**Minutes of the one hundred and third Meeting of the Ethics Committee on Assisted Reproductive Technology**

**7 December 2023**

Held at the Rydges on 7 December 2023

**In Attendance**

Jeanne Snelling Chairperson

Analosa Veukiso-Ulugia Member

Angela Ballantyne Member

Annabel Ahuriri-Driscoll Member

Emily Liu Member

Lana Stockman Member

Mania Maniapoto-Ngaia Member (Online via zoom)

Mike Legge Member

Peter Le Cren Member

Richard Ngatai Member

Simon McDowell Member

Jude Charlton Member

Catherine Ryan ACART member in attendance

ECART Secretariat

1. **Welcome**

The Chair opened the meeting and welcomed all in attendance.

1. **Karakia**

Annabel Ahuriri-Driscoll led the Karakia.

1. **Conflicts of Interest**

Conflicts of interest were declared in relation to the following applications considered at this meeting:

* Dr Emily Liu – E23/170
* Dr Simon McDowell – E23/175

1. **Confirmation of minutes from previous meetings**

The minutes from the 26 October 2023 meeting were confirmed.

1. **Application E23/170 for surrogacy involving an assisted reproductive procedure**

Mania Maniapoto-Ngaia opened the discussion for this application. The Committee considered this application in relation to the *Guidelines for family gamete donation, embryo donation, the use of donated eggs with donated sperm and clinic assisted surrogacy,* and the principles of the HART Act 2004.

**Issues discussed included:**

* The intending mother had recurrent implantation failure and unsuccessful transfer of embryos. Therefore, surrogacy is the best option for the intending parents to begin their family.
* The surrogate is the sister of the intending father. The surrogate and her partner have children including children through a whāngai arrangement and consider their family complete. The surrogate had uncomplicated pregnancies with elective caesareans due to a previous medical procedure and experienced no issues with these. The surrogate will have another elective caesarean and will be referred for obstetric care during the pregnancy. The surrogate has been informed of the risks of carrying a surrogate pregnancy.
* The intending parents have a close relationship with the surrogate parents, living in the same area and seeing each other regularly. Both parties intend for this close relationship to continue during and after any pregnancy. The intending parents have told their close friends and family about their plans for surrogacy, and this has been met with support.
* All parties intend to be open with any future child about their conception story and to support all children in their family with information about the surrogacy arrangement. The surrogate parents will be aunty and uncle to the potential child. The surrogate parents have not yet informed their children about the intended surrogacy and will wait until a pregnancy is established to help manage their children’s expectations around this. The Committee noted this plan and were happy for the surrogate parents to choose the appropriate time to inform their children.
* Both parties discussed termination and agreed that the health and wellbeing of the surrogate and baby would be paramount to any decision about termination. The surrogate noted that she would be happy to be led by the intending parents’ wishes about termination and they would make the decision as a team. The parties have been informed that the decision to terminate a pregnancy would legally lie with the surrogate.
* Both the intending parents and surrogate parents have received independent legal advice and the intending parents have received approval for an adoption order in principle from Oranga Tamariki.

**Decision**

The Committee decided to **approve** this application.

**Actions**

Secretariat to draft a letter from the Chair to the clinic informing the medical director of the committee’s decision.

1. **Application E23/171 for donation of sperm between family members**

Peter Le Cren opened the discussion for this application. The Committee considered this application in relation to the *Guidelines for family gamete donation, embryo donation, the use of donated eggs with donated sperm and clinic assisted surrogacy,* and the principles of the HART Act 2004.

**Issues discussed included:**

* The intending father has azoospermia. The intending parents conceived one child with the help of fertility treatment, but subsequent treatment has been unsuccessful. The intending parents have been advised that a sperm donor would be needed to have another child.
* The sperm donor is a family member through marriage. The donor couple have a child and agreed to assist the intending parents to grow their family. The intending parents have a close family relationship and see each other a couple of times a year at family gatherings.
* All parties intend to be open with the resultant child about their conception story and the donor couple will have an aunty and uncle role in the child’s life. The sperm donor is Samoan and would be willing to share his family history with any resultant child.
* The sperm donor has been informed that he can withdraw consent for the use of his donation up until the time that it is used to create embryos. The donor has also been informed that his consent and ECART’s approval would be required for any on-donation of embryos. Both parties indicated that they would not wish to on-donate the embryos.
* The donor couple discussed the planned donation with their child and anticipate the donation being openly discussed within the family going forward. The donor couple have not yet informed their wider family of the intended arrangement but expect the arrangement to be met with acceptance and understanding.
* The Committee identified that there was space for the gamete donor to have a discussion with his wider family to discuss the implications of this arrangement on the existing children and any future child. The Committee noted that there had been a lack of reflection on bringing the broader family into the conversation about the intended arrangement and the implications for the donor couple’s existing child and the sibling/family relationship with any resulting child. The Committee would encourage early openness with the gamete donor’s wider family and conversations, reflecting on how the future child would navigate their identity, connection, and relationships in the future.

**Decision**

The Committee decided to **approve** this application and encourage the gamete donor to obtain appropriate support in regard to informing his wider aiga about the proposed donation. ECART would also encourage all parties to reflect on the implications of the proposed donation on the existing and future children.

**Actions**

Secretariat to draft a letter from the Chair to the clinic informing the medical director of the committee’s decision.

1. **Application E23/172 for surrogacy involving an assisted reproductive procedure**

Emily Liu opened the discussion for this application. The Committee considered this application in relation to the *Guidelines for family gamete donation, embryo donation, the use of donated eggs with donated sperm and clinic assisted surrogacy,* and the principles of the HART Act 2004.

**Issues discussed included:**

* The intending mother has medical conditions that are considered stable. She is in good health but has been advised by her medical specialists that pregnancy would be unsafe for her, and that surrogacy is the only option for the intending parents to begin their family.
* The intending mother will need to go through an IVF cycle to collect eggs and has been informed of the increased risk of egg collection due to her medical conditions. The intending mother’s condition is not genetic, and any potential child would not be at risk of inheriting the condition.
* The surrogate and her partner have children and consider their family complete. The surrogate had previous uncomplicated pregnancies and deliveries. Some of the surrogate’s test results were of concern but since making some lifestyle changes her results have normalised. The surrogate has been informed of the risks of carrying a surrogate pregnancy.
* The surrogate approached the intending parents after seeing their post on social media and they then met in person. Since then, the intending parents and surrogate couple describe forming a close relationship. They have met one another’s wider families and the intending parents have met the surrogate parents’ children. The surrogate is interested in childbirth and has wanted to be a surrogate for many years, understanding from her own family background that family dynamics don’t always come from what are considered traditional ways.
* The surrogate couple have informed their children, and their eldest child was involved in counselling. Their families are supportive of the arrangement and the surrogate will have good support from her wider family and from the intending parents during any pregnancy. Both parties have declared that they intend to be open with any future child about their conception story.
* The intending mother and surrogate are both Māori. The surrogate has recently began reengaging with her culture and is interested to learn more. The surrogate is confident that any resultant child will be well supported to understand their origins and conception story in this regard.
* The parties discussed termination and the surrogate reinforced that she would respect the intending parents’ wishes to terminate if a foetal abnormality was detected. Both parties were informed, however, that any decision about termination would legally lie with the surrogate.
* Both parties have received independent legal advice and have appointed testamentary guardians. The intending parents have received an adoption order in principle from Oranga Tamariki.

**Decision**

The Committee decided to **approve** this application.

**Actions**

Secretariat to draft a letter from the Chair to the clinic informing the medical director of the committee’s decision.

1. **Application E23/173 for surrogacy involving an assisted reproductive procedure**

Annabel Ahuriri-Driscoll opened the discussion for this application. The Committee considered this application in relation to the *Guidelines for family gamete donation, embryo donation, the use of donated eggs with donated sperm and clinic assisted surrogacy,* and the principles of the HART Act 2004.

**Issues discussed included:**

* In this application for surrogacy the intending parents have one child together. They have undergone IVF and the surrogacy process previously and hope to do this again to try for another child.
* The intending mother has a medical condition which makes pregnancy medically unadvisable. There is a risk that certain symptoms may be exacerbated by the IVF procedure, she will take medication to help mitigate this risk.
* The surrogate has two children and considers her family to be complete. She is a family member of one of the intending parents and offered to act as a surrogate for them two years ago.
* The indenting parents and the surrogate have a close relationship, and their close family are aware of the plans for surrogacy.
* The surrogate’s previous pregnancies were healthy, and she is fit and well. The medical risks of surrogacy have been discussed with her; and how they might be mitigated. The surrogate hopes to use a midwife known to her for support throughout pregnancy. The intending parents also plan to enlist the oversight of an obstetrician.
* The parties have plans for the number of embryo transfers they are initially prepared to have, and will review after if they are unsuccessful.
* The intending parents understand that any decision regarding termination of the pregnancy lies with the surrogate and have asked that any decisions relating to foetal abnormalities be deferred to them.
* There are plans to be open with any resulting child about their origins, and the intending parent’s child is aware of the plans for surrogacy.
* All parties agree for non-viable embryos to be disposed of in the fertility clinic.
* The surrogate is a full-time caregiver to her children.
* The Committee noted that more information about the support plan for the surrogate would have been helpful in this application given that she is single and, lives some hours away from the nearest fertility clinic. It was noted that the surrogate's children are of an age where they have some independence, and that with the intrafamily aspect of the intended arrangement that there is family involvement and support for the surrogate. The intending parents have noted that they have an awareness of the burden of surrogacy and that they were going to provide support including the intending mother travelling to visit the surrogate. The intending mother will also be the primary support person for the surrogate during a birth.
* The surrogate hopes for her children and the resulting child to grow up as cousins.
* The joint counselling reports indicate that all parties are on the same page about this arrangement. All parties are aware of the counselling available to them.
* The committee noted that the surrogate’s legal report did not expressly include information about discussion had around wills or testamentary guardianship. and agreed that it would seek reassurance that she has been advised about wills and testamentary guardianship and discussed both aspects with her lawyer.

**Decision**

The Committee decided to **approve** this application subject to receiving confirmation that the surrogate has received legal advice in relation to wills and testamentary guardianship and has discussed both with her lawyer.

**Actions**

Secretariat to draft a letter from the Chair to the clinic informing the medical director of the committee’s decision.

1. **Application E23/174 for surrogacy involving an assisted reproductive procedure**

Angela Ballantyne opened the discussion for this application. The Committee considered this application in relation to the *Guidelines for family gamete donation, embryo donation, the use of donated eggs with donated sperm and clinic assisted surrogacy,* and the principles of the HART Act 2004.

**Issues discussed included:**

* In this application for surrogacy the intending parents require a surrogate after multiple miscarriages.
* The intending parents and the surrogate met last year through a mutual friend. The surrogate volunteered to act as a surrogate for the intending parents. One of the intending parents and the surrogate share iwi affiliations, and all parties in this arrangement identify as Māori.
* The surrogate has had multiple natural pregnancies which were all straight forward and she considers her family to be complete.
* The surrogate is single and lives in a family home where she is the full-time caregiver for her children. To attend appointments at the fertility clinic the surrogate will need to travel some distance.
* The Committee noted the power differential between the two parties – the intending parents are able to offer to pay for life insurance for the surrogate while she is pregnant and for three months post birth of the baby, and for an obstetrician to care for her during a pregnancy given there is a lack of midwives where the surrogate lives and it might not be possible for her to have a midwife.
* The intending parents would plan to schedule some appointments with a midwife which will not include the surrogate. The committee discussed why this might be the intention of the intending parents and noted it might be to discuss how they could be involved in the birth and how they could prepare for that. Any disclosure of information about the surrogate during sessions would only be possible with her prior consent to this.
* While counselling sessions have canvassed pregnancy and birthing plans there was no in-depth discussion presented in the individual counselling reports for the intending parents with the couple noting that this was hard to discuss given the uncertainty around whether a pregnancy would happen.
* This application did not provide much detail surrounding the birth and supports for the surrogate except to say that one of her parents plans to relocate back to the surrogate’s home soon and will be one of the main supports for the surrogate during pregnancy.
* The intending parents have offered to pay for life insurance and a private obstetrician for the surrogate.
* The surrogate has indicated that she is planning to have a will written and plans for testamentary guardianship are in place.
* The parties plan to share their journey on social media. The surrogate hopes to use social media to share a different account on the surrogacy journey.
* The intending parents plan to schedule some appointments with the midwife which will not include the surrogate. The committee discussed why this might be the intention of the intending parents and noted it might be to discuss how they could be involved in the birth and how they could prepare for that.

**Decision**

The Committee decided to **approve** this application, and encourage the parties to consider a support plan for the surrogate that includes the intending parents, including day to day care. The Committee notes that the midwife will not be obligated to take on the intending parents as clients, and also that the intending parents cannot provide the surrogate with maintenance payments.

**Actions**

Secretariat to draft a letter from the Chair to the clinic informing the medical director of the committee’s decision.

1. **Application E23/175 for embryo donation for reproductive purposes**

Mike Legge opened the discussion for this application. The Committee considered this application in relation to the *Guidelines for family gamete donation, embryo donation, the use of donated eggs with donated sperm and clinic assisted surrogacy,* and the principles of the HART Act 2004.

**Issues discussed included:**

* In this application for embryo donation the intending parents have had fertility treatment in the past, and now consider embryo donation to be their best option due to the intending fathers’ medical conditions and the intending mothers egg quality. Embryo donation is their last chance to have a child.
* The embryo donors have completed their family with embryos remaining in storage. The embryo donors are aware that if a child is born from this donation that they cannot donate any remaining embryos.
* The medical report for the embryo donors outlines the family history of the donors. Two conditions are named that present small risk of being passed on to a child born of this donation. The children of the embryo donors were present in the joint counselling. Their children are in good health.
* There are plans in place for obstetric review and medication for the intending mother to mitigate the risks of pregnancy to her and to the potential child.
* The parties met through the fertility clinic and have many shared interests and values. All are aware of the importance of openness with any resulting child. The parties plan to stay in contact once a child is born, although the intending parents hope to spend the first year finding their feet as parents.
* One of the embryo donors is Māori, though their iwi affiliations are unknown, and they hope to learn more of their whakapapa and intend to share what they learn with any resulting child. The intending parents believe that any resulting child should know their whakapapa and hope to learn more about Māori culture and Te Reo.
* The parties do not plan to share their journey on social media.
* All parties understand that any decisions surrounding termination are for the intending parents to make.

**Decision**

The Committee decided to **approve**this application subject to the condition that the intending mother accesses obstetric care throughout her pregnancy.

**Actions**

Secretariat to draft a letter from the Chair to the clinic informing the medical director of the committee’s decision.

1. **Application E23/176 for embryo donation for reproductive purposes**

Lana Stockman opened the discussion for this application. The Committee considered this application in relation to the Guidelines for family gamete donation, embryo donation, the use of donated eggs with donated sperm and clinic assisted surrogacy, and the principles of the HART Act 2004.

**Issues discussed included:**

* The two families at the centre of this application are close friends who have known each other for over a decade. The donor couple wish to donate their remaining embryos that were created for their own IVF treatment, to the intending parents as they consider their own family to be complete.
* Given the intending mother’s fertility history and that there is a lengthy waiting list for donor eggs, embryo donation is considered the best opportunity for the intending parents to complete their family.
* The medical report for the intending parents notes the important considerations for the intending mother in carrying a pregnancy with a donated embryo and these have been discussed with the intending parents.
* Genetic screening has been done and while no genetic conditions have been identified that might affect the potential child, the intending parents understand the potential for genetic conditions even if they have not been found in the screening process.
* The relationships held between the parties appear to safeguard the interests of all including existing and potential children. Supporting letters from the applicants include among other things, declarations of a sense of shared values and community between the two families and they see their relationship as one that will be lifelong.
* Some of the phrasing in the application included the couples’ declaring they believe the donation will not change the way they interact as friends. The counselling reports described how the couples talked about the challenges they might have in seeing a child born of this donation grow up – they have thought the inevitable changing nature of their relationship through.
* One of the donor applicants is Māori and the parties have discussed the ways they might nurture and support this part of the potential child’s identity including with the support of the donor couple and their whānau. The intending parents are also aware of the HART Act requirements for information sharing. They have declared intentions to tell the child about the role the donors played in their conception story and socially the donors will be an aunty and uncle to the child. The donor couple will also tell their existing children about the intended donation.
* The level of detail recorded in relation to whakapapa differed between the parties and suggested the intending parents may have explored this in more detail than the donor couple. However, the Committee noted that because the two families are close, if at some stage the donor conceived child wanted more information that would be readily available to the child.
* The rights of the parties in relation to use, storage and, discarding of the embryos have been outlined and discussed during counselling sessions. The counselling reports indicate no material issues in this regard.

**Decision**

The Committee agreed to **approve** this application.

**Actions**

Secretariat to draft a letter from the Chair to the clinic informing the medical director of the Committee’s decision.

1. **Application E23/177 for donated eggs and donated sperm**

Jude Charlton opened the discussion for this application. The Committee considered this application in relation to the *Guidelines for family gamete donation, embryo donation, the use of donated eggs with donated sperm and clinic assisted surrogacy,* and the principles of the HART Act 2004.

**Issues discussed included:**

* The intending mother in this application is a single woman who needs donated sperm and donated eggs to create embryos for her own use in fertility treatment in order to start her own family.
* Medical opinion is that IVF treatment using donated eggs and donated sperm would give her the best chance of starting her family. She has been on the waiting list to receive donated sperm for the past few years and is now eligible to use gametes from a clinic donor.
* Both gamete donors in this application are clinic donors who have previously donated their gametes and who at the time of donation were counselled about their rights in relation to storage and use of their donations and the number of families who may be recipients of their donations. Their consent was given prior to collection of their gametes. The clinic has contacted both donors in relation to this application and both have no objections to their donations being used to create embryos for the intending mother in this application.
* The counselling sessions have explored the implication of the intending mother raising children who are not her biological children. During the course of these discussions the intending mother talked about insights shared by her friend who is a donor conceived person about their experience.
* The intending mother has declared that she intends to raise and parent any child born of this arrangement and will be open with them about the role the child’s donors played in their conception story. The donors have declared intentions to be known to the potential child and share information with them.

**Decision**

The Committee agreed to **approve this application.**

**Actions**

Secretariat to draft a letter from the Chair to the researchers informing the Co-ordinating Investigator and HDEC of the committee’s decision.

1. **Application E23/114 for surrogacy involving an assisted reproductive procedure with egg donation**

Richard Ngatai opened the discussion for this application. The Committee considered this application in relation to the *Guidelines for family gamete donation, embryo donation, the use of donated eggs with donated sperm and clinic assisted surrogacy,* and the principles of the HART Act 2004.

**Issues discussed included:**

* In its original consideration of this application ECART deferred its decision with a request for a plan showing how the surrogate would be supported during pregnancy and post-partum. The Committee noted in its previous consideration the pregnancy risks associated with an elevated body mass index (BMI) and that the surrogate would likely need a caesarean section.
* The Committee emphasised the importance of adequate support being available to the surrogate throughout the pregnancy and post-partum period due to these risks as well as the surrogate working and raising young children. The Committee also stated that the deferred decision will remain in place until the surrogate reaches a BMI of 40 or below to reduce some of these risks to her health.
* The surrogate’s counsellor submitted a letter of support for the application to be considered at this meeting. The letter outlined what was discussed in the surrogate’s additional counselling session, noting the support available to the surrogate. This support network included the surrogate’s mother, sister, aunty the father of her children, and the intending parents. The letter emphasised the practical support available for childcare as well as the extra help that she could use if needed.
* On the basis of this information ECART was satisfied that there had been significant reflection about how the surrogate would be supported during pregnancy and post-partum.

**Decision**

The Committee agreed to **approve** this application.

**Actions**

Secretariat to draft a letter from the Chair to the clinic informing the medical director of the committee’s decision.

1. **Application E22/060 for surrogacy involving an assisted reproductive procedure**

Jeanne Snelling opened the discussion for this application. The Committee considered this application in relation to the *Guidelines for family gamete donation, embryo donation, the use of donated eggs with donated sperm and clinic assisted surrogacy,* and the principles of the HART Act 2004.

**Issues discussed included:**

* The Committee considered this application in 2022 and agreed to defer it to receive further information about the intending mother’s health profile in order to help the Committee better weigh and balance the risks to her.
* ECART’s convention is that it does not approve an application until it has received confirmation of approval of an adoption order in principle from Oranga Tamariki. However, due to an anomaly in the forms, ECART thought approval from Oranga Tamariki was in place when it was not and approved the application.
* ECART has now been notified that Oranga Tamariki is not in a position to grant an adoption order in principle and the applicants’ fertility treatment services provider has asked whether ECART approval remains in place given Oranga Tamariki’s indication.
* In its original consideration ECART was concerned about the lack of clarity in the reports about the timing of proposed medical procedures for the intending mother. ECART requested further information about the plans in place to care for the potential child should her health deteriorate as well as legal arrangements for testamentary guardianship. Further information received indicated that the intending father would care for and raise the child who would also be his biological child and that the surrogate parents would be testamentary guardians. On that basis, ECART approved the application.
* Letters currently before the Committee include letters from the intending parents’ fertility specialist, counsellor, lawyer and Oranga Tamariki. The fertility specialist letter acknowledges that Oranga Tamariki has declined to support an adoption order in principle and has assumed that decision was based on a misunderstanding of some of the information. The letter asks ECART to consider continued approval for the intended surrogacy arrangement.
* The lawyer’s letter sets out that there are grounds to challenge Oranga Tamariki’s decision and, that they have contacted the agency to ask them to review the case. They argue that the decision is based on a misapprehension of the fertility specialist’s report. In their view, the fertility specialist has clarified the number of years the intending mother has post procedure and her subsequent options for ongoing treatment.
* The letter from the lawyer references a different ECART case where ECART approved an application where the intending mother had a limited life expectancy and, the lawyer is confident that if a surrogacy went ahead and a child was born, that a judge would approve an adoption order. They argue that even though the intending mother has a significant medical condition, that it is well managed, and not immediately life threatening.
* Significantly, in the Oranga Tamariki report, there are no concerns around criminality or risk to the child in terms of family violence; they are solely around life expectancy of the intending mother. The Committee noted that the medical specialist report for the intending mother notes she is young, has good kidney function, and she has multiple options for replacement and treatment in future. The potential child will also be born into an intrafamily environment.
* The Committee discussed whether the child would still be able to go into the care of the intending parents at birth if Oranga Tamariki do not grant an adoption order in principle. The intending parents’ lawyer has explained that because this is an intrafamily arrangement that the child could go into the care of intending parents. In future for any court adoption process, a report from Oranga Tamariki would be needed for the courts to decide on the basis of the report whether or not an adoption order is made. The lawyer is confident that an adoption order will promote the best interests of the child. There is evidence to justify that both intending parents are “fit and proper”.
* ECART agreed that it had come to its original decision to approve the arrangement based on the intending mother’s medical history and there is no concern about criminal status. Oranga Tamariki’s concerns are about the same issue, the intending mother’s medical history, but the agency has expressed a different view to ECART.
* While acknowledging that Oranga Tamariki is of the view that it would not approve the intending mother as “fit and proper” because of her medical condition, it was agreed that this is not a reason for ECART to discontinue its approval of this application because the Committee remains of the view that the clinical risk to the intending mother is manageable.
* ECART noted that the residual risk (for the child), is that a judge doesn’t approve an adoption order in principle.
* The Committee has no concern about criminality but because there is a difference of opinion in relation to the medical issue ECART is willing to affirm that there are no concerns in this regard from an ECART perspective provided the surrogate is aware of this new information.

**Decision**

* Significantly, Oranga Tamariki has no concern about criminality. While there is a difference of opinion between ECART and Oranga Tamariki in relation to the intending mother’s medical condition, ECART is willing to affirm that there are no concerns in this regard from an ECART perspective.

**Actions**

Secretariat to draft a letter from the Chair to the clinic informing the medical director of the Committee’s decision.

1. **Consideration of extended storage applications**

**Meeting close**

Confirmation of next meeting on December 7th 2023.

Confirmation of ECART member in attendance at next ACART meeting on December 14th 2023, Analosa Veukiso-Ulugia.