

Minutes of the Ninety-ninth Meeting of the Ethics Committee on Assisted Reproductive Technology

24 February 2023

Held via zoom on 24 February 2023

In Attendance

Jeanne Snelling	Chairperson
Mike Legge	Member
Analosa Veukiso-Ulugia	Member
Emily Liu	Member
Angela Ballantyne	Member
Lana Stockman	Member
Mania Maniapoto-Ngaia	Member
Jude Charlton	Member
Richard Ngatai	Member
Simon McDowell	Member
Annabel Ahuriri-Driscoll	Member
Kathleen Logan	ACART member in attendance

ECART Secretariat

1. Welcome

The Chair opened the meeting and welcomed all in attendance.

2. Conflicts of Interest

No updates to the register.

3. Presentation on the rights of the child, best interests, considerations, and principle (a) of the HART Act by Kathleen Logan.

4. Confirmation of minutes from previous meetings

The minutes from the 8 December 2022 meeting were confirmed.

5. Application E23/020 for embryo donation for reproductive purposes

Analosa Veukiso-Ulugia 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.

- In this application the donor couple wish to donate their remaining embryos that were created for their own fertility treatment to the recipient couple as they now consider their own family to be complete. Their faith is a motivating factor in donating their embryos.

- The recipient couple have a long history of failure to conceive and unsuccessful IVF treatment.
- The recipient couple parent an adopted child and have discussed the implications of a child born from this donation having no genetic link to them or their existing child.
- The testamentary guardian for any resulting child will be the same as the one for the recipient couple's existing child.
- The donor and recipient couples had no relationship prior to being matched by the fertility clinic. The two couples share similar ethnicities, values, and faith.
- The recipient couple plan to be open with any resulting child regarding their origins, and plans are in place to discuss the donation process with their existing child. They are open to remaining in contact with the donor couple.
- The Committee discussed the impacts of citizenship and residency and the impacts these could have on any resulting child.
- The Committee discussed the medical risks of embryo donation for the recipient woman, including the risks associated with carrying a pregnancy at an advanced maternal age. Obstetric care has been recommended to recipient woman and the recipient couple plan to follow this recommendation.
- The donor couple have sought independent legal advice and understand the legal implications of this donation and, that this donation will not produce full genetic siblings in more than two families.
- The donor couple have no fixed set expectations on a relationship with any resulting child and are aware they may be contacted about any resulting child's milestones. They would like to be updated by the clinic if there is a resulting pregnancy. The couple consider their children are currently too young to be involved in this process.
- The donor couple have received independent legal advice.

Decision

The Committee decided to **approve** this application, supporting the fertility specialist's recommendation that the recipient woman be referred for obstetric care.

Actions

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

6. Application E23/021 for surrogacy involving an assisted reproductive procedure with egg donation

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.

- The intending parents are a male couple who need an egg donor and a surrogate to start their family. A child born of this intended arrangement will have a biological link to one parent and the couple are content with this.
- The intending parents plan to be open with any resulting child about the use of a surrogate and egg donor.

- The birth mother and egg donor are both long standing friends of intending parent 1. Intending parent 2 met the birth mother and egg donor through intending parent 1, and now has a friendship with both.
- The egg donor has no family history of illness and the risks of egg collection have been explained to her.
- She does not currently have children and has declared that she plans to be open with her future children about this egg donation. The intending parents and the egg donor both want the egg donor to be present in any resulting child's life.
- The birth mother is currently single and has children of her own. She sees the intending parents regularly and offered to become a surrogate for the couple. The birth mother has good support networks, including a supportive family and friends.
- The birth mother has had open discussions with her children about this process and feels they are adequately supported.
- She reports she has always wanted to help someone with fertility challenges and believes this process will be fulfilling and spiritual.
- The birth mother and the intending parents describe sharing similar values, including an emphasis on whānau.
- The birth mother's medical report identifies increased risks of post-partum haemorrhage, gestational diabetes and preeclampsia and recommends that any birth takes place in a hospital. The report also notes that the clinic has advised embryo transfer cannot progress until she reaches a weight that would lower the risk of complication during pregnancy for her and the potential child, and she is taking steps to reduce her weight.
- Pregnancy and birthing plans have been discussed and agreed during counselling sessions. The intending parents would like the birth mother to go through routine antenatal screening. The birth mother plans to have midwife care and plans to give birth in a hospital. The Intending Parents and Birth Mother have discussed how they will manage antenatal appointments, tests, and care management. They have also discussed the possibility of issues in pregnancy and delivery, and the birth mother understands that caesarean may be necessary. The birth mother intends for the intending parents to take any resulting child into their care immediately after birth.
- The intending parents and birth mother can have open and honest communication, and feel they are able to navigate conflict. Contact throughout any resulting pregnancy would be led by the birth mother.
- The birth mother and intending parents have both had full legal counselling.
- The intending parents plan to adopt the child and have received approval for an adoption order in principle from Oranga Tamariki.
- The intending parents intend to pay for insurance and disability cover for the birth mother.
- The birth mother does not currently have a will, although the committee noted that she has received legal advice regarding the importance of making one. She intends to appoint the intending parents as testamentary guardians of her children.
- The intending parents have nominated a testamentary guardian for any resulting child, though this still needs to be appointed.

Decision

The Committee decided to **approve** this application, supporting the recommendation that the birth mother has a hospital birth.

Actions

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

7. Application E23/022 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 a traumatic pregnancy history, the complications of which have meant, with the exception of one, she has not been able to carry her pregnancies to term. The intending parents have one child and surrogacy has been recommended as the best option for the intending parents to complete their family. They have had IVF treatment to create embryos and any child born of this arrangement will be the full biological child of both parents and a full sibling of their existing child.
- The birth mother's pregnancy and birthing history has seen her require medical intervention and has included two of her pregnancies being affected by gestational hypertension. Outside of pregnancy she remains healthy and well and has no other significant medical history of note. The birth mother describes her pregnancies as straightforward and has noted that she was able to continue to work up to 35 weeks during her pregnancies.
- The intending parents have been open and transparent about the intending mother's mental health history, that is solely related to her obstetric experiences. The intending mother reports that she feels emotionally well and is no longer taking medication prescribed during her last pregnancy. An independent psychologist report detailing the intending mother's obstetric history and subsequent psychological impacts and her recovery was also provided with this application.
- The birth mother has been informed of the increased risks to her in carrying a surrogate pregnancy and she has had an independent obstetric review. The review is in support of her acting as a surrogate and outlines the plans in place to reduce her obstetric risk, including a recommendation that she give birth in hospital.
- Individual and joint counselling sessions have explored the birth mother's motivation for acting as a surrogate, her wishes around pregnancy and birthing plans, and how the intending parents can provide practical support within the boundaries set by the HART Act. The birth parents' children have attended counselling sessions.

- The intending parents do not plan to share this process on social media but are aware that the birth mother has a business social media account and are comfortable for her to share information for advocacy and awareness.
- Post birth plans have also been discussed and agreed between the parties along with the level of contact they agree would be appropriate for all. The intending parents and birth parents anticipate that their relationship will continue regardless of the outcome of the intended treatment.
- Regular contact and communication is very important to the birth mother, and she feels it is crucial to feel a level of trust between the parties. She feels the intending parents have trust in her and feels comfortable having the intending parents attend appointments.
- The intending parents and birth parents met via an online platform and started communications, then the intending parents travelled to meet the birth parents in their hometown. They have now met in person, and the children from both families know each other.
- The intending parents have shared their surrogacy plans with close friends and family who are supportive and excited for them to have another pathway to have a child. They intend to be open with their existing child and with any child born of this intended arrangement.
- Conflict and relationship breakdown was discussed in the joint counselling, both parties believe they will be able to fix problems and can access counselling.
- Both parties have received independent legal advice
- The intending parents plan to adopt the child and have received approval for an adoption order in principle from Oranga Tamariki. One of the intending parents' siblings will be the testamentary guardian for any resulting child.

Decision

The Committee decided to **approve** this application, subject to the birth mother agreeing to plan for a hospital birth and supporting the recommendation for her referral to obstetric care.

Actions

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

8. Application E23/023 for surrogacy involving an assisted reproductive procedure with egg donation

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:

- The intending mother has no ovarian function and is unable to carry a pregnancy and, the Committee were satisfied that the intended arrangement of surrogacy with egg donation is the best or only option for the intending parents to have a child. Any child born of this arrangement will have a genetic link to the intending father and to the intending mother through a sister-to-sister egg donation.

- The egg donor's motivation for donating to her sister: the egg donor was asked by the intending mother whether she would be happy to be an egg donor for her. She has taken several years to think about whether to donate which the committee is satisfied is an appropriate amount of time. She has indicated that she is now in a position where she feels comfortable to donate to her sister alone and she would not wish for any embryos created to be on-donated to another family. The egg donor is clear about what her rights are in relation to her gametes and any embryos created.
- The intending parents did not have access to a surrogate in their circle of family and friends. They found their potential birth mother via an online family building forum and have known each other for about a year. They are similar ages, and they describe having similar values. They have described investing significantly in building their relationship and have met family and extended family in person.
- The medical report for the birth mother discusses the important considerations for her in carrying a surrogate pregnancy. Her first pregnancy had complications which haven't reoccurred in any of her subsequent pregnancies and clinically there is no concern expressed about her acting as a surrogate. The birth mother has disclosed the ramifications of a past childhood trauma during her counselling sessions and how she managed with low mood in her first pregnancy. While she has had a complex history that has been challenging and unfair in some ways it appears that she is in a good place now. The Committee was reassured from her partner's comments in the report that she is supported and has a partner who is an advocate for her best interests.
- The parties have sought independent legal advice and have discussed the legalities regarding adoption. The intending parents intend to adopt any child born of this arrangement and have approval for an adoption order in principle from Oranga Tamariki.
- The counselling sessions have also canvassed the topics of birthing and pregnancy plans. They have been advised of the pathways open to them for any dispute resolution.
- It was not clear to the Committee from the information in the reports what the intending parents' intent is in relation to testamentary guardianship. The legal report for the intending parents' states that they have been advised to have a plan in place for wills and testamentary guardianship but there is no further evidence in the reports that the intending parents have nominated anyone. The report for the birth parents reflects their understanding that the intending parents had intended to nominate a family member. The Committee agreed that it would include a comment in the decision letter reminding the intending parents that they should have a plan in place for testamentary guardians in the event that they are themselves unable to care for a child born of this arrangement before the treatment proceeds.

Decision

The Committee decided to **approve** this application but noted that there was no mention of intended testamentary guardian(s) for the potential child in the reports. Whilst approving the application, the Committee wished to reiterate to the intending parents the importance of them nominating testamentary guardians for any potential child born before treatment proceeds.

Actions

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

9. Application E23/024 for creation of embryos from donated eggs and donated sperm

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:

- The intended arrangement will entail a New Zealand European mother carrying and raising a Māori child as the egg donor identifies as Māori. (Although the egg donor identifies as Pakeha first and has noted she hasn't been socialised as Māori).
- The egg donor is donating to the recipient woman primarily based on her friendship with her. She is aware of her rights and has not placed any conditions on the donation. The two women share a close friendship and anticipate being open with any child born of the role the egg donor played in their conception. The egg donor has been open with her older children about the intended arrangement and they talk about the potential child being a close cousin in their lives. The recipient woman is socially an aunty to the egg donor's children and the two women anticipate that this role will be reciprocated for any child/ren born to the recipient woman of this arrangement.
- The principles of the HART Act have been agreed to. The parties have declared the donor offspring will be made aware of their genetic origins and have access to information and, the needs and beliefs of Māori have been considered.
- In terms of the justification for this procedure being the 'best or only' opportunity for the intending parent to have a child, the recipient woman has low ovarian reserve and previous cycles of IVF with donor sperm were not successful.
- The risk of egg donation has been outlined and discussed with the egg donor and any risks to her are considered low. There are no medical risks associated with donation for the sperm donor who has previously donated and has limited his donation for use in up to two families. He has also consented to no on-donation of the embryos created and the recipient woman has agreed to this condition.
- Medical risks to the recipient woman in carrying a pregnancy are those associated with being of older gestational age and she also has been encouraged to lose weight before treatment begins.
- The sperm donor and his partner have declared that they are open to contact with any resulting child and also willing to have contact with egg donor.
- Joint counselling covered use and storage of embryos, issues related to consent. The parties all agree on issues regarding a child's genetic origins, and ongoing contact with donors and between families in the future.
- All parties have declared they would maintain a relationship that would allow for any child that the recipient woman has from this donation to have knowledge of the donors and their families. Being resident in New Zealand makes this easier although if any of the parties were to move overseas there is capacity to maintain their relationship virtually.

- The Committee noted that cross cultural issues were not discussed within the reports and discussed how it might respond to the gap identified in the reports.
- The Committee noted that it would like to know that the parties have considered the implications for cultural identity from the perspective of the potential child. In particular, the Committee would like to see that there has been acknowledgement of the future child's right to whakapapa and that it exists independently of their parents. ECART would like to see that the parties have considered how they might approach this with the potential child and what plans they might put in place for that to happen.

Decision

The Committee decided to **approve** this application subject to the Committee receiving a counselling update prior to commencing treatment confirming that the parties have considered the implications of this reproductive procedure for cultural identity from the perspective of the child.

Actions

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

11. Application E23/025 for donation of sperm between certain family members

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:

- In this intended donation of sperm between certain family members, the gamete donor is the husband of the recipient partner's sister (GD is RP's brother-in-law). While the donation does not preserve the recipient partner's genetic connection with a resultant child it is seen to deepen the connection between the two families which is already close. There will be a genetic connection between the gamete donor's children and any resulting children born in the recipient couple's family.
- The reports note there are no social or intergenerational issues associated with the intended procedure that could potentially impact on the well-being of any of the parties, and especially any resulting child. The legalities of gamete donation in New Zealand have been discussed.
- The donor couple offered to help the recipient couple having been closely aware of their fertility journey and they describe their motivation to donate as wanting to help the recipient couple have their own family.
- The recipient partner has unexplained infertility and the recipient couple have had a number of fertility treatments without success, so sperm donation has been medically advised to help them start their family.
- Embryos will be created using the recipient woman's eggs. The risks of egg collection and how they can be minimised have been explained to her and it is noted in her medical report that she has not been at risk of OHSS in the past.

- Sharing of information. They have declared that the relationships between the two families will be known and maintained. All parties have declared plans for openness and have been clear they will tell a child from a young age about their conception story and the role the gamete donor played. The donor couple's children will also be supported to understand his role and their biological relationship to any resultant child. The gamete donor's partner is a foreign national, but the couple reside in New Zealand.

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.

12. Application E23/026 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 research on gametes and non-viable embryos* and the principles of the HART Act 2004.

Dr Simon McDowell declared a conflict of interest and the Committee agreed that he would not take part in the decision-making for this application.

- The intending mother has a long history of failed fertility treatments and surrogacy is now the recommended pathway to offer the intending parents the best chance to begin their family.
- The birth mother is a long-term friend of the intending parents. The birth parents have children and consider their family complete. The birth mother experienced uncomplicated previous pregnancies and labours. The birth mother has been informed of the risks of carrying a pregnancy as a surrogate. The Committee supports the recommendation for a planned hospital birth given the potential risks set out in the report.
- The birth parents have been open with their close family members, including their eldest child, about the proposed surrogacy and this plan has been met with support.
- The intending parents are currently living overseas with the intention to move back to New Zealand in the future. Embryos have already been created with the intending parents' gametes and will be transported to New Zealand to begin treatment. The intending parents plan to be in New Zealand during and following the treatment and intend to return overseas after the adoption order has been signed.
- The intending mother was open about her mental health history and about how it is currently well managed.
- Both intending parents and birth parents intend to be open with the potential child about their origins. Both parties are long-term friends and expect to continue regular contact, with the birth parents having an aunt and uncle role in the potential child's life.

- The intending parents and birth parents have discussed potential termination of pregnancy and agree that they will place the birth mother's health at the forefront of their decision making. They acknowledge that the birth mother ultimately has the legal right to make decisions around termination.
- Both parties have received independent legal advice and have been advised of their rights in relation to adoption. Oranga Tamariki has approved in principle an adoption order for this application.

Decision

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

Actions

Secretariat to draft a letter from the Chair to the researchers informing the Coordinating Investigator and HDEC of the committee's decision.

13. Application E23/027 for surrogacy involving an assisted reproductive procedure with egg donation

Simon McDowell 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.

Dr Emily Liu declared a conflict of interest and the Committee agreed that she would not take part in the decision-making for this application.

Issues discussed included:

- The intending mother had an emergency hysterectomy following a previous labour and is therefore unable to carry a pregnancy. The intending mother also has a very low ovarian reserve after having an ovary removed during the same procedure and requires an egg donor.
- The intending parents have one child together and since then they have struggled to conceive. They are having one last attempt of IVF using their own gametes before the egg donor starts treatment, but have been informed of the low chance of success.
- The birth mother is a relative of the intending partner. The birth mother had complications in her first pregnancy and needed intervention to deliver the baby. Her subsequent pregnancies have been uncomplicated. The birth mother has been advised of the increased risk of carrying a pregnancy at a higher maternal age and aims to lose weight prior to the embryo transfer.
- The birth mother's health history included disclosure of her post-partum mental health history following the birth of her first child and her subsequent mental health history and how this has been managed. The intending parents are supportive of the birth mother's plan to take a low dose of medication during the later stages of pregnancy if needed.
- The egg donor is a friend of the intending parents. She has no children and no intention of having children for the foreseeable future. She has been informed of the risks of egg collection and is aware that she can withdraw her consent up until fertilisation.

- The egg donor has a family history of a condition. Full information about whether there is a genetic linkage was not available at the time the application was submitted. She currently has no symptoms that would indicate she has the condition and has sought genetic advice and, a diagnostic genetic test would need to be done to investigate whether the condition is hereditary. The intending parents have been informed of this. The Committee noted the importance of this and the need for the intending parents be fully informed of the impact of the condition and of any risk of the potential child developing the condition before any treatment goes ahead.
- The intending parents have discussed their surrogacy plan with their families and close friends, who have been supportive. The birth parents intend to tell their families about the arrangement once there is an established pregnancy.
- All parties intend to be open with the potential child about their conception story. The intending parents anticipate continuing their current level of regular contact with the egg donor with the opportunity for this to increase as a relationship between the egg donor and any resultant child develops.
- The intending parents and birth parents have discussed potential termination of the pregnancy and recognise that the decision ultimately lies with the birth mother.
- Both the intending parents and birth parents have sought independent legal advice and the intending parents have received preliminary approval from Oranga Tamariki.

Decision

The Committee agreed to **approve** the surrogacy with the intending parent's own gametes on the condition that the surrogate agrees, when pregnant, to referral for obstetric review.

The Committee agreed to **defer** the surrogacy with the egg donation until a diagnostic test is done to determine whether the condition in the egg donor's family history is hereditary and until the intending parents receive genetic counselling if it is.

Actions

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

14. Application E23/028 for surrogacy involving an assisted reproductive procedure

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.

Dr Simon McDowell declared a conflict of interest and the Committee agreed that he would not take part in the decision-making for this application.

Issues discussed included:

- The intending mother has a history of recurrent implantation failure and now requires a surrogate for the best chance to conceive. The intending parents have embryos already created to use for treatment.
- The birth parents met the intending parents through a social media page and have formed a good relationship with them. The birth parents have children together and consider their family complete. Although the birth mother developed pre-eclampsia during her first pregnancy, the resulting birth occurred without any complications. Her other pregnancies and labours were uncomplicated.
- The intending mother has disclosed her mental health history which is currently well-managed. The Committee agreed that the birth mother had been open about her history and supported the psychologist recommendation that she attend monthly psychological health check-in sessions.
- Both parties intend to have regular contact during and after the pregnancy. In the future, the relationship between their current children and any potential child would be one of cousins and the birth parents would have an aunt and uncle relationship with the potential child.
- The intending parents have been open about the surrogacy plan with people close to them including their child and this has been met with support.
- The intending parents and birth parents discussed the topic of termination of pregnancy and agreed that if there was any risk to the health of the birth mother all would support the termination of the pregnancy. The intending parents stated that they would accept and love any future child even if born with a disability. They recognise that the decision to terminate legally lies with the birth mother.
- Both parties received independent legal advice and attained approval for adoption in principle from Oranga Tamariki.

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.

15. Application E20/82 for creation of embryos from donated eggs and donated sperm

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:

- ECART approved this application in 2020. A child was born in 2021 and now the recipient woman would like to try for a second child using the same embryos. The recipient woman intends to use these embryos in the latter part of 2023 after the expiry date for the original ECART approval and therefore requires an extension to the ECART approval.
- The Committee supports the recommendation from the original application that the recipient woman receive obstetric care should a pregnancy be established.

Decision

The Committee agreed to **approve** this application and supports the original clinical recommendation that the recipient woman should have obstetric care if a pregnancy is established.

Actions

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

16. Consideration of extended storage applications**Meeting close**

Confirmation of next meeting on Monday, 3 April 2023.

Confirmation of ECART member in attendance at next ACART meeting on Thursday, 27 April 2023. Jeanne Snelling to attend.