

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

5 December 2024

Held online on 5 December 2024

In Attendance

Jeanne Snelling	Chairperson
Analosa Veukiso-Ulugia	Member
Angela Ballantyne	Member
Annabel Ahuriri-Driscoll	Member
Emily Liu	Member
Jude Charlton	Member
Lana Stockman	Member
Mike Legge	Member
Peter Le Cren	Member
Richard Ngatai	Member
Simon McDowell	Member
Calum Barrett	ACART member in attendance
ECART Secretariat	
Apologies	
Mania Maniapoto-Ngaia	Member

1. Welcome

The Chair opened the meeting and welcomed all in attendance.

2. Karakia

Dr Simon McDowell led the Karakia.

3. Conflicts of Interest

There were no conflicts of interest declared.

4. Confirmation of minutes from previous meetings

The minutes from the 24th October 2024 meeting were confirmed.

5. Application 21313 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 Committee was satisfied that the intended surrogacy arrangement offers the intending parents the 'best or only' opportunity to have a biological child.
- There is a within family aspect to the intended surrogacy arrangement as the surrogate is the biological sister of the intending mother. Embryos created from the intending parents gametes will be used in future fertility treatment and any child born of this arrangement will be the full genetic child of the intending parents. The surrogate will be known as the birth mother and special aunty of a child born of this arrangement.
- The surrogate's offer appears to have been made freely and there is no evidence of coercion.
- The intending parents and surrogate parents have had individual and joint counselling sessions. Those sessions have canvassed treatment, pregnancy and post pregnancy plans, relinquishment of a child and, the rights of the parties including the surrogate's right to make decisions about the pregnancy.
- The counselling reports describe a strong family network that will offer practical support to the surrogate throughout and post-pregnancy.
- The intending parents intend to adopt any child born of this arrangement and the child will be welcomed into a supportive family network that values openness. The parties have declared intentions to be transparent and open about the arrangement and the role the surrogate played.
- The parties have received independent legal advice about the legal requirements set out in the HART Act and the legal process involved in adoption of a child born of this arrangement. Oranga Tamariki has approved an adoption order in principle and the intending parents intend to have the child in their care from birth. Discussion around the making of wills and, appointing testamentary guardians in the unlikely event the intending parents could not care for a child was also evident in the legal advice.
- The surrogate couple have been adequately medically counselled about the risks of IVF treatment associated with surrogacy and a surrogacy pregnancy. There were no medical concerns noted that would contraindicate the surrogate carrying a surrogacy pregnancy.
- The Committee noted the surrogate's history of caesarean section deliveries. Whether that might pose additional risk to her and the child was not discussed in detail in the medical reports but the Committee noted that specialist obstetric care has been recommended.
- An additional specialist report was provided for the surrogate given she had experienced post-partum depression after the birth of one child. Her current situation was discussed and also the ways in which the potential surrogacy pregnancy would be managed. The specialist did not see her history as a barrier to her being a surrogate for her sister and was of the view that the surrogate is away of the support she can access to manage any issues in future.
- The Committee was satisfied that the regulatory requirements have been met and that the parties have consented as fully informed participants to the intended arrangement.

Decision

The Committee noted that there are potential uncertain medical risks for the surrogate but that she has been adequately counselled and has appropriate support. The Committee therefore agreed to **approve** this application and support the recommendation that the surrogate have regular check ins with her health care team including monthly mental health check ins.

Actions

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

6. Application 21314 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:

- The intending mother has had a previous ECART application for embryo donation approved but that arrangement did not progress due to a major social change for the donor couple who subsequently withdrew their consent to the donation.
- In this application for embryo donation, the donor couple are a new couple who are clinic donors who have been matched with the intending mother. They have completed their own family and the embryos they wish to donate were created from IVF treatment with their gametes.
- The donor couple have had genetic screening with no common recessive genes found and their medical report describes them as healthy with no medical conditions of concern.
- The parties were unknown to each other before being matched but have met during this process including at joint counselling sessions. They have declared intentions to be open with any child born of the donation as early as possible noting they value the concept of openness and of a child knowing their biological origin and conception story.
- The intending mother has been open with close friends and family about the intended donation and supportive social networks are described in the reports submitted with this application.
- Both parties have had individual and joint implications counselling sessions that have met the donation guidelines and other relevant regulatory requirements.
- The intending mother has significant medical issues that mean she cannot use her own gametes. She is a single person and the fertility treatment options open to her are either embryo donation or double gamete donation. She has indicated in counselling sessions that she prefers the option of embryo donation as she would find it easier to be connected to one family rather than two donor families.
- The intending mother has significant health issues due to a congenital medical condition. Specialist reports submitted with the application show she has

engaged with medical specialists over time, and note that while there are additional risks there is no contradiction for her to carry a pregnancy. The reports describe the plans that are in place to manage identified risks to her and the potential child during pregnancy. The Committee was satisfied that she has received thorough counselling concerning the risks to her and to the potential child should a pregnancy be established. She also has a team of medical specialists who will care for her during a pregnancy.

- There is a risk of premature birth, but the Committee agreed that the risk was not significant enough to warrant declining the application.
- The donor couple have also been informed about the intending mother's health issues and the risks associated with carrying a pregnancy and they still wish to proceed with the intended donation.

Decision

While the Committee noted the significant health issues for the intending mother, it was satisfied on the basis of the comprehensive specialist reports provided that there are no contraindications to pregnancy, a plan is in place to manage the risks and she has the support of a medical specialist team. The intending mother has also received thorough counselling during this process. The Committee therefore agreed to **approve** this application with the recommendation that the intending mother consider updating or making a will and appointing a testamentary guardian once 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.

7. Application 21308 for surrogacy involving an assisted reproductive procedure

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

Issues discussed included:

- The intending parents have already been through a surrogacy process that was successful and they have one child - they remain in contact with the surrogate parents and see them on a regular basis. Having had that experience, they are familiar with the clinical, legal and emotional aspects of surrogacy arrangements and are entering into this second intended arrangement with experience and insight.
- The proposed surrogate is the intending mother's sister. Now that she has completed her own family, she has offered to help her sister complete her family.
- The couples' family know about the intended arrangement. They live in the same area and they are supportive. The counselling reports describe thorough discussion around the aspect of support for both parties and the willingness of

family to give practical help to the surrogate and her family should a pregnancy be established.

- The embryos that would be transferred to the surrogate are the genetic embryos of both intending parents. The embryos have been screened as the intending father has a condition and there are several available for transfer.
- The Committee noted that the medical report provided for the surrogate is brief and states that the risk to her is carrying a pregnancy is low but it does not provide detail for the Committee about why that is. However, on the basis of the brief assessment provided, it appears that the risk for complications during pregnancy and delivery are low. The Committee agreed that it would note in its decision letter that while the risk is low, that fuller information is helpful to guide the Committee in its decision making.
- The Committee has previously agreed that surrogacy offers the intending parents the best or only way to have a child who is their full genetic child and it agreed that this criteria is still met.
- There is a declared commitment to open and respectful communication; the counselling reports were clear that the parties would put the best interests of the child first.
- The legal reports included with this application outline advice around the limits to financial compensation for the surrogate. Evidence of pre-adoption approval from Oranga Tamariki is also provided.

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.

8. Application 21309 for surrogacy involving an assisted reproductive procedure

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

Issues discussed included:

- The Committee was satisfied that the intended surrogacy arrangement meets the criteria for the 'best or only' opportunity for the intending parents to have a child. Embryos have been created from the intending parents gametes and should the arrangement be successful, the child would be the full genetic child of the intending parents.
- The family are from a collective decision-making culture and the concepts of family and collective parenting that underpin the intended arrangement were clearly described in the reports. They have stated that counselling was appropriate and cognizant of their cultural values.

- The parties have declared intentions to be open with the child and others about their origin story.
- Independent legal advice for both parties has been received and the legalities of surrogacy discussed during the sessions have been well set out in the reports. In the event that the intending parents were unable to care for the child, the surrogate has been nominated as testamentary guardian.
- The surrogate is the intending mother's sister. A surrogacy pregnancy would be her first and some of the implications of this have been discussed in counselling sessions.
- The Committee noted there was an inconsistency in the reports around whether the surrogate wished to have children herself and, was reassured to see that this seemed to be resolved in the joint counselling session. All parties have been counselled about their rights and this includes discussion about the surrogate's right to make decisions about the pregnancy. The Committee also noted that medically, there seems no reason why the surrogate couldn't have children of her own if she were to change her mind.
- The medical report for the surrogate noted that given her medical history, that obstetric-led care and delivery by caesarean section will be considered..
- The medical report however, was light on information and discussion about pregnancy in general. Given the surrogate's circumstances including that this would be her first experience of pregnancy, the Committee agreed that in the interests of being reassured that the surrogate is fully informed, it would request an independent medical report that sets out discussion had in relation to pregnancy, childbirth and the post-partum period.
- The parties live in the same family home and describe a close relationship and the implications of that were discussed in the counselling sessions. It was noted that the surrogate would have the option of living independently with other family members if she felt she needed to do so at any point.
- The Committee noted that support for the surrogate referenced in the reports is within her household and family and discussed whether to request further information about the support network available to her beyond her family. It was agreed to request a support plan that identifies who the key people in the surrogate's network are outside of the home and what that support might look like.

Decision

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

- An independent medical specialist report that reassures the Committee the surrogate is fully informed about pregnancy in general, and
- A support plan for the surrogate that sets out the support that will be available for her to access both within and outside of the home.

Actions

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

9. Application 21562 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.

Issues discussed included:

- The existing longstanding relationships between the parties in this application appear to safeguard the wellbeing of all, including existing and potential children. The surrogate and intending mother have known one another since childhood, and they expect that their close relationship will continue regardless of the outcome of the intended arrangement.
- The intending parents have experienced recurrent unsuccessful fertility treatment and the intended surrogacy arrangement offers them the 'best' opportunity for them to complete their family. The embryos created for transfer to the surrogate will be the full genetic embryos of the intending parents.
- The medical report for the surrogate is brief but raises no concerns about risk to the surrogate or potential child. It states that she has been advised of the general risks of surrogacy. She has also been advised of her rights to make decisions about a pregnancy in counselling sessions.
- Counselling sessions for both parties have canvassed support for each other in the context of pregnancy and birth plans (the surrogate parents also describe a strong support network that they can draw on outside of their relationship with the intending parents), relinquishment of the child, existing and continued relationships between the parties and how they will support transparency and openness with others including with their existing children and the potential child. The joint counselling report described respectful communication between the parties and no evidence of any undue influence.
- Both parties have received legal advice and the reports describe that the legal framework and rights and responsibilities of each party have been discussed. Wills and testamentary guardianship for the potential child have also been discussed and agreed.

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.

10. Application 21311 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 intended surrogacy arrangement comes after a lengthy fertility journey for the intending parents and is clearly the only option for the couple to complete their family. The medical report for the couple notes the intend to have IVF treatment to create embryos for transfer to the surrogate.
- The intending parents met the surrogate online via a surrogacy forum and the intending mother and surrogate have built a strong relationship since then and are confident they can maintain an open and supportive relationship into the future. Counselling reports describe the surrogate's altruistic motivation to help others. She and her partner have children and they consider their family to be complete.
- Counselling sessions outline the social support in place for the surrogate couple and, the intending parents also have declared they are committed to practically supporting the surrogate and her family. The intending parents and the surrogate appear to have consistent understandings regarding antenatal and perinatal care very much lead by the surrogate's preferences. The parties describe a commitment to maintaining transparency including with the potential child and there is no evidence of coercion.
- All parties have received legal advice and appear to have a common understanding of rights and responsibilities during the pregnancy, postpartum and adoption.
- The surrogate has re-engaged a psychologist who she has worked with in the past as it appears that there may be risk to her of a pre-existing mental health condition being triggered perinatally. Her psychologist notes that the surrogate has used strategies for recognising triggers and managing her mental health and she also recommends the surrogate continues to access support throughout the process.
- The Committee noted some of the psychosocial issues raised in the reports for the intending parents and commented that the framing of some of these issues varied substantially between the reports. What is clear from the reports, however is that ongoing psychological support for the intending mother is needed and is in place. The specialist reports are ultimately supportive of the intending parents' decision to proceed with the intended surrogacy arrangement as there are protective factors in place and the risk of relapse is low. The reports did not state explicitly whether this history has been shared with the surrogate.
- The Committee was satisfied that while the Oranga Tamariki letter submitted with this application references past involvement outside of the intended surrogacy process with the intending parents, it recommends approval for an adoption order in principle citing that there are no care or protection concerns for the parenting of a child born of this arrangement.

Decision

The Committee agreed to **approve** this application with the strong recommendation that the surrogate check in at the points recommended in her psychologist's advice

and secondly that the intending mother continues with regular psychological support throughout this surrogacy process.

Actions

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

11. Application 21306 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 intended surrogacy arrangement offers the intending parents the best opportunity to complete their family with a child who would be a full genetic sibling of their existing children. The intending mother has been diagnosed with a medical condition and medical advice is that she should not carry a further pregnancy.
- The intending mother and the surrogate are sisters. They describe strong family relationships and a commitment to shared family social connections and these are motivating factors for the intended surrogacy arrangement. The counselling reports note there is no evidence of coercion and the offer for surrogacy has been made freely. They have declared intentions to be open with any child born of this arrangement about their conception story and the role that the surrogate played.
- The surrogate's medical history and the important considerations to her health in carrying a surrogacy pregnancy and the social supports and surrogacy plan in place for her during treatment, pregnancy and postpartum were outlined. Counselling sessions have covered the rights and responsibilities of all in relation to decisions about treatment and pregnancy.
- Both the intending mother and the surrogate mother have a condition that may be inherited and the condition is one that could be managed readily and would not severely impact the potential child if they were to develop it.
- Both parties have received independent legal advice. The intending parents intend to adopt any child born of the arrangement and Oranga Tamariki have approved an adoption order in principle.

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. Update for application E19/24 for a clinic assisted surrogacy

Jeanne Snelling opened the discussion for this application.

Issues discussed included:

- The clinic sought non-binding ethical advice from ECART in 2019 and, ECART's advice was communicated by letter in June 2019. In that letter, ECART noted that the existing ACART guidelines were being updated and may alter requirements in the future.
- The intending parents are a same sex male couple who need a surrogate and an egg donor to help them complete their family. The intended surrogate is the sister of one of the intending parents; she will be both the egg donor and the surrogate, and her brother-in-law's sperm will be used to create embryos.
- There is an inter-country adoption aspect to this arrangement.
- Under the current legal framework, the donation of sperm from a brother-in-law to a sister-in-law is not an established procedure and is therefore regulated under the ACART guidelines. Any surrogacy involving a regulated procedure requires a full application to ECART.

Decision

The Committee agreed to advise the clinic of the requirement for submission of a new application to ECART for consideration and a decision in accordance with the ACART donation guidelines.

Actions

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

13.Consideration of extended storage applications**14.Consideration of request for non-binding ethical advice on transfer of affected embryos****Actions**

Secretariat to advise clinic that ECART have continued to do considerable work and have had considerable discussion about this request. Further, ECART wish to consult on its proposed advice with ACART before responding. Therefore, ECART may not be in a position to respond to the clinic before the end of the year.

Meeting close

Confirmation of next meeting on 20 February 2025.

Confirmation of ECART member in attendance at next ACART meeting on 27 February 2025, Lana Stockman.

Simon McDowell led the closing Karakia.