent years prohibits the use of third party genetic material³¹.

No provisions were found regarding collection and access to non-identifying information.

Japan

The regulation of procreation with donor gametes is largely determined by the Japan Society of Obstetrics and Gynaecology (JSOG). This society gave its approval of artificial insemination with donor sperm. The ethical guidelines of this

²⁸ Carmeli, Y.S. and Birenbaum-Carmeli, D. (2000) State regulation of donor insemination: an Israeli case study, *Medicine and Law* 19: 839-854.

²⁹ Carmeli, Y.S. and Birenbaum-Carmeli, D. (2000), *ibid*, p. 846.

³⁰ Although other countries like Ireland still accept this practice, Tomkin, D. and Hanafin, P. (1994) Ireland, In Nys, H. (ed.) *Medical law – Suppl. 4*, The Hague, London, Boston: Kluwer Law International, p. 142.

³¹ Mori, M. and Neri, D. (2001) Perils and deficiencies of the European Convention on Human Rights and Biomedicine, *Journal of Medicine and Philosophy* 26 (3): 323-333.

society are not legally binding and are directed at the members of the society³². Nevertheless, there are strong indications that a large number of Japanese couples go to the United States both for sperm and oocyte donation³³. No clear policy exists but the head of the ethics committee of the JSOG states that 'donor anonymity is basically encouraged'³⁴.

On the other hand, a report compiled by a committee of the Health and Welfare Ministry in 2000 proposed that gametes donation by close relatives should be allowed and that children should have the right to know the identity of their biological parents³⁵. The discussion is partially fuelled by the recent commotion around the use of sperm of the father of the infertile partner. According to some, the use of a family donor would make it easier for parents to inform their children about the identity of the donor.

No provisions were found regarding the collection of and access to non-identifying information.

Kyrgyzstan

Section 25 of the *Law of 2 July 1992 of the Republic of Kyrgyzstan on the protection of the health of the nation in the Republic of Kyrgyzstan* lays down that health care establishments performing artificial insemination and embryo implantation are required to preserve anonymity regarding the donation and should respect the confidentiality of such interventions³⁶.

No provisions were found regarding the collection of and access to non-identifying information.

³² Sueoka, K. (1999) Reproductive medicine in Japan: progress and paradox, *Japan Echo* 26 (1): 40-44.

³³ Anonymous (1998) Infertility treatments: in vitro fertilization debate heats up, *Trends in Japan*, September 1, 1998.

³⁴ Takagi, S. (2000) Incest at root of sperm donor row, *Mainichi Shimbun*, September 15, 2000.

³⁵ Anonymous (2001) Babies born from donated gametes in Japan may become legitimate, Eubios Ethics Institute, February 7, 2001. <http://www.biol.tsukuba.ac.jp/macer/DAILY/html>.

³⁶ *International Digest of Health Law* 1994, 45 (2): 147

New South Wales

New South Wales has no statutes regulating assisted reproduction and the decisions about the policies for offering treatment are left to the individual ethics committees of the fertility centres. The majority of these centres prefer anonymity³⁷. On this point at least, the fertility centres of New South Wales do not follow the guidelines of the NHMRC (1996).

Some regulation of aspects of medically assisted reproduction is incorporated in the Human Tissue Act of 1983 (which is currently under review). The New South Wales Law Reform Commission composed a report³⁸ in which anonymity is guaranteed if the donor does not agree to release his name. Recommendation 32 states that ‘no person should have a legal right of access to information that may identify a party to AID and no record keeper should divulge such information, unless the person who is the subject of the information formally consents’. In the same view, known donation is accepted since both parties then implicitly consented to the disclosure of their identity to the other. Depending on the new legislation, New South Wales might change to the category of ‘identifying information with donor consent’.

At present, there are no provisions regarding the collection of and access to non-identifying information. The Law Reform Commission of New South Wales has recommended in a *Review of the Human Tissue Act 1983* that there be access to non-identifying information without consent but that access to identifying information should only be possible with the consent of the person whose identity will be revealed (Sect. 7.2)³⁹.

Norway

³⁷ Roberts, M. (2000), *ibid*, p. 377.

³⁸ New South Wales Law Reform Commission, (1986) Report 49 (1986) – Artificial conception: human artificial insemination.

³⁹ Law Reform Commission, *Review of the Human Tissue Act 1983*. Discussion paper: assisted reproductive technologies, <http://www.health.nsw.gov.au/corporate-services/legal/art>

Norway guarantees the anonymity of the donor by the Law No. 56 of 5 August 1994 on the medical use of biotechnology⁴⁰. The law requires that health personnel ensures the confidentiality of the identity of the sperm donor (sect. 2-7). Likewise, he may not be given information concerning the identity of the couple or the child⁴¹.

Although Norwegian law generally recognises the right of a child to know his or her origins, an exception is made for children conceived by artificial insemination using donor sperm. Norway has previously taken the view that the anonymity rule is not regarded as being in contravention of Article 7(1) of the Convention on the Rights of the Child. This article goes as follows: ‘The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents’. The principle of anonymity of the sperm donor has been defended in the second report on the UN Convention on the Rights of the Child (1998) as being the best balance after weighing the interests of all parties⁴². Anonymity is in the interest of the sperm donor and his family. Anonymity of the sperm donor is considered to be the most efficient way of avoiding the creation of emotional or legal bonds between the child and the sperm donor, which is in the best interests of the child. Finally, full anonymity for the donor is also in the interests of the social/legal father⁴³.

No provisions were found regarding the collection of and access to non-identifying information.

Portugal

⁴⁰ *International Digest of Health Law* 1995, 46, pp. 51-52.

⁴¹ *International Digest of Health Law* 1987, 38 (4), p. 783.

⁴² UD – Report No. 21 of the Storting , 1999-2000.

⁴³ Ministry of Children and Family Affairs, Chapter IV – Civil rights and freedoms.

In general, the collection, manipulation and conservation of sperm and the application of procedures of medically assisted reproduction are regulated by the Law No. 319/86 of 25 September 1986⁴⁴.

In 1999, a draft Bill on medically assisted procreation was proposed by the Minister of Health. According to the remarks on the Bill made by the National Council on Ethics of Life Sciences⁴⁵, the anonymity of the donor is respected. This National Council strongly recommends that 'should semen donation be legalised and in agreement with the appended Report, the law must provide for: c) unequivocal and unconditional acknowledgement of the right of persons generated with donated semen to have access to the donor's identification'⁴⁶. As the wording of the opening statement indicates this commission only reluctantly accepts the use of donor gametes. This is already a qualification compared to a previous report⁴⁷ by the same commission in which heterologous insemination was considered ethically unacceptable.

No provisions were found regarding the collection of and access to non-identifying information.

Republic of South Africa

Only very little information is available on the regulation of assisted reproduction on the African continent. The Republic of South Africa is the only exception. Artificial fertilization is governed by the Human Tissue Act (1983) and by the Children's Status Act (1985). Prior to the Children's Status Act, the child resulting from artificial insemination by donor was regarded as illegitimate⁴⁸. Art.

⁴⁴ Anonymous (1998) Part III: current European laws on gamete donation, *Human Reproduction* 13, Suppl. 2: 105-134, p. 126.

⁴⁵ National Council on Ethics of Life Sciences (1999) Opinion on the draft bill concerning medically-assisted procreation, *International Journal of Bioethics* 10 (5): 75-77.

⁴⁶ National Council on Ethics of Life Sciences (1999), *ibid*, p. 76.

⁴⁷ National Council on Ethics of Life Sciences (1995) Rapport – Avis sur la procréation médicalement assistée (1993), *International Journal of Bioethics* 6 (1): 76-78.

⁴⁸ van Oosten, F.F.W. (1996) South Africa, In Nys, H. (ed.) *Medical law – Suppl. 7*, The Hague, London, Boston: Kluwer Law International, p. 106.

6(1) of the Regulations regarding the artificial insemination of persons and related matters⁴⁹ orders that the following details must be recorded in a donor's file:

- (a) The prospective donor's –
 - (i) full names, surname, date of birth and identity number;
 - (ii) age, height, mass, eye colour, hair colour, complexion, population group, nationality, sex, religion, occupation, highest educational qualification and fields of interest;
 - (iii) family history with special reference to possible genetic carrier conditions and mental disorders;
 - (iv) wishes in respect of the population group and religion of the recipient;
 - (v) wishes in respect of the number of artificial inseminations for which his gametes may be used.
- (b) Details of medical tests in respect of possible communicable or infectious diseases and genetic evaluation where applicable.
- (c) An evaluation of the psychological suitability of the donor for the purpose of artificial insemination.

The medical practitioner shall provide the non-identifying information mentioned under subregulation (1)(a)(ii) above to the recipient and her husband. However, the identity of a person from whose body any tissue, blood or gamete has been removed for the purpose of artificial insemination shall not be made public⁵⁰.

The South African legislation is unique because they allow the donor to indicate whether his genetic material may be used for the reproduction of groups on the basis of race and religion.

The categories of non-identifying information that is collected and can be provided are specified. However, the donor offspring is not mentioned in the law as a party which has the right to obtain information which seems to indicate that access to non-identifying information is reserved for the candidate parents.

⁴⁹ Government Notice No. R.1182 of 12 June 1986, *International Digest of Health Law* 1990, 41: 77-78

⁵⁰ *International Digest of Health Law* 1990, 41, p. 97.

Spain

In Spain, the practice of the new reproductive technologies is regulated by *Law No. 35/1988 of 22 November 1988 on assisted reproduction procedures*⁵¹. The principle of anonymity, however, has a long history in various reports and has been accepted as absolute by most Spanish commentators⁵². Chapter III, art. 5(5) stipulates that ‘the donation shall be anonymous, the particulars of the identity of the donor being kept in strictest secrecy and in coded form in the corresponding bank and in the National Register of Donors.

The resultant children shall have the right, either personally or through their legal representatives, to obtain general information concerning the donors, although not including their identity. Recipients of gametes shall likewise have this right.’ According to art. 18(8), both the recipients and their partners and the resulting children on reaching the age of majority may obtain data in clinical histories (but not the identity).

Art 5(5) continues as follows: ‘Only in exceptional cases, in extraordinary circumstances that entail a verified danger to the life of the child, or under the law of criminal procedure, may the identity of the donor be disclosed; it shall be a condition that such disclosure is indispensable to avert a danger or to attain the legal objective referred to. In such cases the provisions of subsection 3 of Section 8 shall be applicable. Disclosure shall be limited in character and shall under no circumstances make public the identity of the donor.’ The disclosure of the identity of donors in circumstances other than those specified by the law is considered a ‘very serious offence’ (Chapter VI, art. 20(2), B(j)). The law also provides in the establishment of a computerized National Register of donors of gametes and pre-embryos. The identity of the donor shall be kept in coded form in

⁵¹ *International Digest of Health Law* 1989, 40: pp. 82-83.

⁵² Vidal Martinez, J. (1996) Anonymity of the donor in the Spanish act on techniques of assisted reproduction, In Evans, D. (ed.) *Creating the child*, The Hague, London, Boston: Martinus Nijhoff Publishers, 217-228, p. 220.

the Banks and in the National Register of Donors (which in 1994 still needed to be installed)⁵³.

The donor is selected by the physicians on strictly medical criteria. These criteria are selected in order to guarantee the greatest phenotype and immunological similarity of the donor as well as the maximal level of compatibility with the recipient woman and her family environment (Art. 6.5). In other words, donor selection is meant to enable the couple to maintain secrecy concerning the method of conception. Moreover, the law also allows secrecy by the parents by means of Art. 7(2) which indicates that 'registration in the registry office may under no circumstances provide information enabling the inference to be made concerning the mode of procreation'.

The use of a known donor is only acceptable for unmarried couples and in those cases the donor would have to take on the corresponding obligations arising from paternity⁵⁴.

The offspring as well as the recipients of gamete donation have the right to obtain general information about the donor. No specification was found on the content of this concept.

Western Australia

The legislation on assisted reproduction in Australia is the responsibility of the separate states. Three states (South Australia, Victoria and Western Australia) have designed specific legislation. The others operate under the rulings of the National Health and Medical Research Council (NHMRC). The last version of the '*Ethical guidelines on assisted reproductive technology*' of the NHMRC dates from 1996. However, these guidelines cannot be enforced without statutory force and are subordinate to the state legislation⁵⁵. In some states, like Western

⁵³ Romeo-Casabona, C.M., Hernandez-Plasencia, J.U. and Sola-Reche, E. (1994) Spain, In Nys, H. (ed.) *Medical law – Suppl. 3*, The Hague, London, Boston: Kluwer Law International, p. 180.

⁵⁴ Romeo-Casabona et al. (1994), *ibid*, p. 182.

⁵⁵ Roberts, M. (2000) A right to know for children by donation – any assistance from down under, *Child and Family Law Quarterly* 12 (4): 371-382, p. 374.

Australia, the legislation does not follow the guidelines on the provision of donor information. The NHMRC states that ‘children born from the use of ART procedures are entitled to knowledge of their biological parents.’ The donor must be informed that children may receive identifying information about him or her (clause 3.1.5). Since most states without a specific legislation at present comply with all or part of the recommendations of the NHMRC, it can be expected that these guidelines will strongly influence the new legislation that will be developed in these states to regulate assisted reproduction. Another factor which contributes to the adoption of the NHMRC guidelines is the Reproductive Technology Accreditation Committee (RTAC). This committee was formed by the Fertility Society of Australia to assess the operation of individual clinics. Even though accreditation of clinics is important financially, the extent to which these guidelines can be enforced without statutory leverage is not great⁵⁶.

The practice of assisted reproduction in Western Australia is regulated by the *Human Reproductive Technology Act 1991*. Section 45 of this Act establishes a central register of identity which contains the identity of the participants, the outcome of procedures showing the genetic origin of the gametes or embryos, the identity of the children born as a result of the artificial insemination procedure, including the identity of each biological parent, and relevant demographic and clinical information. However, section 46 determines that ‘a person be furnished with information in a register kept under section 45 if

- (a) it does not identify, but relates to –
 - (i) a biological parent of that person; or
 - (ii) a child of which that person is a biological parent;
 - (b) it is sought by a person so authorized by the Commissioner of Health;
 - (c) it discloses only the social and public health connotations of reproductive technology; or
 - (d) a written law so provides,
- but not otherwise, unless subsection (2) applies.’

⁵⁶ Szoke, H. (1999) Regulation of assisted reproductive technology, In Freckelton, I. and Petersen,

Children by donation can only have access to relevant demographic and clinical non-identifying information about the donor. No further specification is given regarding the nature of this information.

IV. Identifying information with donor consent

Iceland

The Artificial Insemination Act No. 65 of 1996 offers the sperm donor the choice between anonymity and identifiability. When the donor requests anonymity, the health workers must ensure the confidentiality of his identity. When the donor wishes to remain anonymous, all communication of information between couple and child on the one hand and the donor on the other hand will be completely severed. However, when he does not wish to remain anonymous, information about the couple and the resulting offspring are kept in the file of the donor. This opens the possibility that the donor, if he has a right of access to his own file, also obtains information on the child. It remains unclear whether an identifiable donor has the right to obtain information (and if so, what kind of information) on the recipients and the child.

A child conceived with sperm of a donor who accepts to be identifiable may request access to the records at the age of 18. The institution that provides the information will inform the donor as soon as possible that the information has been given (Art. 4). Art. 3 of the law states that the physician providing the treatment chooses a suitable donor. The Regulation No. 568/1997 on Artificial Fertilization only specifies that the doctor shall endeavour to realize the wishes of the applicants that the build, height, colour of eyes and hair and the blood type of the gamete donor is as closely resembling the parent's as is possible. The blood type however is only of interest to parents who intend to keep secrecy regarding the way of conception. It is unclear whether or not the recipients can choose an

anonymous or an identifiable donor. The Regulation only says that they should be informed about this aspect (Art. 20(c)). But the regulation does allow intrafamilial donation of gametes (where anonymity presumably is not an option).

The child and the couple have the right to identifying and non-identifying information if the donor consents. Specification regarding the type of information that is collected was found neither in the Act nor in the Regulation.

The Netherlands

The *Law Donor Data Artificial Conception (23207)* is still debated in the First Chamber of the Dutch Parliament but was voted by the Second Chamber in 2001. This law is a long term project. The first discussions on this proposal already started in 1992. The law proposal as it now stands obliges the physician to collect the following information about the donor and to transmit this information to a Register (Stichting donorgegevens kunstmatige bevruchting) (Art. 2(1)):

- a. medical data that may be important for the healthy development of the child;
- b. physical characteristics, education and profession, information about social background and general personal features;
- c. name, first name, date of birth and domicile.

The data should not, alone or in combination, be traceable to an individual donor (Art. 2(3)).

The non-identifying data (mentioned in art. 2(1)(b)) will be provided to the child who knows or suspects that he or she is a donor child when he or she reaches the age of 12. These data are also available to the parents. The identifying data will be given to the donor child at his or her request if the child has reached the age of 16 and on the condition that the donor consented to the release of these data in writing. If the donor refuses, his identity will not be released. However, the donor has to demonstrate or argue 'weighty' or 'ponderous' interests. When the donor is deceased or is untraceable, this is considered as a refusal. The partner or other first and second degree relatives may in these cases consent to the provision of the identity. If a request is entered by a child to obtain identifying information, the

donor is warned and he has 30 days to object to this plan (Art. 3). In order to contact the donor, the Register will try to trace him. With the exception of the situation mentioned above, the Register cannot contact the donor. This implies that the data in the donor file will not be updated unless the donor volunteers new information.

The Law is not retroactive; the donor who donates before the law comes into force can declare that his identifying data must not be provided. In other words, the time of donation is decisive. Medical data may always be provided to the general practitioner of the child and non-identifying information may still be released to offspring and parents (Art. 12(4)). Art. 12(1) stipulates that the available data kept by legal or natural persons (sperm banks or physicians) when the law enters into force are transferred to the Register. Moreover, the law foresees a transition period of two years before the rules come into force (Art. 14). This measure is introduced in order to prevent as far as possible the expected reduction of the number of sperm donors by means of information campaigns as well regarding the precise content of the law as regarding the importance of the interests of the donor offspring in knowing their genetic origins⁵⁷.

The parliamentary debates on the proposal show that the main drawback lies in the precise determination of the rights of the different parties and more specifically in the definition of ‘ponderous interests’ of the donor. Ultimately, the decision whether or not to reveal the identity of the donor rests on a balance of the consequences of non-disclosure for the requesting child and the consequences of disclosure for the donor. This balancing is performed by the members (multidisciplinary composition) of the Register. In their answer to the remarks made by the members of Parliament, the Minister of Justice and the Minister of Public Health, Wellbeing and Sport⁵⁸ presented the following example as a case of ‘ponderous interest’ by the donor: the donor was very young at the time of the donation and single. In the meantime, he build a family and, based on this

⁵⁷ Brief van de Ministers van Justitie en van Volksgezondheid, Welzijn en Sport, Tweede Kamer der Staten-Generaal, 1999-2000, 23207, Nr. 13; Memorie van antwoord, Eerste Kamer der Staten-Generaal, 2000-2001, 23207, Nr. 201b.

changed situation, he now seriously objects to a confrontation with the donor child. Strangely enough, they add that these are serious circumstances that will rarely happen.

From the late eighties till now, 5 of the 13 sperm banks adopted a ‘double track’ policy partly as a reaction to the discussion in Parliament on the abolition of the donor anonymity⁵⁹. In this system, the donor has the choice to enter the programme as an anonymous or as an identifiable donor and recipients can choose between an identifiable or an anonymous donor. Approximately 20% of the donors opted for identification. The donors signed a notarial act in which they gave the notary permission to ask the clinic for a copy of the file in which identifying information was registered. The notary’s office would release the information at the request of the donor offspring at the age of 16⁶⁰. Since this system does not force one option on the participants, it could be argued that it respects the privacy and autonomy of both parents and donors⁶¹.

Donor offspring has the right to obtain non-identifying information about the donor from the age of 12. This includes medical data that may be important for the healthy development of the child and physical characteristics, education and profession, information about social background and general personal features.

South Australia

Assisted reproduction is regulated in South Australia by the Reproductive Technology Act, 1988 No. 10. The Act also tries to maintain a balance between the rights of the different parties. Section 18(c) states that the identity of a donor of human reproductive material should not be disclosed without the consent of the

⁵⁸ Memorie van antwoord, Eerste Kamer der Staten-Generaal, 2000-2001, 23207, Nr. 201b.

⁵⁹ de Bruyn, J.K. (red.) (1998) Spermabanken in Nederland 1990-1997, Nederlands Belgische Vereniging voor Kunstmatige Inseminatie, Leiden.

⁶⁰ De Bruyn, J.K., De Graaff, I.A., Brewaeys, A. and Helmerhorst, F.M. (1996) Knowing the unknown: donor insemination couples’ choices for an anonymous/identifiable donor, *Human Reproduction* 11, Abstract book 1, 53-54.

⁶¹ Pennings, G. (2001) The right to privacy and access to information about one’s genetic origins, *Medicine and Law* 20: 1-15.

donor of the material. Violation of this rule is punished with a penalty of \$5,000 or imprisonment for six months.

The South Australian legislation explicitly allows infertility treatment involving the use of donor reproductive material when the identity of the donor is known to one or both of the spouses⁶². In that case the medical practitioner or counsellor should make sure that both the couple and the donor have received adequate information and counselling. The children resulting from the use of donor reproductive material have the right under this code to obtain access to non-identifying information about the donor when they are or become 16⁶³.

The medical practitioner must establish a record in relation to the donor. This record must contain the following information:

- (a) the date of birth, country of birth, racial origin, nationality, religion, educational history, occupation, marital status, number of children and leisure interests of the donor;
- (b) the donor's sex, height, weight, eye colour, hair colour and skin colour;
- (c) full particulars of the medical history of the donor and of his or her parents;
- (d) such particulars as the donor provides of any known hereditary illness or disease of the donor's grandparents, great grandparents, brothers, sisters and children;
- (e) the donor's assessment of his or her personality;
- (f) the reasons given by the donor for donating reproductive material;
- (g) full particulars of any payment to the donor for the disbursement of expenses incurred by the donor in connection with his or her donation of reproductive material;
- (h) full particulars of any consent given by the donor under Part 4;
- (i) ...
- (j) such other information as the donor requests to be included in the record.'

The licensee must give all information (other than identifying information) to a person of or over the age of 16 years who was born in consequence of the use of

⁶² Code of Ethical Clinical Practice, 1995, Part 3, 11(4)(d)

the donor's reproductive material when the person asks for this information. When the licensee has reason to believe that, if all or some of the information were disclosed to the offspring, there may be a reasonable likelihood that the donor's identity can be ascertained, he must not disclose the information. This is an important issue which deserves serious consideration since both the specificity of information and the combination of general information may allow a person to trace the identity of the donor. The South Australian Council on Reproductive Technology also noted in their discussion paper that detailed non-identifying information in restricted ethnic groups or occupation may inadvertently identify the donor⁶⁴.

The Donor Issues Working Party of the SACRT composed a discussion paper concerning access to identifying information in the use of donated sperm, eggs and embryos in reproductive technology in South Australia. This document, heavily influenced by donor conception support groups, defends the prospective availability of identifying information for all donor offspring. The Working Party does not recommend compulsory retrospective release of identifying information. However, they suggest that past donors be contacted, kept informed about the discussion and invited to provide information which should be collected in a voluntary or a central register (recommendation 8.7 and 8.8). All current and future donors should be contacted annually and encouraged to provide updated and detailed information for the benefit of their offspring (recommendation 8.6).

In recommendation 8.10. the Working party not only mentions the right of children to identifying information about the donor but also includes a right to information about siblings or half siblings. A number of other reports which promote compulsory identifiability of donors contain similar ideas. There is no explanation of the rationale underlying this provision. In general, the idea is that a person gets information about his or her genetic origins in order to build a truthful

⁶³ Code of Ethical Clinical Practice, 1995, Part 3, 11(4)(c)(ii)(B)

⁶⁴ South Australian Council on Reproductive Technology (SACRT) (2000) Conception by donation: access to identifying information in the use of donated sperm, eggs and embryos in reproductive technology in South Australia, p. 5

and correct self-image. This explanation, however, only implies the right of the child to information about the donor. Unless one attributes an inherent value to the genetic link with another person, there is no reason why information about one's genetic siblings and half-siblings should be received. Likewise, it is unclear why the donor should be given the right to obtain information, let alone identifying information, about his or her donor offspring. A similar belief in the importance of the genetic link seems to found the acceptance of demands for information by the parents and/or the partner of the donor.

Finally, the Working Party has agreed that parents cannot be forced to tell their children. The follow-up of such measure would be too intrusive on the privacy of the parents. Nevertheless, they recommend (8.9) 'that Reproductive Medicine Units seek an agreement from the parents that children born as a consequence of donated gametes are to be told of their biological origins'. The possibility exists that parents will maintain secrecy precisely because the donor is identifiable⁶⁵. The Working Party is aware of this possible scenario but chooses to ignore it.

Donor offspring has the right to obtain extensive non-medical information (categories mentioned above) when they are 16.

United States

There are no federal laws regulating the practice of donor insemination in the United States. The policies governing the release of non-identifying information and access to the identity of the donor practice differ considerably from centre to centre. Most statutes focuses on legal parentage and rarely address other issues. There is for instance no uniform requirement to keep sperm donor records⁶⁶. A number of states require by statute that the physicians keep records about donor

⁶⁵ Pennings, G. (1997) The "double track" policy for donor anonymity, *Human Reproduction* 12 (12): 2839-2844.

⁶⁶ Baker, D.J. and Paterson, M.A. (1995) Marketed sperm: use and regulation in the United States, *Fertility and Sterility* 63 (5): 947-952, p. 948.

insemination and 18 states have provisions for confidentiality⁶⁷. The OTA report of 1987 showed that, although most sperm banks kept detailed records for each donor, they would not allow offspring, recipients, recipients' partners, or the donors themselves access to these records⁶⁸. Partial access (meaning non-identifying information) is granted by most banks. However, the situation has changed considerably in the meantime. The sperm banks that advertise on the world wide web frequently offer donor catalogues. All the donors available at that moment are presented in the catalogue. The same option is offered for oocyte donors in some programmes although the scarcity of oocyte donors limits the choice⁶⁹. There is a core of generally available information. This 'short profile' includes ethnicity or race, age, weight, height, eye colour, hair colour, complexion, education or occupation and blood type. The main components of the short profile are physical appearance and medical records. The medical history if the donor is mostly included. The 'long profiles' give complementary information on the medical, social and educational history of the parents, grandparents, siblings and children of the donor. In addition, other kinds of information are provided, e.g. religion of the donor and his parents, sexual orientation, left or right handedness, language skills, musical skills, favourite colour and favourite sports. In some sperm banks, the long profile can be supplemented with a drawing or photograph of the donor, an audio tape, a video tape and a written essay⁷⁰. The latter provisions frequently contain a statement about his motivation to donate and a message to the donor offspring. Almost all donor insemination programmes are anonymous. In fact, on the basis of this fact the United States should be classified in the "non-identifying information only" category. However, two programmes

⁶⁷ Andrews, L.B. and Elster, N.R. (1997) Legal issues in fertility management, In Lipshultz, L.I. and Howards, S.S. (eds.) *Infertility in the male*, St.Louis, Missouri: Mosby-Year Book, 477-484, p. 478.

⁶⁸ Office of Technology Assessment (1988) *Artificial insemination: practice in the United States: Summary of a 1987 survey – background paper*, OTA-13P-BA-48, Washington DC: US Government Printing Office, p. 70.

⁶⁹ Braverman, A.M. and Ovum Task Force of the Psychological Special Interests Group of The American Fertility Society (1993) Survey results on the current practice of ovum donation, *Fertility and Sterility* 59 (6): 1216-1220.

(the Sperm Bank of California and Pacific Reproductive Services) offer the possibility of ‘identity-release’⁷¹. This procedure in essence coincides with the ‘double track’ system in countries like the Netherlands. The donor can agree to release his identity to the donor offspring at the request of the offspring when they turn 18 or they can remain anonymous. The recipients are then allowed to choose between the two groups. The first meeting by a child born from a donor at the Sperm Bank of California with the donor is about to take place in the near future⁷². At the Pacific Reproductive Services, the donors not only agreed to be identifiable but they also consented to meet the donor child at least once.

In some states, the legislation accepts the disclosure of the identity of the donor when the applicant can show good cause or legitimate interest. This is the case in Wisconsin, Oklahoma and the states that adopted the Uniform Parentage Act (California, Colorado, Minnesota, Montana, Nevada, New Jersey, Washington, Wyoming). The model of the Uniform Parentage Act (section 5,a) states: ‘All papers and records pertaining to the insemination, whether part of the permanent record of a court or of a file held by the supervising physician or elsewhere, are subject to inspection only upon an order of the court for good cause shown’⁷³. The House Bill 147 in Ohio assures the confidentiality of the records pertaining to donor insemination, including the record of the supervising physician⁷⁴. The Bill grants access only to the keeper of the records, the doctor and the recipients.

In a recent court case, the California Supreme Court ruled that an anonymous sperm donor may be forced to testify in a law suit⁷⁵. According to the court, the sperm bank had failed to test the donor properly for infectious and genetic

⁷⁰ Pennings, G. (2000) The right to choose your donor: a step towards commercialization or a step towards empowering the patient?, *Human Reproduction* 15 (3): 508-514.

⁷¹ Scheib, J.E., Riordan, M. and Shaver, P.R. (2000) Choosing between anonymous and identity-release sperm donors: recipient and donor characteristics, *Reproductive Technologies* 10 (1): 50-58.

⁷² Bergstein, B. (2002) A new kind of family reunion, *CBS News*, January 31, 2002.

⁷³ Eisenman, S.G. (1984) Fathers, biological and anonymous, and other legal strangers: determination of parentage and artificial insemination by donor under Ohio law, *Ohio State Law Journal* 45: 383-398.

⁷⁴ Eisenman, 1984), *ibid*, p. 388.

⁷⁵ Johnson v. Sup.Ct. of L.A. 80 Cal. App. 4th, 95 Cal. Rpre. 864, 8/23/2000.

diseases (in this case adult polycystic kidney disease). The court rejected the privacy right of the donor by stating that his privacy rights were strongly diminished as a consequence to the multiple donations and the payment he received⁷⁶. It also argued that the contract of the sperm bank with the donor which guaranteed the donor's anonymity under any circumstance went too far since attorneys in a lawsuit may obtain such information for "good cause". Nevertheless, apart from these exceptions, the anonymity of the donor as assured by the contract with the sperm bank, will generally be protected as part of the donor's privacy right.

The practice of the clinics is regulated by the recommendations of the major professional organisations. These organisation provide some control but they lack the legal authority to ensure compliance⁷⁷. The American Fertility Society (the precursor of the American Society for Reproductive Medicine) recommended in the '*Guidelines for therapeutic donor insemination: sperm*' that 'anonymous donors have traditionally been used and that this practice is encouraged' (III, D)⁷⁸. In 1998, the very same paragraph is repeated but without the part 'and that this practice is encouraged'⁷⁹. Known donation is also allowed. The Committee also strongly recommends 'to maintain permanent confidential records of donors, including a genetic workup and other nonidentifying information, and to make the anonymous record available on request to the recipient and/or any resulting offspring'⁸⁰. This part is no longer included in the 1998 statement.

The practice regarding the collection and provision of non-identifying information differs from sperm bank to sperm bank. Depending on the type of profile, the recipients may obtain very extensive information about the donor and his family. A unique aspect of the provision of non-identifying information is that the

⁷⁶ Crockin, S.L., 2000, ASRM News, p. 19.

⁷⁷ Blank, R. (1998) Regulation of donor insemination, In Daniels, K.R. and Haines, E. (eds.) Donor insemination, Cambridge: Cambridge University Press, 131-150.

⁷⁸ American Fertility Society (1994) Ethical considerations of assisted reproductive technologies, *Fertility and Sterility* 62 (5), suppl. 1: 1S-120S, p. 102S.

⁷⁹ American Society for Reproductive Medicine (1998) Guidelines for therapeutic donor insemination: sperm, *Fertility and Sterility* 70 (4), suppl. 3: 1S-4S.

⁸⁰ American Fertility Society (1994), *ibid*, p. 104S.

information is given before the treatment and is meant to enable the recipients to choose the donor they like most⁸¹. There is no legal regulation regarding access of donor offspring to this information; they depend on the parents to share the data on the donor with them.

V. Identifying information

Austria

The Law on Procreative Medicine (Fortpflanzungsmedizingesetz) of 1991 is based on three leading principles: human dignity, the best interests of the prospective child and privacy in the sense of procreative liberty⁸². This law gives the child the right to know the identity of his or her biological father upon reaching maturity (section 20). The reasons for this provision largely overlaps with the grounds mentioned by the German Constitutional Court. The partner of the recipient is the legal father of the child (sec. 156a, 163(3) ABGB).

No provisions were found regarding the collection of and access to non-identifying information in the law.

Canada

A landmark for the regulation of assisted reproductive technology in Canada is the final report of the Royal Commission on New Reproductive Technologies ‘*Proceed with care*’ from 1993⁸³. This Commission considered three options concerning donor information: full disclosure, a dual system and provision of non-identifying information. The commission finally recommended ‘a system whereby

⁸¹ Pennings, G. (2000) The right to choose your donor: a step towards commercialization or a step towards empowering the patient?, *Human Reproduction* 15 (3): 508-514.

⁸² Bernat, E. (1992) Regulating “the artificial family”: an Austrian compromise, *International Journal of Bioethics* 3 (2): 103-108, p. 104.

⁸³ Royal Commission on New Reproductive Technologies (1993) ‘*Proceed with care*’, Minister of Government Services Canada.

information (standard non-identifying genetic, social, and medical information) about a donor would be available at any time to DI parents and children.’⁸⁴. Only in very rare cases would identifying information be revealed to the parents or children. The identity would be provided ‘only if a situation were deemed to be a medical necessity by a judge’⁸⁵. The Commission believed this solution to be the best way to balance the needs and interests of the children and the families. Already in 1996, the Minister of Health published a report in which a more open system of information sharing was announced⁸⁶. The greater openness is considered to be consistent with one of the guiding principles of policy formation, namely protection of the vulnerable. However, this report explicitly notes that a more open system would not force the parents to tell their children that they are donor offspring. The system ‘would not compromise the decision-making authority of donor families’⁸⁷.

In April 2001 the Minister of Health presented a draft legislation governing assisted human reproduction to the House of Commons Standing Committee on Health. The collection and provision of information on the donor, the recipients and the offspring is a key element in the proposed legislation and results in a number of measures installing information registries. Every licensee who accepts reproductive material from a donor or performs a treatment should collect the health reporting information. “Health reporting information” is defined as information provided under the legislation respecting: (a) the identity, personal characteristics, genetic information and medical history of donors of human reproductive material, and of persons who have undergone assisted reproduction procedures or been conceived by means of such procedures; and (b) the custody of donated human reproductive materials and any uses that are made of them. However, both in the Guide and the Overview of the proposals for draft

⁸⁴ Royal Commission on New Reproductive Technologies ‘*Proceed with care*’, p. 446.

⁸⁵ Royal Commission on New Reproductive Technologies ‘*Proceed with care*’, p. 446.

⁸⁶ Minister of Health (1996) New reproductive and genetic technologies: setting boundaries, enhancing health, <http://www.hc-sc.gc.ca/english/pdf/reproduction>.

⁸⁷ Minister of Health (1996) New reproductive and genetic technologies: setting boundaries, enhancing health, p. 37.

legislation, the need of offspring for information is restricted to ‘medical information’. In general, this restriction can be explained by the main reason for collecting the information, i.e., concerns about the health and safety of donated reproductive material and the health, safety and efficacy of any assisted reproduction procedure⁸⁸.

A licensee would:

- be prohibited from disclosing any personal health reporting information without that person’s written consent (clause 19(1));
- have to disclose non-identifying health reporting information when transferring human reproductive material to another licensee, and disclose, only in accordance with the regulations, identifying information relating to the person (clause 19(3));

Clause 21(3) stipulates that in general the Minister should only disclose health reporting information in his or her control with the written consent of the donor.

The ‘*Guide to the Proposals for legislation governing assisted human reproduction*’ explains that the draft legislation would allow the Minister to disclose non-identifying health reporting information about a donor to a person undergoing assisted human reproduction with the donor’s gametes, or to the person conceived with those gametes or his or her descendants. However, the Minister would be able to release identifying health reporting information about the donor only with the donor’s written consent (clause 21(4)). Written and informed consent is a core principle that can be found throughout the draft legislation. Donors could consent or not consent to having their identity known by the persons born of their donation. Moreover, the regulations would be developed to ensure that donors receive the necessary information to give or withhold their consent⁸⁹. So the draft legislation does not impose donor anonymity but allows

⁸⁸ Guide to the Proposals for legislation governing assisted human reproduction (2001) Legal Services Health Canada, p. 10.

⁸⁹ Proposals for legislation governing assisted human reproduction: an overview, Section C: Consent.

donors who accept or want to make their identities known to their biological children to say so.

However, the Standing Committee on Health of the House of Commons amended the proposal of the draft legislation in her report '*Assisted human reproduction: building families*' of December 2001. They explicitly want to abolish the system of donor anonymity. The members of the Standing Committee were convinced by the following arguments: a system that respects donor anonymity treats children as commodities; donor insemination is essentially the same as adoption and children resulting from this procedure should receive equal respect; since identifiability is part of the responsibility of the donor, only donors who consent to have identifying information released to offspring should be accepted; and the rights of the child to know its heritage should prevail on the privacy rights of a donor⁹⁰. No counterarguments are mentioned. The wish of the Standing Committee on Health to eliminate secrecy leads to recommendation 19:

- (a) Consent to the release of identifying information be mandatory before accepting an individual as a sperm, egg, or embryo donor;
- (b) All donor offspring (or legal guardians) have access to their regularly updated medical histories; ...

A number of accompanying recommendations are proposed. The first measure intends to reduce the possible burden on the donor who might be contacted in the future by limiting the number of offspring (a measure also proposed in other jurisdictions who request donor identifiability). The second measure which necessarily precedes the identifiability of a donor is the rule that no legal responsibilities respecting offspring, financial or otherwise, should arise out of a donation.

If the recommendations of the Standing Committee on Health of the House of Commons are adopted in the law, donor offspring will have the right to obtain identifying and non-identifying information. Nevertheless, the non-identifying information seems to refer mostly to the medical history as this is the only

⁹⁰ Section 8: Health information.

specification that is found. If the proposals in the draft legislation are accepted, donors have the right to consent or dissent to the release of information.

Germany

In Germany, the anonymity of the semen donor is considered unconstitutional. The German Constitutional Court decided in 1989 that a child in principle has the right to know who his or her father is. 'The court held this to be part of a person's right to privacy, which is guaranteed in art. 2 sub.1 and art.1 sub.1 of the German Constitution, and is a result of the very close connection between the execution of one's right to self-determination, that is one's right to determine one's own individuality, on the one hand, and information about the factors constituting this individuality, on the other hand.'⁹¹. This right was already recommended by the well-known Benda committee. Although the right to know one's genetic origins is accorded, supporting measures necessary for the practical implementation of this right have not followed. For instance, the storage period imposed for medical files still remains at 10 years. A survey among practitioners learns that almost half of them effectively destroy the donor files after this period⁹².

The Embryo Protection Law of 1990, which constitutes the general legal framework for medically assisted procreation, does not contain clauses on the right to know one's genetic origins. Still, it was in the preparation of this law that it was proposed to bring all data together in a central register⁹³.

The issue of anonymity is rendered more complicated by the presence of two rules regarding the establishment of paternity. In 1983, the German Federal Court of Justice accorded the husband or partner of a woman who conceived a child after medically assisted procreation the right to contest his paternity even if he gave his consent before the treatment. Secondly, the reform of the family law in 1997,

⁹¹ Deutch, E. (1996) Assisted procreation in German law, In Evans, D. (ed.) *Creating the child*, The Hague, London, Boston: Martinus Nijhoff Publishers, 333-340, p. 337.

⁹² Thorn, P. and Daniels, K. (2000) Psychosoziale Fragestellungen, die bei der Familienbildung mit donogener Insemination entstehen, *Reproduktionsmedizin* 16: 202-207, p. 203.

⁹³ Thorn, P. and Daniels, K. (2000), *ibid.*

enlarged the possibilities of a child to contest the paternity of the husband or partner of his or her mother⁹⁴. When the paternity has been successfully challenged, nothing prevents an action to establish a legal relationship between the sperm donor and the child since the anonymity is not maintained.

In order to prevent juridical problems due to the right to know one's origins, the Federal Order of Physicians issued the following directives regarding medically assisted procreation:

- the use of mixed sperm is forbidden;
- the donor must be informed about the possibility that the child will look for its biological origins and will receive his identity. The physician cannot refer to his or her medical secrecy; and
- the couple must be warned that the child has the right to contest paternity and can obtain the name of the donor⁹⁵.

No provisions were found regarding the collection of and access to non-identifying information in the law.

New Zealand

In 1996 the Human Assisted Reproductive Technology Bill was introduced in Parliament. Later a second bill was introduced by the government, namely the Assisted Human Reproduction Bill. Although no specific legislation is currently enacted in New Zealand, this country has probably reached the most advanced state in abolishing secrecy and donor anonymity. The 1987 Status of Children Amendment Act did indirectly play an important role by clarifying the legal status of the parties involved in donor insemination. It established that the legal father of the resulting offspring was the consenting partner of the recipient woman. The

⁹⁴ Sénat français (2001) Le droit à la connaissance de ses origines génétiques. http://www.senat.fr/lc/lc70/lc70_mono.html

⁹⁵ Sénat français (2001), *ibid.*

donor can never be forced to pay child support or, in reverse, the donor could never try to establish paternity over or gain access to the offspring⁹⁶.

The content of the Assisted Human Reproduction Bill is indirectly obtained by looking at two submissions. The first one is a *Report by the Privacy Commissioner to the Minister of Justice in relation to Part 3 of the Assisted Human Reproduction Bill*⁹⁷. The Privacy Commissioner notices that ‘Part 3 of the Bill provides for an information scheme intended to promote a policy of openness with respect to children born as a result of procedures involving donated gametes. The scheme implemented by the Bill contains the following features:

- donors of gametes and recipients of AHR services will be made aware as a precondition to donation and the receipt of services that information will be collected and retained so that the children born as a result of donated materials (“donor children”) will have access to their genetic origins;
- providers of AHR services will be required to collect information from donors and about donor children and to retain this information for a period of 50 years unless their business ceases to continue in some form;
- where a donor child is born, providers will forward specified information to the Registrar-General which will be held indefinitely and accessed via a central register;
- donor children will be entitled to have access to identifying information held by providers and the Registrar-General upon turning 18;
- donors will be entitled to find out if a donation has resulted in a birth, but will not have access to identifying information about a donor child until the child turns 25, unless the child expressly consents to donor access after turning 18;
- donor children and donors will have access to non-identifying information about each other prior to the donor child’s attaining the age of 18 years;

⁹⁶ Daniels, K.R. and Burn, I. (1997) Access to assisted reproduction services by minority groups, *Australia and New Zealand Journal of Obstetrics and Gynaecology* 37 (1): 79-85, p. 80.

⁹⁷ Slane, B.H. (1999) Report by the Privacy Commissioner to the Minister of Justice in relation to Part 3 of the Assisted Human Reproduction Bill.

- the Privacy Commissioner will have jurisdiction to deal with complaints relating to such matters as denial of access or wrongful disclosure of personal information.'

The information in the donor file can be divided into two parts; the 'prescribed donor information' which is mandatory and constitutes the core of the information, and the voluntarily provided information. Clause 12 obliges the providers of treatment to give the donor reasonable opportunities to add other information about himself.

The second submission comes from the National Ethics Committee on Assisted Human Reproduction (NECAHR) to the Health Select Committee in 1999. The NECAHR notes that recording data about gamete donors and allowing access to this information by offspring born as a result of gamete donation are in keeping with the importance of whakapapa/genealogy. It is very difficult for an outsider to estimate the importance of the Maori belief system on the legislation regarding access to information about genetic origins. Nevertheless, the influence on the whole of New Zealand's legislation seems to be considerable.

The NECAHR noticed that the Bill contains one very unusual clause; it allows donors to have access to identifying information about offspring. Clause 25 gives a donor right of access to information about donor children. The donor must

- be told whether any child conceived from a donated gamete has been born and the sex of each;
- be given access to all information about a donor child between 18 and 25 if the child has consented to the release of such information; and
- be given access to all information about a donor child over age 25.

Compared to the right by the donor offspring, the donor might have to wait 5 years more before gaining access to identifying information about the children. No rationale is given to accord this right to the donor. However, the right is important since it implies that the parents no longer decide alone whether or not to maintain secrecy. The children may be contacted directly by the donor.

Finally, the law does not have retroactive effect (Clause 9). The time of donation is decisive for the possibility of the child to gain access to its genetic origins.

However, as mentioned earlier, most providers of treatment have for years only accepted donors who agreed to be identified⁹⁸. For those donors, the private arrangements with the sperm bank or fertility centre already foresaw identity release and the law does not change much.

Donor offspring has the right to obtain identifying and non-identifying information. However, the specific data that have to be part of the donor information is unclear. Apparently, a distinction will be made between information that is required by the state and information that is voluntarily provided by the donor.

Sweden

Sweden was the first country to give the child the right to obtain the identity of the semen donor. In 1984, the Law No. 1140 on insemination was enacted. It entered into force on 1 March 1985. The legal effects regarding paternity after insemination were dealt with by an amendment to the Swedish Parental Code⁹⁹. The husband or male partner must consent to the insemination and thus irrevocably becomes the legal father of the resultant child.

Paragraph 4 of the law provides that a child may obtain information of the sperm donor when he or she reaches a sufficient grade of maturity. This condition has to be established case by case but conceivably only persons in their upper teens can fulfil this condition. In practice it will be 18 years¹⁰⁰. The physician must inform the donor that the resultant child is entitled to learn his identity. Moreover, he must be told that he may subsequently be required to provide blood specimens or to undergo examinations. A record must be kept of the donor and of the recipient woman. A coded entry in the woman's record must make clear which donor was

⁹⁸ Adair, V.A. and Purdie, A. (1996) Donor insemination programmes with personal donors: issues of secrecy, *Human Reproduction* 11 (11): 2558-2563.

⁹⁹ Bogdan, M. (1988) Artificial insemination in Swedish law, *Comparative Law Yearbook* 10: 91-106, p. 92.

¹⁰⁰ Bygedeman, M. (1991) The Swedish Insemination Act, *Acta Obstetrica et Gynecologica Scandinavica* 70: 265-266, p. 265.

used. Both records must be conserved for at least 70 years¹⁰¹. When the child requests the information, the National Social Welfare Board is obligated to assist the child to obtain the information. The donor however cannot obtain the identity of the recipient or of the child. Neither do the child's legal parents have access to the information about the donor.

The Act does not give the child the right to know about the way it was conceived. In the travaux préparatoires, the government expressed the view that parents should disclose this information but are under no legal duty to do so¹⁰². The recent study by Gottlieb et al. confirmed, however, that the majority of the parents keep the secret¹⁰³.

Section 3§3 of the Insemination Act provides that the donor should be selected by the physician. Special requests by recipients (i.e. for the sperm of a man with outstanding intellectual or physical qualities) should not be honoured¹⁰⁴.

According to Westerhäll¹⁰⁵, the rules governing the practice are designed to protect the best interests of the child. In order to avoid the difficult and unclear situations that may arise from the use of donor semen, the practice should be strictly regulated and under public control. The procedure, especially regarding the examination, control and selection of the candidate parents, can be compared to the adoption procedure. 'In sum, the possibility of medically assisted insemination is looked upon as a potential threat to the structure of the family in the society and also as a procedure which may harm the individual, the child, who is the result of the procedure. To avoid an undesirable result of the use of the technology, regulations exist to restrict the use of the technology.'¹⁰⁶.

¹⁰¹ Regulations and General Recommendations No. 6 of 27 March 1987 of the National Board of Health and Welfare on insemination, 2, *International Digest of Health Law* 1988, 39 (1): 81.

¹⁰² Bogdan, M. (1988) *ibid*, p. 98.

¹⁰³ Gottlieb, C., Lalos, O. and Lindblad, F. (2000) Disclosure of donor insemination to the child: the impact of Swedish legislation on couples' attitudes, *Human Reproduction* 15 (9): 2052-2056.

¹⁰⁴ Bogdan, M. (1988) *ibid*, p. 96.

¹⁰⁵ Westerhäll, L. (1998) Sweden, In Nys, H. (ed.) *Medical law*, Suppl. 11, The Hague, London, Boston: Kluwer Law International, 98-103.

¹⁰⁶ Westerhäll, L. (1998), *ibid*, p. 100.

No provisions were found regarding the collection of and access to non-identifying information in the law. Whatever information exists is provided together with the identity of the donor at the age of maturity.

Switzerland

The *Federal Law of 18 December 1998 on medically assisted procreation* came into force on January 1, 2001. This law determines (art. 27) that the child from the age of 18 may obtain the data concerning the identity and the physical appearance of the donor. If the child is able to show a legitimate interest, it has the right to obtain the information on the donor regardless of its age. The Federal Registry Office (which presently holds the central register of adoptions) will, as far as possible, warn the donor that his identity will be communicated to the child. In order to be able to do this, the Office should look for the present address of the donor¹⁰⁷. He should then be offered a reasonable period to indicate whether he accepts to have contact with the child¹⁰⁸. If the donor refuses to meet the child, the child should be told about this position and should be informed about the privacy right of the donor and his family. However, this refusal of contact does not block the transmission of his identity if the child maintains the request. When the child requests the donor information (which should be done in writing), he or she will be summoned by the Office and the identity will be verified¹⁰⁹. If possible, a social psychologist should be present when the information is given.

Similarly, the donor must be informed in writing about the juridical position and in particular about the right of the child to become acquainted with his file (Art. 18). This file contains the following elements (Art. 24):

- a. name and first name, place and date of birth, domicile, place of origin or nationality, profession and education;
- b. date of sperm donation;

¹⁰⁷ Explanation of OPMA, Art. 22.

¹⁰⁸ OPMA, Art. 22(3)

¹⁰⁹ OPMA, Art. 23(1)

- c. results of the medical examinations;
- d. data on the physical appearance.

The form on ‘physical appearance’ asks for corpulence, hair colour, height in cm, particular marks, eye colour and skin colour.

In addition to the information requested by law, other information (like a photograph) can be included at the request of the donor (OPMA, Art. 17). These files must be kept for a period of 80 years.

The treating physician must transmit the data to the Federal Registry Office immediately after the birth of the child (Art. 25). In view of the art. 14 and 25 of the Federal Law on medically assisted reproduction, the Swiss Federal Council issued an *Ordinance on Medically Assisted Reproduction (OPMA)*¹¹⁰. Art. 16 of the OPMA indicates that in addition to the other data also the results of the medical examinations should be transmitted. However, this should be done in a separate closed envelope on which the content is clearly mentioned. The explanation provided on Art. 16 OPMA states that the medical data are not relevant for the knowledge of one’s origins but they have a medical value. They will only be provided when the child can show a legitimate interest.

Finally, the law applies retroactively to a limited degree since Art. 41 on transitional dispositions states that Art. 18 and Art. 24 to 27 are applicable to sperm donated before the law became effective but used after that date. Since the donor could not have been informed about the juridical situation and the child’s right to obtain his identity (as Art. 18(2) requests) if he donated before this law came into effect, he will presumably be asked for a new consent if he wants his stored sperm to be used after the law. If not, there would be a fundamental problem of informed consent.

Donor offspring has the right to obtain non-identifying information which includes nationality, profession and education and the physical appearance.

Victoria (Australia)

¹¹⁰ Ordonnance sur la procréation médicalement assistée, OPMA, 2000.

The *Infertility Treatment Act* No. 63/1995 reviewed the Infertility (Medical Procedures) Act of 1984 which was largely based on the recommendations made by the Waller Committee. The Infertility Treatment Act became effective January 1, 1998. It has made detailed provisions regarding the information to be recorded about the different participants and about the regulations for the disclosure of that information to the parties. The law is based on 4 guiding principles: a) the welfare and interest of any person born or to be born as a result of a treatment procedure are paramount; b) human life should be preserved and protected; c) the interests of the family should be considered; and d) infertile couples should be assisted in fulfilling their desire to have children (S. 5(1)). Important for the application is that 'these principles are listed in descending order of importance and must be applied in that order' (S. 5(2)). Of course, the core question remains which actions promote the interests of the persons born.

This Act contains several remarkable provisions. Like the French law, a strong emphasis is put on the consent by the spouse or partner of the donor¹¹¹. If the donor is married or living in a de facto relationship, the spouse of the donor must also consent to the treatment procedure (S. 13(1)). The law even specifies that when the donor was single at the moment of the donation but later marries or commences living in a de facto relationship and the later spouse objects to the use of the gametes, the gametes must not be used (S. 15).

The physician must offer the recipients the information on the donor that is recorded in the Register before the woman undergoes a donor insemination (S. 71(1)). The recipients may ask identifying and non-identifying information about the donor. Non-identifying information must always be given while identifying information can only be provided if the donor has first consented to the giving of the information (S. 71(3) and (4)). The parents or guardians of a person born as a result of donor treatment may receive information about the donor if the donor first consented and if the information is provided in accordance with any

conditions or limitations imposed by the donor (S. 75(a) and (b)). If the parents share the information with their children, these children will receive information about the donor at an early age and they do not have to wait until they turn 18.

Also the donor may ask for information recorded in the Register on the woman and her husband for whom his gametes will be used (S. 72(1)). Similar to the provisions for the recipients, identifying information may only be given if the woman and her husband have first consented to the release of that information (S. 72(3)). The donor should be told by the centre whether a pregnancy has occurred or a person has been born as a result of the use of his sperm (S. 73(1)). The donor may apply for information about the donor offspring and about the parents. Again, non-identifying information must be provided but identifying information is subject to previous consent by the parents if the person about who the information is requested is under 18. If the person is over 18, he or she should first consent to the release of his identity (S. 77(2)(ii)). In all the cases in which the consent of the person about whom information is requested is required, the Authority must make a reasonable effort to find this person. The implications of this rule are considerable and similar to those in the New Zealand law. The provisions do not preclude that donor offspring is contacted directly by the Authority to ask whether information about them can be provided to the donor. The consent of the parents is not needed for this contact and they could not prevent this from happening. This means that when the donor requests information after the child becomes 18, the contact by the Authority will inform the child of the way it was conceived. Contrary to what Roberts¹¹² claims, whether or not the child will know that it was conceived by means of donor gametes, does not completely depend on the parents. Moreover, this is also true for donations prior to 1998. The risk that the donor will demand information about the offspring may in practice force the parents to tell about how the child was conceived. The Infertility Treatment

¹¹¹ Pennings, G. (1996) Partner consent for gamete donation, *Human Reproduction* 11 (5): 1132-1137.

¹¹² Roberts, M. (2000) A right to know for children by donation – any assistance from down under, *Child and Family Law Quarterly* 12 (4): 371-382, p. 376.

Authority noted in the News of December 1999¹¹³ that contacting the parties ‘raises a difficulty in those cases where families have not been open about the biological origins’. Although they realise that an enquiry of such nature may have a serious impact on the families, there is no impediment in the legislation which prevents the Authority from contacting the donor offspring. By allowing this step, the legislation works retroactively against the rules which applied at the moment of the treatment.

Of special importance are the provisions about the information that may be obtained by the person resulting from the treatment. This person may apply for information on attaining the age of 18 years. In this case, no consent by the donor is needed (neither for non-identifying nor for identifying information). The Authority will, prior to the giving of the information, make reasonable efforts to advise the donor that information is about to be given and to offer the donor counselling (S. 80(2)(b)). However, this right is not only given to the offspring but also to the descendants of the offspring. This part of the law does not work retrospectively. For donations made before January 1998, identifying information about the donor requested by a person who is or may be born as the result of the treatment and the descendants of this person will only be provided if the donor first consented (S. 184(4)(c)). The Authority must also for those cases make a reasonable effort to contact the donor, which automatically implies a risk of informing the family of a donor. Since surveys showed that a number of donors never told their partners or family about the donations (even in countries where anonymity no longer exists)¹¹⁴, this measure too ignores expectations of privacy that were in force when the donor donated. Contact by donor offspring may cause considerable distress in these families. This problem is obviously avoided to a large degree when the consent of the partner of the donor is requested.

The Authority shall, apart from the Central Register, establish and maintain a donor treatment procedure information register in which the names and addresses

¹¹³ Infertility Treatment Authority (1999) Issues in relation to access to information from the 1984 Central Register.

of the donor offspring, the descendants of the offspring, the donors, the recipients and their husbands, and the relatives of the persons mentioned earlier are entered (S. 82(2)). It will also be indicated who may be given information about them and about who they want to obtain information. This is a voluntary register which should enable all persons involved to contact one another if they want to be contacted or want to obtain information.

Sections 182 and 183 outline the transitional provisions in relation to the recording and giving of information. If I understand them correctly, the written records kept by the approved clinics and doctors are considered part of the Register that has to be kept under this Act.

Identified or known donation is allowed (S. 18).

Donor offspring may apply for information on attaining the age of 18 years. The Act gives specific and elaborate instructions for the collection and the provision of non-identifying information but nowhere in the Act is it specified what type of information is included in this category.

VI. Conclusions and summary

There is a general trend for the legislation to move in the direction of greater openness. This movement is clearly stimulated by the concern for the welfare of the children resulting from donor insemination. However, not every country considers openness as being in the best interests of the donor offspring. The overview demonstrates the lack of consensus and the diversity of the procedures adopted to regulate this form of medically assisted reproduction. The regulations differ on who can get access to what type of information, the number of years the information should be kept, the domains on which information is requested, the age at which the donor offspring can obtain certain types of information, the provision of counselling and so on. Some countries establish a central register or

¹¹⁴ Daniels, K.R., Ericsson, H-L. and Burn, I.P. (1996) Families and donor insemination: the view of semen donors, *Scandinavian Journal of Social Welfare* 5: 229-237.

authority that collects the information and to which the donor offspring has to address requests for information. Others merely provide guidelines for the collection and access of the information and expect the clinics, sperm banks and individual physicians to comply with these rules. A voluntary register maintained by the state where people involved with donor insemination can leave their name and address in order to contact others and/or be contacted by others only exists in Victoria (Australia). Two countries (The Netherlands and Victoria, Australia) have transitional rules that imply that previously collected information is transferred to the register installed by the act.

When the non-identifying information is analysed, a similar lack of consensus becomes evident. Some jurisdictions provide information on religion and on psychological characteristics of the donor while others attach much importance to the motivation for donation. The existence of different practices is largely due to the fact that very little research has been done on the content of an adequate donor profile.

There are at present only two principles that are accepted worldwide. The first universal principle is that parents are not legally forced to inform the child on the method of its conception¹¹⁵. All countries flinch from such a major intrusion in the family life. Still, in some countries, clauses in the regulation jeopardise parental autonomy in deciding whether or not to keep the way of conception a secret. This is for instance the case in Victoria (Australia) where the donor or the Authority may contact donor offspring without consulting the parents. The second principle is that law reforms are not retrospective. However, as noted above, some clauses in new legislation may in practice have a retroactive effect by modifying expectations, promises or guidelines that were in force at the moment of the donation.

¹¹⁵ Knoppers, B.M. (1993) Donor insemination: children as in concreto or in abstracto subjects of rights?, *Politics and Life Sciences* 12: 182-185.