Law does recognise biological dad

I refer to last Thursday's interesting commentary by Dr Andy Ho ("Managing legal uncertainty in sperm donation").

After commenting on the effect of Section 114 of the Evidence Act, Dr Ho concluded that DNA evidence could not be used to disprove paternity during a valid marriage (or for 280 days after its dissolution). "Not even a dark child being born to a light-skinned couple can rebut that paternity," he added.

However, a High Court case decided last year, called WX versus WW, suggests otherwise. In that case, WW, the mother of a child, had carried on an affair with two men, H and WX. WW later discovered she was pregnant and H, thinking the child was his, proposed marriage. WW and H were wedded, and WW then gave birth to the child.

Due to the child's blood type, it became clear that H could not be the father, and H applied to have the marriage annulled. WW then claimed maintenance for the child from WX, who she claimed was the biological father. WX tried to rely on Section 114, arguing that since the provision deemed the child to be H's legitimate child, WX could not be liable to pay maintenance to the child.

This interpretation was rejected by the court. It held that just because Section 114 deemed the child to be H's legitimate child, this did not change the fact that WX was the child's biological father and thus, under a duty imposed by the Women's Charter to pay maintenance to his child.

In other words, under the present law in Singapore, a person can be deemed the legitimate child of one man, and at the same time, another man can be recognised to be his or her biological father.

Section 114 is merely a rule that prevents a child from being considered illegitimate, and it does not alter the fact that there is a biological relationship between the child and a parent.

However, I agree with Dr Ho that the laws concerning the rights and duties of sperm donors, recipients and children born as a result of in-vitro fertilisation (IVF) need to be reviewed.

Jack Lee
Assistant Professor of Law
School of Law
Singapore Management University