

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

11 April 2024

Held online on 11 April 2024

In Attendance

Jeanne Snelling	Chairperson
Analosa Veukiso-Ulugia	Member
Angela Ballantyne	Member
Emily Liu	Member
Jude Charlton	Member
Lana Stockman	Member
Mania Maniapoto-Ngaia	Member
Mike Legge	Member
Peter Le Cren	Member
Richard Ngatai	Member
Simon McDowell	Member

Neuton Lambert ACART member in attendance

ECART Secretariat

Apologies

Annabel Ahuriri-Driscoll Member

1. Welcome

The Chair opened the meeting and welcomed all in attendance.

2. Karakia

Analosa Veukiso-Ulugia led the Karakia.

3. Conflicts of Interest

E24/073 - Dr Emily Liu declared a conflict of interest and did not take part in the decision making for this application.

E24/080, E24/084 – Dr Simon McDowell declared a conflict of interest and did not take part in the decision making for these applications.

4. Confirmation of minutes from previous meetings

The minutes from the 19th February 2024 meeting were confirmed.

5. Application E24/073 for embryo donation for reproductive purposes

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:

- This is a planned embryo donation between two couples who are New Zealanders of Indian and Fijian Indian ethnicity. The couples have been matched for embryo donation with clinic assistance and did not know each other before the intended arrangement was proposed.
- There is a clear medical reason for the need for donated eggs and otherwise the intending mother is in good health. The IPs have considered egg donation but have not been able to find a donor and, they consider their chances of finding a donor to be slim. They have also faced the extra challenge of finding a suitable ethnic and cultural match, which the donor couple meet for them.
- The counselling report for the intending parents notes the counsellor is satisfied that the intended embryo donation procedure is not being used for social or financial gain. The intending parents wish to complete their family and are of the view that the intended donation offers them the best opportunity to do this.
- The Committee discussed the relationships described between the parties and how they will safeguard the well-being of all including existing and potential children. Both parties have declared intentions to be open with the potential child about their genetic origins and to support them to learn about the donor couple's culture and the role the donor couple played in their conception story. The intending parents report they have discussed the proposed donation on many occasions with their child who is excited about the prospect of having a sibling. The intending parents are open to future contact with the donor parents and to liaise with the clinic and the donors to talk about what this might look like.
- The implication of the loss of a genetic link for the intending parents has been discussed in the counselling sessions as has the well-being of all parties at the centre of the intended arrangement. All are HART register aware and have declared intentions to be open to future contact should a child/ren be born.
- The donor couple have one child born from the embryos created with the help of IVF treatment for their own use. The donor woman had to have a hysterectomy due to illness following the birth of their child. They do not want to pursue surrogacy as an option and, they want to donate to help another family who are experiencing infertility. The Committee was satisfied that the implications counselling had addressed this issue with sensitivity and that the donor couple are comfortable with their decision for another family to use their embryos and, that they have consented to this, accepting that they have completed their own family.
- The donor couple have been advised of their legal rights in relation to a potential child after transfer of an embryo and they understand that all decisions about a pregnancy would rest with the intending mother after transfer and, that the intending parents would be the legal parents of a child from birth. They have declared intentions to be open with their own child about the intended donation and they anticipate having ongoing communication and a relationship with the potential child and have thought about what that might look like.

- One of the embryo donors has some health conditions which the committee noted and discussed. It was agreed that they are commonly shared medical issues for which there is no significant medical concern nor barrier to donation. The intending parents have been informed of the issues and family history and wish to proceed with the intended arrangement.
- The intending father has no medical conditions. The intended embryo donation precludes the potential child having a genetic connection to the intending parents when there could potentially be a genetic connection with their father. The Committee accepted however, the challenges of finding donors in New Zealand, especially for ethnic minorities and the length of time this can take.
- The Committee discussed whether further consideration was needed around the needs of the existing children. In particular, whether further conversations are needed about how to support the donor couple's existing child, and their concern she would want a sibling. However, the Committee agreed that the counselling sessions had adequately addressed this point and it would not request further 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.

6. Application E24/074 for embryo donation for reproductive purposes

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:

- The intending mother has had multiple unsuccessful rounds of IVF and an unsuccessful pregnancy. She has low ovarian reserve as well as advanced maternal age. Egg donation was recommended; however, the intending parents were unable to find an egg donor. Embryo donation now gives the best chance for the intending parents to begin their family.
- The intending mother has been counselled regarding the increased obstetric risks associated with advanced maternal age and embryo donation. The Committee noted that the obstetric report appropriately informed the intending mother of the risks associated with the procedure.
- The donor couple have children and consider their family complete. They have two remaining embryos that they wish to donate to the intending parents. The embryo donors have been considering donating for some time and are motivated to do so through having experienced fertility difficulties themselves.
- One of the donors has a family history of short-sightedness and glaucoma. No other genetic conditions were identified. This information has been shared with the intending parents and they are happy to proceed.

- The intending parents were shown the donor couple's profile and felt they could be a positive match. The intending parents and donor couple met during their joint counselling session facilitated by the clinic counsellors.
- The intending parents have informed their family and they are supportive of the intended arrangement. The intending parents have supportive friends in New Zealand and their family is willing to travel to help them if they have a child from this arrangement.
- The children of the donor couple were too young to be involved in counselling, but the donors have been informed that counselling will be available for them and their family in the future if needed.
- Both parties have been informed that the donor couple can withdraw their consent any time before the embryo transfer and that once an embryo is transferred to the intending mother the intending parents will become the legal guardians of the foetus. They have also been informed that after a live birth any remaining stored embryos cannot be on-donated due to the two-family limit.
- The intending parents plan on being open with a resulting child and speaking with them as early as possible about the donation. The donor couple have no expectations of involvement with the potential child without the intending parents' consent but are open to sharing their cultural heritage with any potential child.
- The intending parents are of Asian descent. The donor couple have Chinese and Malaysian heritage. The Committee noted that cultural implications for the child were considered in the counselling reports but that more in-depth discussion could have been had about how this could impact the child in the future. The Committee would encourage the parties to consider what support could be provided to help the child understand their diverse cultural heritage.

Decision

The Committee agreed to **approve** this application. The Committee would encourage the parties to consider the cultural implications of the diverse cultural background for any resulting child and how to support the child with their understanding of this.

Actions

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

7. Application E24/075 for embryo donation for reproductive purposes

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:

- This is a planned embryo donation between two couples who are friends. The intending mother is American but resides permanently in New Zealand. The donor couple are close friends of the intending parents who live in the USA and who had the embryos they are intending to donate created for their own IVF treatment in the USA. The donor couple have completed their own family. The

intending parents share a trusting relationship with the donor couple and their children and, they share similarities in cultures and world views.

- The intending parents don't currently have children and the medical opinion is that donated gametes will increase their chances of having a child. There is a question of whether the intended embryo donation is the best or only opportunity for the intending parents. Their medical report is light on describing whether they sought an egg donor although it does state that they have been on the egg donor waiting list for a couple of years and, the report also lists extensive unsuccessful treatment for the couple when they used their own gametes.
- The Committee noted the donor couple's medical history and that the medical report for the donor couple notes a maternal family history of ADHD and a paternal family history of schizophrenia (family history rather than a condition an intending parent has); depression; breast and thyroid cancer. The Committee discussed whether the support mechanisms outlined were enough given what has been going on medically for the donors. They agreed however, that the conditions when looked at individually, are not significant enough to preclude approving the donation. The medical information has been shared with the intending parents who were already aware of the history given their long-standing friendship. Section 3.17 of the donor couple's report notes that the intending parents feel reassured by the genetic screening of the embryos (this was done in the States when the embryos were created)
- The Committee noted the existing relationships and how they might safeguard the well-being of all parties including potential child/ren. The intending parents believe that the close and long-term relationship they share with the donor couple creates a strong opportunity for a resulting child/ren to know their genetic parents and have an ongoing relationship with them and their biological siblings. The counselling reports set out the discussion had around ways they will foster their relationships including visits to the USA. In acknowledging that there will be full siblings on opposite sides of the world, the Committee noted that it would hope there is a strong commitment on both sides to help facilitate the building of relationships between the biological siblings, acknowledging that it is in the best interests of children to actively facilitate relationships.
- Police vetting is complete for intending parents and no concerns have been stated.
- The embryos for use in the intending parents' treatment will be imported from offshore and there are no concerns that their importation and use will not comply with New Zealand's regulatory requirements.

Decision

The committee agreed to **approve** this application and, to note in its decision letter that if successful, the arrangement will see full siblings in two countries. The Committee wished to encourage the intending parents to consider ways they can facilitate contact between the children as much as possible.

Actions

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

8. Application E24/076 for surrogacy involving an assisted reproductive procedure

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 intending parents have a history of multiple unexplained implantation failure. The intending parents have remaining embryos they wish to use in a surrogacy arrangement to begin their family.
- The surrogate and her partner have children and consider their family complete. The surrogate has been counselled regarding the increased obstetric risks associated with a surrogate pregnancy. The surrogate had hyperemesis in her previous pregnancies and a traumatic delivery of her first child due to circumstances at the time. The surrogate went on medication to help cope with the trauma and the delivery of her next child was uncomplicated.
- The intending parents and surrogate couple are close friends, and the surrogate made the offer of surrogacy after seeing the intending parents' fertility struggles. The parties have discussed the difficulties with hyperemesis in the surrogate's previous pregnancies and how the intending parents could support the surrogate couple during a pregnancy. The Committee noted that there had been extensive discussion about what support would be available for the surrogate both in counselling and in the letter from the surrogate couple.
- Both parties intend to continue the relationship between their two families after any surrogacy arrangement and to be open with any resulting child about their conception story.
- Both parties have been informed that the decision to terminate a pregnancy lies with the surrogate. They agreed that they would consider termination if a pregnancy posed a significant risk to the surrogate's life or if the child had a condition that would have a significant impact on quality of life.
- The Committee noted that the surrogate parents had specifically requested that the intending parents name testamentary guardians in the event that they were unable to care for a child born of this arrangement. The Committee agreed that it was not clear from the legal reports whether guardians had been appointed and would recommend that this happens before beginning any treatment.
- The Committee discussed whether the intended arrangement meets the threshold for the 'best or only' opportunity for the intending parents to have a child. The Committee agreed that not enough information had been provided to ascertain whether surrogacy was the best option in the circumstances, such as whether the embryos were aneuploid or not. The Committee noted that embryo donation was suggested as another option which indicated that there may be an issue with the embryos, but this was not clear in the medical report. The Committee agreed that a medical opinion from another fertility specialist would help determine whether surrogacy is the best or only option.

Decision

The Committee agreed to **defer** this application and ask that the intending parents provide ECART with a second independent opinion from a fertility specialist as to why surrogacy is the best or only option for the intending parents.

Specifically, the Committee requests that the medical opinion addressed why surrogacy is advised and provides assurance that the intending parents have been informed of all of their options.

Any subsequent approval would also be conditional on the intending parents identifying testamentary guardians for a future child.

Actions

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

9. Application E24/077 for surrogacy involving an assisted reproductive procedure

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 parents are citizens of Ireland, where they live. The couples at the centre of this intended arrangement share a close and longstanding friendship and view each other as good friends who trust each other implicitly.
- The medical information before the committee for the intending parents relies heavily on a high-level report from their fertility clinic in Ireland and states that the couple have unexplained infertility. Other significant history noted is that the intending mother is a carrier of a gene mutation that has led to her having a double mastectomy due to invasive carcinoma. She is currently well on medication and her health care team have a plan in place to monitor her care so that they can intervene early if needed.
- The medical report submitted with this application notes that the couple might want to consider PGD for a gene as this testing could help to decrease the number of cycles and likelihood of transmission to the potential child. Their NZ-based fertility specialist notes in the medical report that they are "Hopeful that alternative family building options have been discussed previously."
- The surrogate has a medical condition that has been assessed by a specialist who sees no contraindication for pregnancy. She had complications with the birth of her child, but counselling reports note that she has received medical reassurance that the complications experienced during her child's pregnancy present a minimal degree of risk to this potential pregnancy and, she has been advised that she will be conservatively cared for by a specialist obstetrician.
- The surrogate parents have not yet told their family about the intended arrangement, but the surrogate's workplace knows and is supportive and has indicated that sick leave is available for her if needed.
- The counselling sessions have canvassed treatment, pregnancy, pre, and post-birth plans and both couples have similar expectations and there is broad consistency in those areas.

- The committee discussed the intending mother’s clinical prognosis and whether there might be a substantive risk of a health crisis in the near future. The Committee’s concerns were allayed by the knowledge that it seems the intending mother had cancer detected at an early stage and her prognosis is good. A plan is in place that reduce the risks to her, and much knowledge exists about her condition.
- In terms of risk to the potential child, if the intending parents decide not to have PGD testing before embryo transfer, there is the option for testing once the child is older and, if the child carries the gene mutation, to have a monitoring plan established with their health care team. While the committee agreed that the intending parents choosing not to have PGD before transfer would not be a barrier to approving this application, it also agreed that it is important for the parties, including the surrogate couple to have more information about the option of PGD and have more discussion about whether to use it or not.
- The intending parents have a family member in the UK who has offered to be a surrogate, but it is unclear if this arrangement could proceed due to complexities within Ireland as surrogacy is not regulated and, a clinic in Ireland that provides fertility services indicated they won’t accept the embryos due to “embryology incompatibility”.
- The Committee noted that a surrogacy arrangement in Ireland could have obvious advantages for the intending parents and the application has insufficient information about why they are not waiting to pursue an arrangement there. If the couple find they have the option to pursue a surrogacy arrangement in Ireland or the UK, this intended arrangement in New Zealand would not be their only option. The Committee noted that while there is nothing inherently prohibitive about an international surrogacy arrangement, it is significant that there may be an alternative surrogate available who is a close family member in the UK. The Committee discussed whether to seek a better understanding as to why surrogacy in the UK is not the intending parents’ preferred option.
- The intending parents have engaged lawyers in New Zealand and Ireland for legal advice and guidance around the adoption process. The two countries’ legal systems are not aligned, so the intending parents have decided in line with legal advice, that they will travel to NZ for the birth and remain here until an adoption takes place. They intend to contact Oranga Tamariki when a pregnancy is confirmed so the appropriate processes can be followed and have agreed this with the surrogate parents.
- The intending parents have received independent legal advice from Irish and New Zealand lawyers. The legal report submitted with this application describes the process for returning the child to Ireland. The Committee noted that the consent of the surrogate is required for the adoption process in Ireland. Court orders in New Zealand do not impact the surrogate’s continuing legal status of surrogate as guardian of the child in Ireland. The intending parents appear to have been adequately informed and advised but the surrogate herself has not received independent advice from an Irish lawyer.
- The surrogate has received independent legal advice from a lawyer in New Zealand. The Committee noted however, that the implications in Ireland are distinct to the implications in New Zealand. For example, it appears that in Ireland, the surrogate’s legal obligations to the child continue up to the point that the intending parents adopt the child there. Therefore, the Committee

would like to see that the surrogate has received advice about the Irish system to check that she has a good understanding of what the implications are for her.

Decision

The Committee agreed to **defer** this application to:

- Request further information from the intending parents regarding the status of their proposed surrogacy process in the UK, and why it is not their preferred option at this point.
- Seek confirmation that the surrogate in this intended arrangement has received advice from an Irish lawyer about the implications for her and the potential child or surrogacy with intended adoption in Ireland.
- In order to approve an application for surrogacy the Committee requires evidence of approval-in-principle for an adoption order from Oranga Tamariki. The Committee is of the view that the intending parents need to engage with Oranga Tamariki prior to establishing a pregnancy particularly given the additional complications with adoption in this case.

Actions

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

10. Application E24/078 for the creation of embryos from donated eggs and donated sperm

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:

- The intending parents have one adopted child. They have had extensive fertility treatment using their own gametes as well as donor gametes, without success. The use of donated eggs and sperm has now been recommended as the best option for the intending parents to have a child.
- The intending mother has been informed of the increased obstetric risks associated with advanced maternal age.
- The egg donor is a clinic donor who wishes to donate for altruistic purposes and has been informed of the risks of egg collection. The egg donor is a carrier for one recessive genetic condition, which has been disclosed to the intending parents.
- The sperm donor is a clinic donor who also wishes to donate for altruistic purposes. The sperm donor is a carrier for one recessive genetic condition which has been disclosed to the intending parents. The condition is different to the condition carried by the egg donor so there is no risk of either condition being passed on to a potential child. The sperm donor has a family history of mental health disorders, which has also been disclosed to the intending parents.
- There is no evidence of undue influence on any party. The gamete donors were connected with the intending parents through a profile exchange. The parties

chose not to meet before the donation, but both gamete donors are happy to be contacted by the intending parents if requested and are also open to future contact with any resulting child.

- The intending parents have informed their family and friends about the intended arrangement, and this has been met with offers of support.

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.

11. Application E24/079 for surrogacy involving an assisted reproductive procedure

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.

Issues discussed included:

- There is a clear medical reason for surrogacy offering the intending parents the best and only option to complete their family. They have a limited number of suitable embryos created from their own gametes that are available for transfer to their surrogate in this intended surrogacy arrangement.
- The Committee discussed the surrogate's pregnancy and birthing history and the important considerations for her in carrying a surrogate pregnancy. Her medical report notes a previous experience of post-natal depression and, that her previous c-section delivery puts her at risk of placenta accreta (1%), without placenta accreta, placenta previa (0.2%) increasing to 11% if placenta previa is also present. However, there was sufficient information to satisfy the Committee that any risks can be managed with antenatal care and obstetric care is planned should a pregnancy be established. The Committee noted she has been well counselled about the risks of a surrogacy pregnancy.
- The surrogate, who identifies as New Zealand Māori and Samoan, is a childhood friend of the intending mother and the two women grew up living close by one another. Their families, including each other's parents, have all remained close and the surrogate's sister and IM's brother are married. The surrogate sees her role in this arrangement as aligned with a Whāngai arrangement and is described as speaking openly about it being an easy and straightforward decision for her to help her friend in need.
- The counselling reports canvas discussion around treatment, pregnancy plans, and care for the surrogate. They also clearly set out the cultural journey for the surrogate and in this context, what specific cultural considerations and support are important for her both through pregnancy and post-partum.
- The parties have been made aware in counselling sessions that any final decision regarding the termination of a pregnancy rests solely with the surrogate. This has been discussed between parties and the IPs are comfortable with the views of the surrogate in this regard.

- Both parties have sought independent legal advice and have been counselled on the legal framework for surrogacy arrangements in New Zealand. The intending parents intend to adopt any child born of this arrangement and they have received approval for an adoption order in principle from Oranga Tamariki.

Decision

The Committee agreed to **approve** this application and supported the decision for the surrogate, once a pregnancy is established, to have specialist obstetric care.

Actions

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

12. Application E24/080 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 chronic health conditions that increase the risk of complications during pregnancy. The indication for surrogacy and significant risks to the intending mother's health were clearly outlined in the medical report and supported with specialist reports. The Committee agreed that surrogacy was the best option for the intending parents to begin their family.
- The intending parents have undergone IVF and created embryos. The intending mother is currently medically stable.
- The surrogate is single with children and considers her family complete. She suffered from hyperemesis during her previous pregnancies and required hospital admissions to manage this. The surrogate's obstetric report noted no contraindications for surrogacy but recommended obstetric care during a pregnancy.
- The intending parents met the surrogate on an online platform and have met with each other multiple times over the past year. Both parties would like any resultant child to know the role the surrogate played in their conception story and for their relationship to continue after the surrogacy.
- The intending parents have a good support network of family and friends around them. They have informed them of the potential arrangement, and this has been met with support.
- The surrogate has informed her children of the intended arrangement and they are supportive of it. The surrogate has also informed her previous partner and his parents, and they are willing to support her with childcare during any pregnancy. The Committee noted the consideration of the support available to the surrogate in the surrogate support plan.
- The Committee noted that given the hyperemesis she experienced in her previous pregnancies, the surrogate's children may carry some of the burden of responsibility during the surrogacy arrangement, particularly the oldest children. The Committee would encourage the surrogate to consider how the

children will experience the surrogacy process and how to support them once the process is underway.

- Both parties feel they share similar views around termination of pregnancy with the surrogate's health and safety being the priority, as well as the child's quality of life. The parties have been informed that any decision around termination would ultimately lie with the surrogate.
- Both parties received independent legal advice. The Committee noted that the legal report for the surrogate did not discuss wills or testamentary guardianship.
- The intending parents have received approval for an adoption order in principle from Oranga Tamariki.

Decision

The Committee agreed to **approve** this application on the condition that evidence is provided to ECART that the surrogate has received legal advice regarding the importance of wills and testamentary guardianship. ECART also supports the surrogate receiving obstetric care during the pregnancy.

The Committee recommends that the parties consider how they might support the surrogate's children in this surrogacy process and encourages discussion about this.

Actions

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

13. Application E24/081 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 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 a radical hysterectomy following the birth of the intending parents' child and surrogacy offers them the best and only option of using their remaining embryos to have a full sibling for their child and complete their family.
- The intending mother's sister has offered to act as a surrogate for the intending parents. The reports describe a strong bond between the sisters and regular contact and no evidence of coercion.
- The Committee discussed her pregnancy and birthing history and the important considerations for her and carrying a surrogacy pregnancy. Given her history of caesarean-section delivery and the risks this creates in any future pregnancy, specialist obstetric care during pregnancy has been advised. Her fertility specialist has discussed the risks with her, and an obstetric report is provided with the application that sets out the risks and discussion about how the risks will be mitigated. The intending parents have seen this report.
- Both parties have received independent legal advice and understand that surrogacy arrangements are not legally enforceable, that the Status of Children Act affords the surrogate mother legal parenthood of a baby at birth and that the intending parents will need to adopt the child after birth. The parties have also received independent legal advice about dispute resolution, the

requirements of section 14 of the HART Act, and wills and testamentary guardianship in the unlikely event that the intending parents are unable to care for the child.

- There are no concerns that the surrogate would not relinquish a baby. The intending parents intend to adopt any child born of this intended arrangement and have received approval-in-principle for an adoption order from Oranga Tamariki.
- Treatment, pregnancy, and postpartum plans have been discussed during counselling sessions and the parties appear to be on the same page and broadly aligned in their thinking. The parties have discussed termination of pregnancy and are aligned with the surrogate in their thinking. They are aware that any decisions about the pregnancy are legally the surrogates to make and, they consider her health as paramount. A surrogacy support plan has been provided with this application.
- There have been declared intentions by all parties to be open with existing and potential children about the role the surrogate played, and the existing relationships support this openness now and into the future. They are aware of the HART Act requirements for information sharing.

Decision

The Committee agreed to **approve** this application and supported the recommendation of obstetric care for the surrogate.

Actions

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

14. Application E24/082 for surrogacy involving an assisted reproductive procedure

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.

Issues discussed included:

- The intending mother had a hysterectomy following a medical diagnosis. Before this procedure, the intending parents had an IVF cycle to create embryos. Surrogacy is now the only option for the intending parents to have a genetically related child.
- The intending mother has a good prognosis and there are no concerns from her doctor about her medical condition. The intending parents have no hereditary genetic disorders.
- The surrogate couple have children and consider their family complete. The surrogate had previous uncomplicated pregnancies, apart from some sciatica. The surrogate plans to have a caesarean section due to extensive scar tissue and complications in previous deliveries and to have obstetric care.
- The intending mother and surrogate are friends from school and have remained close friends since then. The surrogate supported the intending mother through her treatment and offered to be the intending parents' surrogate.

- The intending couple's parents are supportive of the arrangement. The intending parents plan to tell their wider family and friends when they are further along with the surrogacy process.
- The surrogate and surrogate partner's families live nearby and have offered to provide support during any pregnancy. The intending parents have good relationships with the surrogate couple's children and have also offered childcare support.
- The intending parents plan to be open with any resulting child about their conception story early on in their life. The intending parents would support a relationship between the surrogate and resulting child.
- Both parties have been informed that any decision around termination would legally lie with the surrogate. The parties agreed that they would support a termination if a pregnancy posed a significant risk to the surrogate's health or if an abnormality that was not compatible with life was found in the child.
- Both parties received independent legal advice, including advice regarding wills and testamentary guardianship.
- The intending parents have received approval for an adoption order in principle from Oranga Tamariki.

Decision

The Committee agreed to **approve** this application and support specialist obstetric care for the surrogate during the pregnancy.

Actions

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

15. Application E24/083 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.

Issues discussed included:

- The intending parents in this application for surrogacy with egg donation are a male couple who have had another application for surrogacy with egg donation approved by ECART. In this application both the egg donor and the surrogate are different to those in the previously approved application.
- In the previously approved application, ECART was advised that IP1 and the egg donor were carriers of a genetic condition. ECART approval at that time was conditional on the use of either embryos created with IP2's gametes or any embryos created with IP1's gametes that had undergone PGD testing to rule out the condition.
- The reason for this second application is that the previous surrogate withdrew following planned embryo transfers that had to be cancelled. There are embryos created from both intending parents' gametes and the previous egg donors' gametes remaining that could be used including those where testing

excludes the identified medical condition. The intending parents also have embryos created from the egg donor in this application and there are no concerns in relation to genetic conditions.

- The Committee noted that there are therefore potentially a range of possible genetic relationships between the intended parents, donors and potential child/ren. Should ECART approve this application, the intending parents plan on using embryos created from their gametes and the gamete donor in this application (GD2) only and if more than one child is born, they would be half siblings. In any of the scenarios outlined, at least one of the intending parents will be a genetic parent to the child born. In terms of whether they are half siblings or not, genetically relatedness will depend on which embryos are used in treatment.
- The plan is to use the embryos created with the eggs of the donor in this application before the committee. If the treatment is not successful, they would attempt further treatment with the embryos created from their first egg donor, which ECART has already approved. An updated counselling report for the GD1 was provided with this application and she is aware that the embryos created with GD2's application will be used first in this arrangement. She has also consented to her embryos being used if needed and has been made aware on the updated guidelines that allow for on-donation of embryos.
- The surrogate is aware that PGD testing of some of the embryos created with GD1's gametes would be needed prior to use should the embryos created with GD2's gametes not be successful in treatment.
- The Committee was satisfied that this intended arrangement provides the intending parents with the best opportunity to have children who are genetically related to them as adoption is their only other option.
- The intending parents met their donor and surrogate through online social media platforms. They have known their surrogate almost a year and have connected over this time and have met her and her children in person. They say they feel a connection to their surrogate outside of this intended arrangement. They have remained in contact with their first gamete donor even though they are not intending at this stage to use the embryos created with her gametes. They wish to remain in contact with her in the future regardless of whether or not a pregnancy is established and a child born from the embryos created from her gametes.
- The surrogate's medical report notes that she has had previous uncomplicated pregnancies and births. She is now of advanced maternal age and specialist obstetric care is recommended.
- The intended parents talked at length during counselling sessions about how to best support the surrogate and especially if she is unwell, her needs post-partum and those of her family, and the surrogate's rights to make decisions about the pregnancy. They are taking guidance from the surrogate about her preferred lead maternity carer. Should the treatment be successful, and a pregnancy established, the surrogate describes a strong support network that she can reach out to for help.
- The reports provide no evidence of coercion and outline the intending parents have a good understanding of the HART Act information sharing requirements. Their plan is to be open with the potential child/ren about the roles the donor

and surrogate played, and they have talked about future plans of contact with both donors and the surrogate and her family.

- The intending parents intend to formally adopt any child born of this arrangement and have engaged with Oranga Tamariki who have provided a letter approving an adoption order in principle.
- There is complexity in the intended plan in that if more than one child is born, while each will have a genetic relationship to one parent, they may not be genetically related to each other. While the number of parties involved create some complexity, the committee could see that while complicated there is no reason to decline on these grounds.
- The recommendation for the surrogate to have obstetric care is consistent across the documents.

Decision

The Committee agreed that it would **approve** this application conditional on the surrogate agreeing, when pregnant, to be referred for specialist obstetric care.

Actions

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

16. Application E24/084 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 had multiple IVF cycles with poor responses. The intending couple later tried IVF overseas and created embryos, however, the pregnancy unfortunately ended in miscarriage. The intending mother had a surgical procedure overseas which resulted in perforation of her uterus and the considerable scarring means that she can no longer carry a pregnancy. Surrogacy with egg donation has now been recommended as the best opportunity for the intending parents to begin their family.
- The egg donor is a clinic donor and was informed of the risks of egg collection prior to treatment. The egg donor has children and considers her family complete. Four embryos have already been created using the egg donor's eggs and the intending father's sperm.
- The embryos will need to be tested prior to transfer as the intending father has possible chromosomal rearrangement. If these embryos were not suitable to transfer, then they may need to be discarded.
- The intending parents met the surrogate couple through an online platform. The parties live a few hours away from each other and have met in person a couple of times.
The surrogate and her partner have children from previous relationships and consider their family complete. The surrogate's previous pregnancies and

deliveries were uncomplicated. The surrogate was informed of the risks of carrying a surrogate pregnancy.

- The surrogate has told some of her children about the intended arrangement and they are supportive of it. The Committee noted that the surrogate has not told her other child about the arrangement. The surrogate described a period of low mood that was situational after the birth of her first child. The surrogate intends to have counselling with her children once they are further along with the surrogacy arrangement and the surrogate's partner plans to inform his children once a surrogacy is approved.
- The surrogate has a good support network to help during any pregnancy. The intending parents have also offered to support the surrogate couple during a pregnancy, including staying with or near the surrogate couple in the final stages of pregnancy to provide practical support.
- The surrogate plans to share her surrogacy experience online and is clear that she will not share any details about the intending parents. She would also consult the intending parents if any traditional media approached her.
- The intending parents are Chinese, the surrogate parents are New Zealand/European, and the egg donor is Latin American. The egg donor provided her contact details and is happy for any resultant child to contact her to learn more about their genetic heritage in the future. The intending parents will also support any resulting child to get to know the surrogate couple and to help them understand the role the surrogate and egg donor played in their conception story.
- Both parties have been informed that any decision to terminate a pregnancy legally lies with the surrogate. The parties discussed this in joint counselling and the intending parents, surrogate, and the surrogate partner would support a termination if there was a significant risk to the surrogate's health.
- Both parties received independent legal advice, including advice regarding wills and testamentary guardianship. The intending parents are waiting to receive an adoption order from Oranga Tamariki.

Decision

The Committee agreed to **approve** this application conditional on receiving documentation from Oranga Tamariki that it has undertaken an assessment and recommends an Adoption Order following IVF surrogacy. The approval is also subject to chromosomal analysis of the four embryos given a translocation found in the intending parent (male) (PGT-SR).

Actions

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

17. Application E24/026 for the 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 considered this application in February 2024 and agreed to defer to request more information about the intending mother's current cardiac status, and what, if any, monitoring she might need for the course of her pregnancy. The Committee also sought an assurance that the intending parent has been advised of the risks and the plan of how they might be mitigated.
- A cardiologist report has been provided and advises that a cardiac MRI dated 2019 shows minimal narrowing of the distal aortic arch and their specialist opinion is that this should not have any haemodynamic effect on her pregnancy and therefore that there are no implications related to IVF or pregnancy.
- The intending mother plans to await results of another test and take advice on whether a further MRI is needed.

Decision

The Committee agreed to **approve** this application on the basis of the information provided in the clinic letter, which satisfied the Committee that a specific plan is in place for the intending mother's care.

18. Application E23/110 for the donation of sperm between family members

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 Committee considered this application in 2023 and deferred it, requesting that further counselling take place for the parties to reflect on what supports could be put in place for the potential child. The Committee also asked the parties to address how the intended donation could impact whānau relationships including their future relationships with the child.
- In its original consideration, ECART was concerned about the intergenerational implications of the arrangement for a future child. ECART agreed that further counselling could invite parties to reflect on what support could be put in place to help the future child with their experience of their conception story and, if possible, that this further counselling be facilitated by a Māori counsellor as originally requested by the donor. ECART also encouraged the parties to talk about the intended donation with their family members living in the same home given the potential child would have close relationships with these family members.
- Letters currently before the Committee include a letter from the two counsellors who facilitated further counselling, and a personal statement from all parties involved in the arrangement.
- The letter from the counsellor sets out the further discussion with the applicants about the points raised by ECART in the decision letter. The clinic noted that no Māori counsellors were available to facilitate this counselling session.
- The Committee discussed the further information provided and was satisfied that the parties had now informed everyone in the household about the intended arrangement.

- ECART discussed the sociological context in terms of the relationships between the sperm donor and his mother's partner and the risks involved with cross generational donations. The Committee was less satisfied that the parties had thoroughly explored how the arrangement would be experienced for any resulting child. The Committee noted that the child may grow up with a different view from the intending parents about the arrangement and may navigate it from a different perspective. However, ECART also acknowledged that the strong whakapapa element of the arrangement could be experienced positively.
- Given that further discussions took place between the parties and that there has now been communication with those living in the same household, the Committee agreed that the parties had overall addressed what ECART asked them to address.

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.

19. Request for continued approval of application E21/003 for embryo donation for reproductive purposes

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:

- This application was first approved in June 2021 and approval will expire in June this year. The intending parents are seeking an extension to continue treatment to grow their family.
- The embryo donation arrangement was successful, and the intending parents have a child who is in good health. The intending parents are also in good health.
- Both parties have had medical review and updated counselling. They have maintained contact and the donor couple have met the child born to the recipient couple. They have yet to tell their own children that they have a full genetic sibling in another family and are giving considered thought to when they will do this. Coincidentally, a family member of the donor man became aware of the donation. He is not expecting his family will have concerns, but the donor woman is not sure about potential reactions within her family, and this is another consideration for her in terms of the timing of telling her family. They have indicated however, that they remain firm in their intention to tell their children about the embryo donation, but they are still deciding on the right time and, their recent counselling session provided options for how they might do this.
- The lawful storage period of the embryos will end in 2025 and the embryo donors intend to apply to ECART for extended storage so that the embryos remain available to the recipient couple. The donor woman commented during the counselling session that discarding embryos would be difficult for her.

Because there are full siblings in two families and any remaining embryos could not be on-donated, the donor couple might want to revisit how they might manage that.

- The donor couple are in full support of the recipient couple to continue to use the embryos for their own treatment and for an extension to storage to allow them to do this.

Decision

The Committee agreed to **approve** an extension with the recommendation that the donor couple continue engagement with clinic counsellors for support on how to tell the existing children and share information about the embryo donation.

Actions

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

20. Request for continued approval of application E21/072 for the creation of embryos from donated eggs and donated sperm

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 Committee considered and approved this application in 2021. The applicants are now requesting an extension of approval for this application.
- In its original discussion about the application, the Committee did not identify any issues with the intended arrangement.
- The sperm donor in the original application was the recipient man's brother and the egg donor was a friend of the intending/recipient couple. The recipient couple have had a child from this arrangement and wish to try for a second pregnancy. As their approval expires in June, they are asking for an extension to continue treatment.
- The letters from the counsellors explained that the recipient parents have five remaining embryos in storage for five more years and would like the opportunity to continue treatment with these embryos by extending approval of this application.
- The letters from the counsellors for intending parents and gamete donors report a good ongoing relationship between the parties and support the extension of approval for this application.

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.

21. Request for continued approval of application E21/074 for the donation of gametes between family members

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 original application was approved in June 2021. The intended parents applied for permission to use sperm donated by the intending mother's brother-in-law.
- The pregnancies established from treatment sadly ended in miscarriage and after taking some time to have a break from treatment, the couple wish to try again. The intending parents are therefore seeking an extension to continue using the donated gametes.
- Updated counselling reports for both parties are supportive of the extension. The donor couple still very much wish to support the intending parents to have a child and the donor has consented to continued use of his donation by the intending parents.
- In the original application, the gamete donor held a firm view that the donation was to be used by the intending parents only and there was to be no on-donation. The current guidelines do not allow for on-donation without his consent.

Decision

The Committee agreed to continue 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.

22. Consideration of extended storage applications

Meeting close

Confirmation of next meeting on June 20th 2024.

Confirmation of ECART member in attendance at next ACART meeting on May 2nd 2024, Richard Ngatai.

Richard Ngatai led the closing Karakia.