**Minutes of the Eighty Forth Meeting of the Ethics Committee on Assisted Reproductive Technology**

**3 September 2020**

Held via zoom on 3 September 2020

**In Attendance**

Iris Reuvecamp Chairperson

Paul Copland Member

Michele Stanton Member

Mike Legge Member

Mary Birdsall Member

Mania Maniapoto-Ngaia Member

Jude Charlton Member

Analosa Veukiso-Ulugia ACART member in attendance

Hayley Robertson Senior Advisor, Ethics.

Kirsten Forrest Senior Advisor, Ethics.

Tristan Katz Advisor, Ethics.

Tania Siwatibau Administrator, Ethics.

1. **Welcome**

The Chair opened the meeting by welcoming all present and noting apologies were received from Tepora Emery.

The Chair advised members that ACART published the *Guidelines for Family Gamete Donation, Embryo Donation, the Use of Donated Eggs with Donated Sperm and Clinic Assisted Surrogacy on 1 September 2020.* These guidelines address cases involving the donation of sperm, eggs or embryos; donations between certain family members; and clinic assisted surrogacy and make clear the requirements for counselling and consent and the circumstances in which donations and surrogacy can be carried out. These guidelines replace previous separate guidelines for each of:

* Embryo donation
* Donations between certain family members
* Surrogacy
* Donations of eggs and sperm together.

It was noted that new application forms have not yet been developed to align with the revised guidelines but that these are expected to be published early 2021 in consultation with ECART and Fertility Clinics.

Applications at this meeting were considered under the previous Guidelines.

1. **Conflicts of Interest**

Dr Mary Birdsall declares (on an ongoing basis) that she is a shareholder in Fertility Associates and has interests on a professional and a financial basis.

The Chair noted that she had been appointed Chair of the WHO Compliance Panel for Implementing and Monitoring the International Code of Marketing of Breast-milk Substitutes in New Zealand: The Code in New Zealand, to be added to the interests register. However, it was highly unlikely that any conflict would arise as a result of this role.

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

The minutes from the 25 June 2020 meeting were confirmed.

1. **Application E20/107 Creation and Use of Embryos from donated eggs and donated sperm**

Michele Stanton opened the discussion for this application. The committee considered this application in relation to the *Guidelines on the Creation and Use, for Reproductive Purposes, of Embryos created from Donated Eggs and Donated Sperm* and the principles of the HART Act 2004.

**Issues discussed included:**

* The recipient in this application is a single woman with a clear medical need for donor eggs and donor sperm.
* There is a familial element to this application as the egg donor and the recipient woman are half-sisters. The egg donor in this application does not have any children and has not yet completed her family. She has had all of the risks associated with IVF explained to her.
* The sperm donor in this application is a long-time friend of the recipient woman and has previously donated his sperm to the recipient woman resulting in her first child. He is known to the egg donor also.
* The committee had some concerns around the issue of openness with the sperm donors’ partner not knowing of his intention to donate for a second time but noted that the second donation enables the recipient woman to complete her family and retain the biological link between her children.
* The application notes that all parties are aware that the sperm donor is a carrier of a genetic disorder and have agreed that the donor eggs will be screened to ensure that any resulting children do not have the condition.
* Cultural and religious customs have been discussed during the counselling sessions and both parties have stated that counselling has been culturally appropriate.
* The committee noted that this was a clear application with all requirements for ethical approval met.

**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 E20/108 for the Posthumous use of embryos**

Mike Legge opened the discussion for this application.

* This was an application for the posthumous use of embryos that were created for use by a couple using their own gametes to begin their family. The application notes that during the course of the fertility treatment, one partner tragically passed away.
* The committee noted the recipient couples long and difficult reproductive journey.
* The committee noted that there are currently no Guidelines which expressly address the use of embryos after the death of one partner.
* The committee noted that both parties had opted for the embryos to be disposed of in the event of their death.
* Members felt that even though the application was well put together and there appeared to be strong family support for the use of the embryos, they could not undermine the written consent provided by the partner to the disposal of the embryos in the event of his death.

**Decision**

The committee agreed to **decline** 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 E20/109 for Surrogacy involving an Assisted Reproductive Procedure**

Paul Copland opened the discussion for this application. The committee considered this application in relation to the *Guidelines for Surrogacy involving an Assisted Reproductive Procedure* and the principles of the HART Act 2004.

**Issues discussed included:**

* The committee noted that a clear medical reason to justify the use of a surrogate exists to assist the intending parents in this application to start their family.
* The birth parents in this application have children and consider their family to be complete. The application outlines that the birth parents have had the risks associated with a surrogate pregnancy explained to them.
* The intending parents and the birth parents met through a surrogacy website and are now close friends.
* The committee acknowledged the difficulty in living with a long-term health condition and would like to see information regarding the intending mothers long term prognosis and ability to care for the child.
* The committee discussed the intention to use the intending mother’s eggs and were concerned that the intending mother’s medical reason for needing a surrogate may be heritable for any resulting children. The committee expressed concerns about the severity of her illness and decided that it would like to see more comprehensive information about the intending mother’s condition and the risk of the resulting child inheriting the same condition.
* The issue of termination has been discussed and the intending parents understand that once an embryo is transferred to the birth mother that she has the legal right to make any decisions about the pregnancy including the decision to terminate a pregnancy.
* The intending parents have sought a preliminary assessment from Oranga Tamariki.
* Both the intending parents and the birth parents have sought independent legal advice and the legal issues have been discussed at those sessions as well as during their counselling sessions.

**Decision**

The Committee agreed to **defer** this application to enable it to receive a report that contains more information on the intending mother’s prognosis, confirmation of current health and the potential for this condition to be genetic.

**Actions**

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

1. **Application E20/110 for Surrogacy involving an Assisted Reproductive Procedure (and egg donation)**

Mania Maniapoto opened the discussion for this application. The committee considered this application in relation to the *Guidelines for Surrogacy involving an Assisted Reproductive Procedure* and the principles of the HART Act 2004.

**Issues discussed included:**

* A clear medical reason to justify the use of a surrogate exists.
* The committee noted the couple’s difficult reproductive history and acknowledged the tragic loss of their child.
* The committee noted the importance of continued support for the intending parents and agreed to remind them to access the counselling support available to them through the clinic if they would like to do so.
* The egg donor and her partner in this application have children and consider their family to be complete. The application notes that the same egg donor has previously donated eggs to this couple, however the treatment was not successful.
* The birth parents in this application have children and consider their family to be complete. The birth mother’s age was discussed and the application notes that she has expressed a good understanding of the proposed treatment for herself and the other parties involved and including the potential child. The application states the birth mother will be under the care of an obstetrician during pregnancy.
* The intending parents view the participants in this arrangement as extended family. The committee noted that the egg donor’s children are like cousins to the birth parents’ children and the application notes that the parties involved imagine that any resulting children will enjoy the same relationship and envision that the birth parents will share a special bond with the resulting child and will be important in the child’s life.
* The application notes that one embryo is available for transfer and the intending parents do not intend to create more if this embryo is not successful.
* The issue of testamentary guardianship was discussed.
* The issue of termination has been discussed and the intending parents understand that once an embryo is transferred to the birth mother that she has the legal right to make any decisions about the pregnancy including the decision to terminate a pregnancy.
* The intending parents have sought a preliminary assessment from Oranga Tamariki.
* Both the intending parents and the birth parents have sought independent legal advice and the legal issues have been discussed at those sessions as well as during their counselling sessions.
* The committee noted that this was a very clear and comprehensive application.

**Decision**

The Committee agreed to **approve** this application, acknowledging the recent tragic loss of their baby and that counselling is available for them should they require continued support.

**Actions**

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

1. **Application E20/111 for donation of eggs between certain family members**

Jude Charlton opened the discussion for this application. The committee considered this application in relation to the *Guidelines on Donation of Gametes between Certain Family Members* and the principles of the HART Act 2004.

**Issues discussed included:**

* The committee noted that a clear medical reason to justify the use of donated eggs exists.
* There is a within family aspect to this application as the intending mother and the egg donor are sisters in law.
* The application notes that the egg donor and her partner in this application do not yet consider their family to be complete.
* The application notes that all parties currently live together, and report being unclear about how long this will be the case.
* Both the intending parents and the egg donor and her partner have discussed the HART Act requirements in their independent counselling sessions. However, the committee noted that the counselling reports show that the parties have opted not to inform their other family members of their donor plan and do not intend to do so due to cultural beliefs. Extended family are unaware of the intended arrangement and the parties are all uncomfortable with disclosing this information in the event a child is born.
* They are also very conflicted about telling the child of its genetic origins but have noted that they would consider doing so if there is any health need.
* The committee discussed this issue of openness and their plans not to disclose to the resulting child, and felt that it was important to note that the donor couples children will also not have the opportunity to know that they are half siblings.
* The counselling report notes that where the possibility of dealing with disappointment is discussed, the donor couple plan to do whatever it takes to give the recipients a child and while donating eggs is their preference, they are prepared to carry a child and gift it to the couple if the use of donor eggs are not successful.
* All parties report that counselling has been culturally appropriate.

**Decision**

* The Committee agreed to **approve** this application with the strong recommendation of further counselling about the requirement of openness and to note that the HART Act outlines the rights of any resulting and existing children to be aware of their genetic heritage.

**Actions**

* Secretariat to draft a letter from the Chair to the clinic informing the medical director of the committee’s decision.
1. **Application E20/112 for Creation and Use of Embryos from donated eggs and donated sperm**

Mary Birdsall opened the discussion for this application. The committee considered this application in relation to the *Guidelines on the Creation and Use, for Reproductive Purposes, of Embryos created from Donated Eggs and Donated Sperm* and the principles of the HART Act 2004.

**Issues discussed included:**

* The recipient woman in this application is a single woman with a medical need for donor eggs and donor sperm. The medical report states that she is in good health and there are no medical reasons stated that would contraindicate her carrying a pregnancy should treatment be successful. The recipient woman has been informed of the usual risks associated with a carrying a pregnancy not biologically related to the recipient woman, which are set out in her medical report.
* Both donors in this application are clinic donors and neither currently have children of their own. They understand that any embryos created for the recipient woman using their gametes will only be available for use by the recipient woman and that they can withdraw consent to donate up to the point where the embryos are created. They understand that the recipient woman then has all legal rights and responsibilities for the use of any embryos including decisions around pregnancy.
* The egg donor’s age was discussed during counselling sessions. The counsellor observed in her report that the egg donor is an insightful person who has considered egg donation for some time.
* The sperm donor is not known to the recipient woman and does not yet have any children of his own.
* The recipient woman understands that any resulting children could have half-siblings in other recipient families of the donors and also the donors themselves should they have children in future, and believes that it is in the best interests of the children to know each other and to have opportunities to share information in future.
* The issue of testamentary guardianship was discussed.
* Cultural and religious customs have been discussed during the counselling sessions and both parties have stated that counselling has been culturally appropriate.
* The committee noted that this was a clear application with all requirements for ethical approval met.

**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 E20/113 for Surrogacy involving an Assisted Reproductive Procedure**

Mike Legge opened the discussion for this application. The committee considered this application in relation to the *Guidelines for Surrogacy involving an Assisted Reproductive Procedure* and the principles of the HART Act 2004.

**Issues discussed included:**

* A clear medical reason to justify the use of a surrogate exists.
* The intending parents in this application have a child who was born through an ECART approved within family surrogacy arrangement. They would like to have another child to complete their family and for this application another family member of the intending mother has offered to act as a surrogate.
* The earlier surrogacy arrangement went well with a child born last year. Close family ties are described throughout this application and the wider family unit are continuing to support the intending parents to complete their family.
* The birth parents in this application have children and consider their own family to be complete. The usual risks associated with a surrogate pregnancy have been discussed.
* The intending parents are familiar with the legal issues involved with a surrogacy arrangement having been through the process, including the adoption process, previously, and they intend to adopt any child born of this arrangement. The intending parents have sought a preliminary assessment from Oranga Tamariki.
* Testamentary guardianship arrangements, in the unlikely event that the intending parents are unable to care for the child, have also been discussed and agreed.
* The issue of termination has been discussed and the intending parents understand that once an embryo is transferred to the birth mother that she has the legal right to make any decisions about the pregnancy including the decision to terminate a pregnancy.

**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. **E20/114 for Surrogacy involving an Assisted Reproductive Procedure**

Iris Reuvecamp opened the discussion for this application. The committee considered this application in relation to the *Guidelines for Surrogacy involving an Assisted Reproductive Procedure* and the principles of the HART Act 2004.

**Issues discussed included:**

* The committee noted that there is a clear medical need for surrogacy and egg donation. The medical report states that the intending mother is unable to carry a pregnancy and has had a poor response to IVF treatment for egg collection following treatment for a medical condition.
* The birth mother and the intending mother in this application are close and there is a within family arrangement with the intending mother’s sister offering to act as a surrogate mother and the intending mother’s cousin as an egg donor.
* The birth mother has one child and the usual risks associated with a surrogate pregnancy have been discussed with her. She plans to be under the care of her obstetrician and to have an elective caesarean delivery in this case.
* The issue of openness is also discussed, and the counselling reports note that the birth mother envisages that she would be a special aunty to any resulting child.
* The egg donor is the cousin of the intending mother. She has no children of her own and she and her partner are undecided about starting their own family in future.
* The application notes that extended family are also very supportive and the ways in which they will offer practical and emotional support have been outlined in the application.
* Testamentary guardianship arrangements, in the unlikely event that the intending parents are unable to care for the child, have also been discussed and agreed.
* The issue of termination has been discussed and the intending parents understand that once an embryo is transferred to the birth mother that she has the legal right to make any decisions about the pregnancy including the decision to terminate a pregnancy.
* The intending parents have sought a preliminary assessment from Oranga Tamariki.
* Both the intending parents and the birth parents have sought independent legal advice and the legal issues have been discussed at those sessions as well as during their counselling sessions.

**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 E20/115 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 Embryo Donation for Reproductive Purposes* and the principles of the HART Act 2004.

**Issues discussed included:**

* The donor couple have two embryos created from their own IVF treatment that they would like to donate to the recipient couple. The donor couple have three children born from the embryos and consider their family to be complete. They would like to give their remaining embryos a chance at life.
* The donor man has a mild medical condition for which there is no shared family history. A report from genetic counselling services included with this application states that the absence of a family history suggests that the likelihood of it being heritable for his offspring is low.
* The committee noted that counselling sessions have discussed in some detail the recipient couple’s reasons for seeking embryo donation over creating embryos from their own gametes, for the reason that they do not wish to have surplus embryos in storage. The committee acknowledged this but had concerns about the approach when there appeared to be no clear reason to not use the recipient couple’s own gametes. Because of this, the committee felt that the recipient couple did not meet the requirement in the *Guidelines for Embryo Donation for Reproductive Purpose* at section 2.a.iii that “the recipient or the recipient’s partner/spouse has a medical condition affecting his or her reproductive ability, or a medical diagnosis of unexplained infertility that makes embryo donation appropriate”.
* It was suggested that another option would be for the recipient couple to undergo a cycle of egg freezing in conjunction with single egg thawing, to create individual embryos and therefore prevent the issue of having surplus embryos.
* The counselling sessions have also canvassed the support from the networks of people the potential child would be welcomed into, the recipient couple’s views on openness with the children, ongoing contact with the donor couple and the requirements of the HART Act including the HART Act register and the right for any child born of this arrangement to have access to information about the donor couple and any siblings.

**Decision**

The Committee agreed to **decline** this application, on the basis that neither the recipient nor the recipient’s partner/spouse has a medical condition affecting his or her reproductive ability, or a medical diagnosis of unexplained infertility that makes embryo donation appropriate.

**Actions**

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

1. **Application E20/116 for Embryo donation for reproductive purposes**

Michele Stanton opened the discussion for this application. The committee considered this application in relation to the *Guidelines for Embryo Donation for Reproductive Purposes* and the principles of the HART Act 2004.

**Issues discussed included:**

* The donor couple have remaining embryos created from their own IVF treatment that they would like to donate to the recipient woman. The donor couple have children born from the embryos and consider their family to be complete. They have described their motivation of entering into the intended arrangement as wanting to help others who have experienced infertility to have a family.
* The application notes that they plan to be open with their children about the intended donation. Both parties have declared intentions to be open with any child/ren born of this arrangement. Both parties have declared intentions to continue contact should the intended donation be successful and a child be born of this arrangement.
* The application notes that medical advice is that the intended embryo donation would give the recipient woman the best chance of pregnancy given her age and relationship status. The committee noted the recipient woman’s age and planned obstetric support should a pregnancy eventuate.
* Both parties understand that the donor couple can withdraw their consent up to the time the embryos are transferred.
* Both parties have sought independent legal advice and are aware of the legal issues involved with an embryo donation arrangement.

**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 E17/86 Request to extend approval** **for creation of embryos from donor eggs and donor sperm**

Mike Legge opened the discussion for this application. The committee considered this application in relation to the *Guidelines for Surrogacy involving an Assisted Reproductive Procedure* and the principles of the HART Act 2004.

**Issues discussed included:**

* For this application, the committee considered a letter requesting extension of approval for the creation of embryos from donor eggs and donor sperm to support their original application from 2017 for the use of embryos created by one of the recipients and their previous partner who is now deceased. The couple have one child from the donated embryos and wish to have more children. They are seeking ECART approval for a further three years.
* The recipient couple attended a further counselling session via zoom and the report states that there is no new relevant information.

**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 E17/55 Request to extend approval for embryo donation**

Paul Copland opened the discussion for this application. The committee considered this application in relation to the *Guidelines on the Creation and Use, for Reproductive Purposes, of Embryos created from Donated Eggs and Donated Sperm* and the principles of the HART Act 2004.

**Issues discussed included:**

* For this application, the committee considered a request to extend the approval given for the use of donated embryos.
* The original application was approved in July 2017 for three years to July 2020.
* The recipient couple have three children, one of whom was born from the donated embryos, and one current pregnancy from the donated embryos. They would like to continue to give the remaining embryos a chance at life.

**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. **Correspondence**
* ECART discussed a query from an individual requesting clarification around the import of their embryos stored overseas. The embryos contain gametes from an anonymous egg donor and the intending father’s own sperm. The query notes that they had planned to use them overseas but due to the current environment where international travel is restrictive, they would like to bring these embryos to New Zealand for use.

The committee noted that the committee has no jurisdiction with respect to fertility services accessed by New Zealanders overseas. It also does not have any jurisdiction regarding the import and export of gametes and embryos, but clinics are required to ensure that any such import and subsequent use must be consistent with New Zealand law which requires the gametes used to be identifiable.

* ECART discussed a query from a treatment provider outlining a number of suggestions for improvements to application forms, and concern in regards to information that could potentially identify individuals in the public minutes.
* ECART discussed a query from a treatment provider where a couple have embryos created from donated eggs and donated sperm stored overseas and had planned to use them overseas but due to the current environment where international travel is restrictive, they would like to bring these embryos to New Zealand for use.

The provider queried whether an application for ethical approval by ECART would be needed. The committee noted that under the relevant guidelines on the Creation and Use, for Reproductive Purposes, of Embryos created from Donated Eggs and Donated Sperm, ECART is required to consider the application since the use of the embryos is planned to take place within New Zealand.

1. **Consideration and discussion for ECART’s submission on ACART’s consultation on Posthumous Reproduction**

The committee also set aside time to discuss the proposed revised Guidelines for the Posthumous Use of Gametes, Reproductive Tissue and Stored Embryos with the view to submit ECART’s feedback on the policy rationales in the consultation document and usability of the proposed new Guidelines.

Members went through the document question by question and discussed the different situations in which the revised guidelines could be applied and the rationale for their feedback. It was agreed that the Secretariat would draft a response to the consultation and circulate the draft response to members out of session for approval.

**Meeting close**

Confirmation of 29 October 2020 meeting likely via zoom.

Confirmation of ECART member in attendance at next ACART meeting on 15 October 2020 scheduled in Wellington and via zoom, Mania Maniapoto-Ngaia.