Anonymity and Openness in Donor Conception:
The New Danish Model

1. Introduction
In many European countries, such as e.g., Sweden, the United Kingdom, the Netherlands and Austria the regulatory trend has been a move towards openness in donation of gametes for conception. In Denmark the possibility of donating and receiving donated sperm completely anonymously has, however, been maintained. Consequently, the supply of donated sperm remains so high that the world’s largest sperm bank is in fact based in Denmark and that a lot of women and couples — who are affected by stricter national regulation in their own country but none the less wish to build their family according to how they envisage the good family life, travel to Denmark in order to receive treatment with anonymous donor sperm. Or they buy sperm off the internet for home insemination. This commentary traces the raison d’être of anonymity in Danish law, accounts for the legal framework for the export of Danish sperm and examines the new Danish model in donor conception which offers women/couples a choice of anonymity or openness in donation.

2. Going to the Roots of Anonymity in Danish Law
The first Danish IVF baby was born in 1984. By then the Warnock report was out in the United Kingdom, but since IVF had just been introduced in Denmark, the same need to explore the ethical and legal issues arising from this technology was only just surfacing in Denmark. The Minister of Interior and Health appointed a ministerial working group in April 1984 and in October of that same year their report entitled “The Price of Progress”¹ was published. The front page was simply a painting of Adam and Eve holding the Apple, as if to signal the almost religious message that life is delicate and imply the dangers associated with “playing God”. The report recommended the appointment of an ethical council.

In 1987 Parliament established the recommended Danish Council of Ethics.\(^2\) A Council consisting of both laypersons and experts who were to consider and advise on issues such as these as well as create awareness and debate in society on the ethical dilemmas facing modern society in relation to biomedicine and technology not least those relating to assisted reproduction technologies. Of course the old-fashioned and low tech procedure of insemination had been practised for many years and already in 1948 a working group under the Ministry of Justice had also considered if legislation was needed and appropriate, however their recommendations had never been put forward as a Bill by government. Furthermore, it was seen as natural that medical issues were best left to the medical profession to decide on, on a professional and scientific basis, and for that reason most medical issues were not addressed by legislation. Consequently, no special rules or regulations governed insemination, donation and artificial fertilisation prior to 1997 where the Act on artificial reproduction\(^3\) was adopted. Instead these practices were subject to the regulations that generally regulated medical treatment. The general regulation in medical law was characterised by a high degree of professional self-regulation and covered primarily the legal and administrative framework for the healthcare system, some educational demands regarding healthcare personnel and issues of malpractice, torts and complaints as well as the duty to provide information to patients.

Consequently, the practices surrounding sperm donation had been left to develop within the healthcare system without regulatory interference. A working group on fertility treatment set up by the Minister of Health in 1992\(^4\) argued that there was overall still no need for special regulation exactly because the practice of insemination had evolved in such a way that it did not give rise to any worries. Insemination was performed by gynaecologists and specialist doctors and as such the working group was satisfied that the standard of care met professional medical standards and that adverse risk of transferral of diseases through the donation was managed in an appropriate manner.

At this point administrative guidelines were slowly emerging in the early 1990s.\(^5\) The practice of anonymous donation had been adopted from the beginning by the medical community. In the early guidelines, anonymity was simply presupposed as the natural and existing norm and the guidelines were predominantly interested in regulating eggs and embryos and it was only in 1994 that an

\(^{2}\) Act no. 353 of 3 June 1987.

\(^{3}\) Act no. 460 of 10 June 1997.

\(^{4}\) Behandling af ufrivillig barnløshed, en rapport afgivet af en arbejdsgruppe nedsat af sundhedsministeriet (Treatment of involuntary infertility, a report submitted by a working group under the Ministry of Health), Copenhagen, 1992.

\(^{5}\) The Danish Board of Health's instruction of 22 December 1993 on doctors' use of artificial fertilisation and other forms of fertility treatment and circular of same date on notification of IVF treatments.