

IS INSEMINATION FRAUD AGAINST THE LAW?

UNCOVERING THE FRAUD

Sperm sample substitutions violate the ethical and deontological principles of the **doctor-patient** relationship. And yet, for more than 40 years, doctors have engaged in insemination fraud with impunity, taking advantage of a **legal vacuum** in this area. Indeed, the discovery of such fraud does not always lead to its social or legal condemnation.

IN THE UNITED STATES

To date, **approximately fifteen U.S. states** have either proposed or passed legislation to criminalize insemination fraud. A federal legislation is in the process of being enacted to make the practice illegal and liable to prosecution nationwide. In addition, **more than a dozen lawsuits** have been filed against **doctors accused of these acts**, and five convictions have been handed down.

IN CANADA

In Canada, a doctor can be charged with **assault** or **battery** if the treatment was carried out without consent, went beyond or deviated from the limits of given consent, or if that consent was obtained by inaccurate or fraudulent statements. In other words, if the treatment involved insemination with donor X's sperm, the doctor cannot use donor Y's sperm without the patient's consent. The doctor's desire to help his patients conceive cannot be used as a means of legitimising the failure to respect their consent.



Few lawsuits against doctors accused of insemination fraud have been documented and publicized in Canada. However, a **class action lawsuit** against Dr. Barwin was filed in 2016 and settled in 2021. It brought together 244 plaintiffs grouped into three categories: those concerned by the substitution of the **father's** sperm (1) or the **intended donor's** sperm (2) for that of another donor or Dr. Barwin, and the use of **donor-stored sperm** in unauthorized inseminations (3).

Sperm substitution violates the ethical principles of the doctor-patient relationship and has long escaped sanction due to a legal vacuum. Although legislation to criminalize the practice is underway in the U.S. and prosecutions have led to convictions, legal protections remain inadequate in Canada and in many other countries around the world.

