

# Minutes of the Ninetieth Meeting of the Ethics Committee on Assisted Reproductive Technology

## 5 August 2021

---

Held in person at the Miramar Links, on 5 August 2021

---

### In Attendance

Iris Reuvecamp	Chairperson (from 9.30am)
Paul Copland	Member
Michele Stanton	Member
Mike Legge	Member (10.30am-3.00pm)
Mania Maniapoto-Ngaia	Member
Jude Charlton	Member
Tepora Emery	Member
Mary Birdsall	Member
Calum Barrett	ACART member in attendance
Francesca Fogarty	Health Psychologist, Fertility Associates (8.30am-2.00pm)
Nicola Lambie	Te Aka Matua o te Ture Law Commission (9.00am-1.00pm)
Briar Peat	Te Aka Matua o te Ture Law Commission (9.00am-1.00pm)

ECART Secretariat

Nic Aagaard                      Manager, Ethics (from 12.00-2:30pm)

### 1. Welcome

As the Chair would be at this meeting from 9.30am the Committee agreed that Michele Stanton would Chair the meeting until her arrival. Michele Stanton opened the meeting by welcoming all present and introducing guests: Nichola Lambie and Briar Peat from the New Zealand Law Commission and, Francesca Fogarty, Counsellor from Fertility Associates.

### 2. Conflicts of Interest

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

### 3. Confirmation of minutes from previous meeting

The minutes from the 3 June 2021 meeting were confirmed.

### 4. Application E21/103 for embryo Donation for reproductive purposes

Tepora Emery 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 Donor couple in this application are originally from offshore but have lived in New Zealand for some time now. They have completed their whānau and both have consented to donate their remaining embryo, created from their own gametes, to the recipient couple. The donor did not have a prior relationship with the recipient couple and were linked through the clinic based on their profiles, thoughts and current and future expectations in relation to donation. They have gone on to meet up after counselling sessions with the view to grow their connection in relation to this intended donation. The counselling sessions addressed the implications of this intended arrangement now and in the future.
- The recipient couple of Māori. They have a child from a whāngai arrangement. They also have a child from a previous embryo donation. Thus, this is the second application for embryo donation that the recipient couple have made.
- The donor couple both have clear reasons that justify the need for this assisted reproductive procedure.
- Having already been through an embryo donation arrangement, they have not included their tamariki in counselling sessions for this application and they understand the process and implications of this intended arrangement.
- Their counsellor's professional view is that they have discussed and understood the rights and needs of existing and potential children, each other's needs and specific issues relating to health and other conditions.
- The reports confirm that the principles of the HART Act have been respected and that this intended arrangement would protect the health and well-being of all including any child born of this arrangement and the application has been made in accordance with ACART guidelines.
- Independent legal advice has been sought by both couples and they understand the issues associated with embryo donation. Police vetting has been completed with no issues identified that would impact on the health and wellbeing of existing and potential children.
- The medical report for the donor couple state no medical risks inherent in the intended donation but does outline some factors for consideration including a medical condition of the donor woman of which a hereditary cause is considered to be low with no need for genetic testing of the embryo. The risk to the potential child of another condition in the donor woman's family is also considered to be low and not above that of the population. The recipient couple have seen this information and had an opportunity to discuss.
- The medical report for the recipient woman establishes that she is fit and well. She has existing medical conditions that are well managed and these according to the medical report would not have a clinical bearing on the proposed pregnancy. The donor couple have been made aware of this and are still prepared to go ahead with the donation. The recipient couple have had a number of previous fertility treatments using donor gametes. The recipient woman conceived a number of times with the help of the treatments but miscarried when pregnancies were established. A previous embryo donation resulted in the birth of their child. The risks of carrying a pregnancy with a donated embryo have been outlined and discussed with the recipient woman as part of this application.

- The donor couple's motivations to donate have been explored in their counselling sessions. They have declared intentions to be open about the role they played in the potential child's conception and to ongoing contact with the recipient couple. They consider it a privilege for the potential child to be raised in a family with understanding of Māori customs and values and would be open to sharing their own culture with the potential child in future. The couples were in agreement at joint counselling sessions about their expectation that a child could bridge two cultures with their help. There were no issues raised in the counselling reports that caused concern for ECART in relation to the health and well-being of the parties in 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.

### **5. Application E21/104 for within family egg donation**

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 intended within family gamete donation is for a donation of eggs between mother and daughter. The egg donor in this application has children of her own and considers her family to be complete. The recipient woman wishes to have a child with her partner who is not the egg donor's father. The recipient woman has been through menopause, hence the need for donated eggs. The recipient man does not have existing children of his own. The couple have been planning for a child for the past two years and the recipient partner's family is described as supportive of the couple having a child together.
- The gamete donor has received counselling and understands that her gametes may be used to create more than one embryo and may create more than one child for the recipient woman. She has placed no conditions or restrictions on the use of her gametes. The recipient woman's counselling report notes that she confirmed the egg donor's donation is only for her use and not to be on donated.
- The egg donor has received medical counselling and had the medical risks associated with egg collection outlined and discussed with her as well as methods for minimising any risks. She has had genetic screening completed as part of the medical assessment with no risks identified. The history of her immediate and extended family is also noted in her medical report. She has a raised BMI and has been advised to optimise her weight prior to any treatment cycle. She has declared that she feels apprehensive about the treatment cycle, but the recipient woman would be there to support her and her family both emotionally and practically with child-care support.
- The medical report for the recipient woman notes she has been through menopause hence the need for donated eggs. The risks of pregnancy for the

recipient woman as an older woman have been outlined and discussed with her as well as how they might be managed. The recipient woman's health tests have reassuring findings that suggest she and the potential child are not likely to be adversely affected by her carrying a pregnancy at advanced maternal age. The recipient woman has a raised BMI and has been encouraged to optimise her weight prior to embryo transfer. Pregnancy and post birth plans have been discussed in the context of this application.

- The recipient woman has a number of children of whom the egg donor is the eldest. The intended arrangement has been discussed with some of the siblings but not all as the recipient woman and the egg donor are not currently in contact with all given a family history which has been disclosed to ECART.
- The Committee noted there is some inconsistency across reports in relation to who initiated the offer to donate with one describing the recipient woman initially approaching the egg donor to ask her whether she might act as a surrogate because she did not know at the time that she might be able to carry a pregnancy herself and, once it was determined this was possible the egg donor declared that she is more comfortable with egg donation as this treatment would be less of a burden on her. Another report describes the offer being declared as originating from the egg donor. The Committee was satisfied, however, that the reports showed no indication of coercion and it was satisfied that the inconsistency in reports could be attributed to the applicants' having an initial misconception that a surrogate would be needed.
- The counselling sessions have set out the HART Act requirements and rights. The egg donor understands that the recipient couple will have the right to make decisions about the embryos once created and to make decisions about the pregnancy once established, the requirement for identifying information to be held, as well as the rights and responsibilities for any child conceived, and that she will have no legal parenting rights. The reports did not make explicit whether there was discussion in relation to the egg donor's right to withdraw or vary her consent up to the point the embryos are created. The recipients understand that they will be the child's legal parents. The egg donor has declared intentions to be open with the resulting child. The recipients have declared that they would wait to decide whether to be open with any resulting child about the role the egg donor played. The parties have agreed that the egg donor will be seen as a social aunt given the age difference.
- In relation to information sharing, the Committee noted that in this case given such information is viewed as culturally private and deeply personal, it could be difficult to convince the applicants that sharing such information beyond the immediate family would be in the best interests of the child. However, the Committee is concerned about the impact on the children should they find out later in life as this could be detrimental to their health and well-being. The Committee noted the importance of a child being socialised from an early age about their conception story and the reasons behind it to help the child accept and feel secure with this knowledge.
- The Committee affirmed the importance of the applicants sharing information with the existing children and potential child about the role that the egg donor played in the child's conception, noting there is literature that supports the importance of children knowing their genetic origins from an early age.
- The Committee agreed to recommend the recipient couple and egg donor meet again with their counsellors separately and together to discuss the issue of

information sharing of a child's heritage, both genetic and cultural connections (including being explicit about the potential child's heritage), and also to reconsider the exploration of those issues with the egg donor's children.

## **Decision**

The Committee agreed to **defer** 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 E21/105 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 in this application has a medical history that means she cannot carry a pregnancy. She is on long term treatment to stop recurrence of the illness and has been advised that it is not safe to come off her medication. There is currently no evidence of recurrence and she has ongoing observations as part of her treatment. The intending mother has had IVF treatment for fertility preservation and she and the intending father have one embryo in storage. There are no plans to create more embryos. The intending mother has inherited a familial X-linked degenerative disorder of unclear nature, but she is unaffected by this condition.
- The intending parents had met four possible surrogates online, none of whom progressed beyond the online meetings.
- The birth parents and intending parents in this application had existing relationships prior to the birth parents making the offer for the birth mother to act as a surrogate. The birth mother and intending mother have known each other since school days and their relationship has continued to strengthen through common interests. The intending partner and birth partner also know each other through shared interests. Despite concerns on a pregnancy intruding on the birth parents' lives, the birth mother is positive about the intended arrangement. She and the birth partner have family who live locally and who are supportive of the intended arrangement.
- Counselling sessions have discussed pregnancy and birthing plans. The intending parents indicated the pregnancy will be led by the birth mother and the intending mother has the flexibility to attend medical appointments with the birth mother and provide support. The intending parents are aware of the potential for disagreements and if they cannot resolve a disagreement, they have indicated they will use the counsellors as mediators. They are aware of the Family Court process in the event this is needed. The intending parents

understand the altruistic nature of surrogacy and that reasonable expenses can be covered but not loss of income. The intending parents intend to cover what they are legally allowed to cover under the HART Act.

- The intending parents intend to ask the birth parents to be godparents and may consider them as testamentary guardians. Although no formal arrangement has been made currently both couples would oversee the child's wellbeing. The intending mother envisages any child born of this arrangement would be social cousins with the birth parents' children.
- The medical report for the birth parents notes the important considerations for the birth mother acting as a surrogate. Her own pregnancies and deliveries were uncomplicated with no post-natal issues. She has a history of anxiety some years ago that was unrelated to her pregnancies which was appropriately managed at that time. An independent psychological assessment included with this application that focuses on her current health and support for her if needed raises no issues of concern. The letter from the Consultant Clinical Psychologist provides advice that in their opinion "*...it does not appear that there is a high risk that the surrogacy process would be unduly distressing or precipitating of relapse.*"
- The birth mother has had the risks of a surrogacy pregnancy and how to manage them discussed with her. Regular pregnancy monitoring is required, and the birth may have to be away from the surrogate's immediate hometown. She expressed some concern in relation to this but acknowledged she has time to adjust to this possibility.
- In counselling sessions, the birth parents describe a longstanding relationship with the intending parents and shared interests that keep them in regular contact. The birth mother noted she and the intending mother communicate regularly through social media and visit each other often. The birth mother and intending mother have discussed a pregnancy plan. The birth parents both work full time and have home cleaning and childcare arrangements which could be increased in the event of a pregnancy being established. Their counsellor will be in touch throughout the pregnancy if support is needed.
- Both birth parents and intending parents have agreed that any decision in relation to a termination of pregnancy would be based on the birth mother's health and poor quality of life for the potential child in conjunction with medical advice. The intending parents have declared that they would accept any child born of this arrangement including a child born with a disability. The counsellors reported there was no chance of the intending parents rejecting a child born of this arrangement. Counselling sessions included discussion relating to the future possibility of the intending father becoming the sole parent. The birth parents know of this possibility and still wish to progress with this surrogacy arrangement.
- The birth parents have received independent legal advice relating to surrogacy and the requirements of the HART Act as have the intending parents and both

parties have received advice in relation to the adoption process and surrogacy expenses requirements.

- The intending parents have asked to have care of the child from birth and the birth parents also want this approach. They intend to contact Oranga Tamariki at around 30 weeks gestation to progress their plans. Both parties understand the interim adoption process and the final order. A letter from Oranga Tamariki approving an adoption order in principle is included with this application.
- The Committee agreed that it wishes to see a letter from the intending mother's oncologist that reports on her condition and the prognosis. Further to this, ECART would like to see further counselling address what would happen in the event that the intending mother were to have a recurrence on her illness during the surrogate pregnancy. The Committee would request that the intending parents explore with their counsellor what that means for each other and then meet in a joint counselling session to discuss this in the context of the surrogacy with the birth parents.

### **Decision**

The Committee agreed to **defer** this application to request an oncologist's report and further counselling reports that give consideration to what the parties agree might happen in the event that the intending mother's condition were to recur during the pregnancy. The Committee also requests any available information about the intending mother's neurogenetic condition as it is unclear to the Committee whether the condition could impact on the potential child.

### **Actions**

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

## **7. Application E21/106 for Surrogacy involving an assisted reproductive procedure**

Tepora Emery 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 are foreign nationals who reside permanently in New Zealand. They have a child together and wish to complete their family. They have two embryos created from their own gametes and have agreed that they will not have further IVF treatment to create more embryos should this treatment be unsuccessful. The birth mother has stated she is prepared to have up to two embryo transfers.
- The intending mother's medical history means that she cannot carry a child. The intending parents are familiar with the issues and risks associated with the intended procedure and the complexities that can occur during a pregnancy. They have had a previous successful surrogacy arrangement with a family member acting as the birth mother.

- In this arrangement a longstanding close family friend has offered to act as birth mother. The birth mother reports being honoured to help her close friend. There are no identified risks to the birth mother stated in her medical report (her own pregnancy and birthing history is described as uncomplicated), apart from her advanced maternal age and the risks that come with that. Her medical specialist has discussed with her how any risks will be mitigated.
- Both couples have discussed their views on termination of pregnancy at counselling sessions and appear to be in agreement in relation to this difficult topic. They are described as good communicators who are open to third party involvement to work through difficult issues if and as needed. Pregnancy and birth plans have been discussed and agreed and there is acknowledgement between parties that pregnancy and treatment can be an emotionally difficult time. The intending parents intend to adopt any child born of this arrangement and would expect to take the baby directly into their care following the birth. The parties live a short distance apart and this helps allow the birth mother to continue to see the baby following the birth and it is expected that she would continue to be part of the child's life in the same way that the intending parents are part of her children's lives. They are hopeful that their friendship will be enriched through this surrogacy process.
- There has been a declaration of intent by the intending mother to share information on social media about her experience in a bid to help others but only with the express consent of all parties beforehand.
- The counselling report for the birth mother notes she is aware that she can change her mind "at any stage" and it was not clear to the Committee whether she understands that this is prior to embryo transfer. The birth parents have yet to talk to their own children about the intended arrangement but have declared intentions to do so and feel confident that their children will be supportive. They have also declared intentions to be open with any child born of this arrangement. The birth mother is described as a kind and empathetic person who has a strong support network around her.
- The birth parents have received independent legal advice and understand their legal rights in relation to the intended surrogacy arrangement and the legal parameters in relation to surrogacy arrangements. The birth parents intend to relinquish the baby and have faith that the intending parents will adopt any child born of this arrangement and they are aware that the intending parents are working with Oranga Tamariki to support them adopting any child born of this arrangement. The birth parents are aware that the intending parents have appointed testamentary guardians for the potential child in the unlikely event that they are unable to care for the child.
- The legal advisor for the intending parents is satisfied that they understand the legal issues associated with a surrogacy arrangement. The couple have already adopted their child following their previous successful surrogacy arrangement and their legal advisor recapped the legal process with them for the purpose of this intended arrangement.

### **Decision**

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

## **Actions**

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

### **8. Application E21/107 for Surrogacy involving an assisted reproductive procedure**

Paul Copland opened the discussion for this application. The Committee considered this application in relation to the *Guidelines for 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 need for the intended surrogacy arrangement as the intending mother has a history of procedures for the treatment of a medical condition that means she is not able to carry a pregnancy herself.
- The intending parents have had IVF treatment in the past and have had embryo transfers with their own embryos which unfortunately ended in miscarriages. They have spent much time in counselling working through their difficult fertility journey. The couple have three remaining embryos.
- The medical history for the birth mother and the important considerations for her own health and well-being and that of the potential child she may carry was discussed. She has completed her own family and has had uncomplicated pregnancies and deliveries. She briefly experienced a medical complication that resolved itself and her pregnancies and births were subsequent to the complication.
- The couples met via social media and have developed a relationship since then. The joint counselling report describes a genuine friendship between the couples and canvasses the potential implications of this intended arrangement well.
- Section 4.8 in the application notes the intending parents have nominated family members as testamentary guardians but in the unlikely event that something were to happen to them while the birth mother is pregnant that meant they cannot care for the child then the birth parents would take the baby into their care.
- The legal reports for the couples outline the legal issues and rights discussed during those sessions and indicate that both couples understand the issues. The intending parents intend to adopt any child born of this arrangement and a letter from Oranga Tamariki approving an adoption order in principle is included with 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.

## **9. Application E21/108 for Surrogacy involving an assisted reproductive procedure**

Michele Stanton 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 are a same sex male couple who require an egg donor and a surrogate to start their family. They are in a relationship of some years and have no children currently. Their family and close friends are aware of and supportive of the intended arrangement.
- Intending parent one is a foreign national and New Zealand resident having moved here several years ago. He has no medical history or family medical history of note. Intending parent two is also a foreign national who is resident in New Zealand. His medical report advises of a medical condition that is well managed on medication and no other medical history of note. Supporting medical documentation describes his overall good health, compliance with medication, and confirms risk of transfer of the condition to the surrogate mother or potential child as negligible.
- Both intending parents intend to provide their own gametes to create embryos for transfer to the surrogate mother. The egg donor and surrogate are accepting of this. They are both aware that the intending parents would wish to have two children in future. The parties in this application have developed warm and close friendships and say they have shared values which predate this application and motivates their involvement in the intended arrangements. All have declared a commitment to being open to sharing with the child their conception story.
- The birth parents are a same sex female couple who have been together for many years and have a child together who was conceived with the help of IVF treatment. The Committee noted that the birth mother has been counselled according to the medical specialist and intending parents, at section 4.20 in this application, to the theoretical risk of transfer of intending parent two's condition but this understanding is not noted in her medical or individual counselling report or the joint counselling report. The intending parents' medical report mentions at 2.12 that a discussion has been had with the birth mother in relation to this issue. ECART noted that generally it would expect to see medical history that is relevant and material to a surrogacy arrangement outlined and discussed in both the independent medical and counselling sessions and again during the joint counselling sessions.
- ECART noted that it was the Committee's preference that issues as important as this one ought to have been discussed with the birth mother with the birth mother's medical practitioner rather than by the intending parents' medical practitioner. ECART's expectation in terms of sharing information generally is that applicants' independent medical specialists discuss information material to the application about other applicants (with their permission), with them. In this case, the discussion has been had between the intending parents' medical specialist and the birth mother. In the specific circumstances of this case, ECART was satisfied that the birth mother had received the relevant information and had the opportunity to consider it.

- The birth mother has an elevated BMI and has declared that she would only go ahead with an embryo transfer once she has lost weight. She is aware of the potential risks of an elevated BMI in pregnancy including hypertension, gestational diabetes and postpartum haemorrhage. Her medical specialist has recommended specialist care given her elevated BMI and previously large baby. It was noted that the birth mother has had a recent pregnancy and the birth was uncomplicated, with a healthy child born.
- The birth mother also has a history of depression and anxiety and is currently stable on medication. A number of mental health conditions in her wider family are also disclosed in her medical report. The counselling reports do not explicitly note this history as having been discussed as part of implications counselling.
- The Committee noted that the birth mother has remained on her medication throughout her recent pregnancy with no antenatal or postnatal complications which is reassuring, and that she does not have the same diagnoses as some of her family members.
- The longstanding and close history between the parties is reassuring as it suggests that they already know of her history and will ensure that she is well looked after. There is reference in some of the reports to the intending parents offering practical support to the birth mother as needed.
- However, the Committee noted despite the birth mother's history of anxiety and depression appearing to be well managed, surrogacy potentially can impact on that and asked for a view from the birth mother's general practitioner (GP) about the potential impact of a surrogacy, the extent of the support to be provided during the surrogacy, and how her anxiety and depression would be managed.
- The egg donor is in a relationship, but the couple do not have children at this stage and feel no sense of urgency to have children currently. The egg donor has been made aware of the medical risks of egg donation and has given informed consent. Her rights to vary the terms of her donation and to withdraw her consent have been discussed. The egg donor and her partner are aware of the new rules around on-donation of any embryos with her consent. The donor couple have also had a discussion with their counsellor about ongoing contact with the intending parents and any resulting child, reimbursement for any expenses allowed under the HART Act, guardianship of the child, and adoption.
- All parties have discussed the rich cultural diversity that is inherent in this application and how this will influence the intending parents in supporting the potential child to understand their history/identity.
- The intending parents and birth parents have received independent legal advice on the surrogacy and adoption process in New Zealand. The relationships between the parties are longstanding and close and appear to safeguard the wellbeing of all parties including any resulting child.

### **Decision**

The Committee agreed to **defer** this application to consider the letter from Oranga Tamariki once received and to request a letter from the birth mother's GP. ECART agreed that it will consider a complete response, once received, in between meetings.

### **Actions**

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

## **10. Application E21/109 for Surrogacy involving an assisted reproductive procedure and donated eggs**

Iris Reuvecamp 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 surrogacy arrangement, the intending parent is single and requires both donated eggs and surrogacy to begin a family.
- The birth parents in this application have children and have completed their family. The application notes that there is also an increased risk of preterm labour with a surrogate pregnancy and the recipient woman has had these risks explained to her.
- A medical report that supports the application states that the birth mother has experienced normal and uncomplicated births and pregnancies. However, the Committee noted a discrepancy between this report and the more in-depth counselling report that canvases further detail about the birth mother's successive caesarean sections. The application notes that she will receive obstetric care throughout her pregnancy and the Committee felt that this was required to ensure the health of the birth mother. The Committee also noted that following successive caesarean births for her own children, a caesarean section is medically advised for a surrogate birth.
- There is a within family aspect to this application as the birth mother is the sister of the intending parent. Counselling reports that they share a close relationship, enjoy a high level of trust and are able to manage difficult conversations.
- The Committee had a discussion about the counselling report for the birth mother which explored aspects of trauma associated with birth and experiences of situational anxiety. As part of this discussion, the Committee requested a letter from the birth mother's GP identifying possible risks and triggers of situational anxiety and how the birth mother would be supported in the surrogate pregnancy should she need to reach out to her GP.
- The Committee noted that the birth mother feels that helping her sibling to start a family is something that she would like to do, and she has a plan in place to manage. However, the Committee had some concerns about the health and wellbeing of the birth mother and asked that counselling further explore any familial expectation to be a surrogate for her brother.
- The egg donor in this application is one of the intending parent's best friends. She and her partner do not yet have children. Counselling reports for the egg donor outline the ACART guidelines which state that embryos created with the use of donated gametes can be donated in the future with the consent of all parties, including donors and assuming that the maximum number of allocations is not exceeded. The donor is aware that she can donate eggs to others but does not intend to do this and is only motivated to donate in this instance because of her close friendship with the intending parent.
- The issue of termination has been discussed in counselling and notes that the parties feel that the birth mother's health is paramount and that any decisions should be made as a collective family, however, they understand that ultimately a decision rests with the birth mother.

- All parties feel that counselling has been culturally appropriate. The counselling sessions have also canvassed their attitudes towards openness and age appropriate messaging for existing children and with any resulting children and notes that close family are informed and supportive of the proposed arrangement. Expectations around boundaries and space have been discussed and the intending parent also discusses options for supporting the birth parents and their existing children during the pregnancy.
- Testamentary guardianship has been discussed and agreed and the intending parent also intends to pay for the birth mother's life insurance.
- Both the intending parents and the birth parents have sought independent legal advice and the legal issues have been discussed at those sessions as well as during their counselling sessions.
- Oranga Tamariki assessments are ongoing, and the Committee noted that a letter is expected to be received following this application.

### **Decision**

The Committee agreed to **defer** this application, requesting information for consideration:

- a) confirmation that obstetric care will be provided to the birth mother throughout a pregnancy and that a birth plan is put in place to manage uncertainties.
- b) further exploration with a fertility clinic counsellor about the risk of situational anxiety and any pressure or familial expectation that the birth mother may feel to be a surrogate for her brother.
- c) a letter from the birth mother's GP identifying possible risks and triggers of situational anxiety and how the birth mother would be supported in the surrogate pregnancy should she need to reach out to her GP.

### **Actions**

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

### **11. Application E21/110 for Surrogacy involving an assisted reproductive procedure and donated eggs**

Paul Copland 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 surrogacy arrangement, the intending parents are a same sex couple who require both donated eggs and surrogacy to begin a family.
- The application notes that the egg donor and her partner have completed their family. The egg donor is a clinic donor who has previously donated eggs to others and this is her second and final donation. Counselling reports show that she is motivated by a desire to help others build their families after sharing in the journey of infertility with a close family member.
- The issue of on donation of embryos created with the donated eggs was also discussed in counselling and it was agreed that if the intending parents wished to donate their embryos, the egg donor would consider her consent to on-donation in the future if the scenario eventuated.

- The birth parents in this application have also completed their family. Counselling reports note that the birth mother has a history of mild anxiety and depression and the application contains a comprehensive report from a specialist psychiatrist.
- There are discrepancies in the application about the birth mother's history of miscarriage. 3.8 says birth mother is G6P2 and has had 4 miscarriages. However, 6.9 says the birth mother has never experienced a miscarriage. The Committee was satisfied that, as the medical specialist had identified that the birth mother had had 4 miscarriages, this had been properly taken into account by the medical specialist.
- The intending parents and birth parents originally met through social media and have since met in person. Counselling reports that support the application note an easy relationship and frank level of openness between the parties. Both couples are separated geographically within New Zealand and the counselling reports canvas discussions about their hopes for the relationship and contact going forward to unfold organically if a resulting child is born.
- The Committee noted that counselling reports are thorough, and all parties considered the counselling provided to be culturally appropriate. All parties have had discussions about openness and transparency with any existing and resulting children. The report also notes the support of the intending parents' close family members for the proposed arrangement.
- Testamentary guardianship for any resulting children has been discussed and the Committee noted that the intending parents intend to ensure their wills are updated before a resulting child is born to reflect their wishes outlined in the report.
- The application states that the birth mother already has life insurance in place and the intending parents plan to take over the insurance for her for the duration of a pregnancy.
- The issue of termination has been discussed in counselling and the reports note that while both parties anticipate making the difficult decision together, any decision ultimately rests with the birth mother.
- Both the intending parents and the birth parents have sought independent legal advice and the legal issues have been discussed at those sessions as well as during their counselling sessions.
- Oranga Tamariki assessments have resulted in approval to 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. Application E21/111 for Embryo donation for reproductive purposes**

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

### **Issues discussed included:**

- The donor couple in this application have embryos to donate created from their own gametes for use in their IVF treatment. The application is clear that they consider their family to be complete and wish to donate their remaining embryos to the recipient couple.
- Counselling reports that support the application note that the donor couple applied to donate their embryos in 2020 but this was declined by ECART due to factors associated with the previous recipient's treatment options. The counselling reports also observe that the donor couple initiated the opportunity to donate their remaining embryos through their fertility clinic and have remained consistent in their views about donating over time, and that they are motivated by a desire to help others have a family.
- Medical reports that support the application state that embryo donation has been recommended to the recipient couple as an option to help them start their own family. The medical report for the recipient couple does not mention any issues that would put the recipient woman at increased risk when carrying or delivering a pregnancy. The recipient couple state that they intend to give all of the embryos available for donation a chance at life.
- Counselling reports for the recipient couple explore their journey towards acceptance that any resulting child will have no genetic connection to themselves but notes that they consider the opportunity to carry the pregnancy as a special and positive connection. The reports also canvas that the recipient couple have the support of their close family and feel they have family support even though they are separated geographically. They report a strong commitment to openness with any resulting children and agree that transparency is in a child's best interests. They describe in counselling that they feel a shared perspective with the donor couple including aligned values and beliefs about donation.
- The donor couple also firmly believe that openness is important and have declared intentions to ensure their existing children are aware of the donation and can potentially have a connection with any child/ren born of the donation. They are open to and hope for contact between their own children and any resulting children in consultation with the recipient couple at a time that feels appropriate for both parties. They know that while there will be a full genetic connection between the children that they have no legal or parenting rights and that any contact would be at the discretion of the recipient parents.
- Counselling sessions have canvassed the donor couple's feelings about termination of pregnancy, and their rights around storage and ownership of the embryos, HART Act requirements and changing or withdrawing consent.
- Both parties understand that full genetic siblings from embryo donation can exist in two families only, and both parties envisage a relationship with any existing and resulting children as being like that of cousins.

### **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.

### **13. Application E21/112 for Surrogacy involving an assisted reproductive procedure**

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

#### **Issues discussed included:**

- In this application there is a clear medical need for surrogacy. The intending parents have one child created from their own gametes and a long history of unsuccessful treatment. Medical reports that support the application note that surrogacy gives them the best chance of completing their family.
- The intending parents do not currently have any embryos in existence and intend to create embryos for transfer to the birth mother in the event that an ECART application is approved.
- The birth parents in this application have completed their family and their previous births and pregnancies are described as uncomplicated. The application notes that obstetric care is planned.
- There is a within family element to this application as the birth mother and intending mother are siblings. The birth mother is clear that she feels motivated by a desire to help her sibling complete her family and would not make this offer to just anyone. Counselling reports note that they are close and have similar values and philosophies around pregnancy care and parenting.
- The counselling sessions for both the intending parents and birth parents have canvassed the topics of openness and transparency for any resulting and existing child/ren to know their conception story and the link they share with the birth parents who plan to be known as a special aunt and uncle to any resulting child/ren. All parties are aware that they can continue to access counselling services throughout their treatment, pregnancy and following the birth of a baby.
- Testamentary guardianship of any resulting child/ren was discussed and the intending parents note that the birth parents already have testamentary guardianship over their existing child, they note that they would like them to be the guardians over a child born from this surrogacy arrangement also.
- The issue of termination has also been discussed in counselling and all parties feel that the birth mother's health is paramount and understand that decisions around termination of pregnancy will rest with the birth mother.
- Both parties have sought independent legal advice. The legal advisor for the intending parents is satisfied that they have a clear and comprehensive understanding of the legal considerations, implications and processes associated with a surrogacy arrangement. A full and comprehensive legal report for the birth mother covered all legal aspects of the surrogacy and subsequent adoption of the baby that the birth mother needs to be aware of.
- Oranga Tamariki have given approval for 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.

### **14. Application E21/113 for Embryo Donation for Reproductive Purposes**

Michele Stanton opened the discussion for this application. The Committee considered this application in relation to the *Guidelines for 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 donor couple have remaining embryos created from their own IVF treatment that they wish to donate to the recipient couple. The donor couple have children born from the embryos created and have completed their family.
- Recently, the donation of these embryos was approved by ECART, but the proposed transfer did not go ahead due to the previous recipient conceiving spontaneously. The application states that the donor couple are motivated by a desire to help another couple and to give their remaining embryo a chance at life.
- The recipient couple have a diagnosis of unexplained infertility with a history of unsuccessful treatment and medical reports that support the application canvas their history of unsuccessful treatment and state that embryo donation gives them the best chance of a pregnancy.
- The parties originally found each other online and have since met in person. If this treatment is successful, the child/ren would be full biological siblings of the donor couple's children. They would wish for ongoing contact with any child born of this arrangement and they plan to tell their existing children about the donation once a pregnancy is established. Both the recipients and the donors value openness and transparency and counselling reports that support the application state that the alignment of these values has been important to the agreement to proceed with the proposed donation. Both parties also agree in counselling reports that they hope for a cousin like relationship between existing and any resulting child/ren.
- The issue of testamentary guardianship has been discussed and the application notes that it is important to the donors that if something were to happen to the recipients, that the resulting child would be cared for and the nominated guardian would be both aware of and willing to facilitate ongoing contact between the two families.
- The issue of termination has been discussed and notes that both couples share similar beliefs around termination where they are religiously opposed. All parties understand that the decision is the recipient woman's to make. The Committee noted that the clinic will await confirmation of up to date police vetting before the donation is finalised. The Committee was advised however, that police vetting has previously been required in a different capacity for the recipient couple's work without any issues being identified.

## **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 E21/114 for Within family gamete donation (eggs)**

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 arrangement of within family egg donation, the egg donor would like to donate eggs to her biological aunt.
- There is a clear medical and age-related need for donor eggs and the application notes that the recipient couple will also require surrogacy to carry a pregnancy. The application is clear that they will only undertake an egg retrieval cycle with the donor once they find a surrogate and have that application approved by ECART.
- The egg donor is single and has been aware of the fertility struggles of the recipient couple for a number of years. She is healthy and well and there are no significant medical risks to her in undertaking the proposed donation. She has had the risks of egg donation explained to her, along with the ways in which the risks will be mitigated. She currently has no children of her own but may consider having children in future.
- Counselling reports note that the issue of openness has been discussed and close family are also supportive of the intended donation. Because of the age difference between the egg donor and recipients, it has been discussed that all parties envisage the egg donor's relationship with any resulting child/ren as a social cousin. Counselling reports also describe the recipient couple's view that the opportunity to use these eggs gives a genetic connection that the recipient couple would like if possible.
- The Committee noted letters of support that are attached to the application and were satisfied that this intended egg donation is the best or only opportunity for the recipient couple to complete their family.

## **Decision**

The Committee agreed to **approve** this application, subject to noting that the recipient couple will only proceed with the egg retrieval once an application for surrogacy is also approved.

## **Actions**

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

### **16. Application E21/115 for Embryo donation for reproductive purposes**

Mary Birdsall 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 donor couple in this application have children and have embryos left over from their own IVF treatment that they wish to donate to the recipient couple. The donor couple consider their family to be complete. They have discussed donating their remaining embryos for a number of years now and have remained consistent in their wish to donate any remaining embryos. Counselling reports that support the application also note that the donor couple are motivated by wanting to give the embryos a chance at life and to help another couple.
- The donor couple have disclosed their medical history, in particular that one of their children has a mild and manageable condition. The recipient couple have been informed about what this disorder involves and would like to proceed with the intended donation arrangement.
- The recipient couple have one child. They have had fertility treatment for a number of years in order to complete their family without success and the recipient woman is now of advanced maternal age. The Committee considered the information provided in this application and agreed that the intended embryo donation offers the recipient couple the best opportunity to complete their family at this point in time.
- The application notes that the recipient couple may not be able to use all of the embryos donated due to their age and counselling reports discuss the donor couple's preferences for disposing of any remaining embryos.
- Counselling reports explore the recipient couple's feelings towards having one child related to them biologically and one child who is not. They note that they are excited for the opportunity to carry the pregnancy and have that special connection to a resulting child, and that having experience in navigating issues around adoption of an immediate family member, they are committed to being open with any child born of this arrangement.
- The donor couple also have experience of adoption in their immediate family and took time to consider these discussions and wish to proceed with confidence. They have declared that they would wish to have ongoing contact with any child born of this arrangement and that openness and transparency is extremely important to them also. The parties joint counselling reports explore ongoing contact and wellbeing of existing children and highlight a relationship of mutual respect and shared values between the couples.
- The implications counselling has covered the issues well and both couples understand the legal issues associated with embryo donation. Testamentary guardianship has also been discussed and agreed. The donor couple feel it is important that the guardian be made aware of the agreement for openness and ongoing contact and would continue to facilitate this in the event that a guardian had care of any resulting child/ren.

### **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.

## **General business**

### **New Zealand Law Commission issues paper and meeting attendance**

The New Zealand Law Commission (NZ Law Commission) thanked ECART for the invitation to attend this meeting to observe how the Committee considers surrogacy applications. In their initial consultation, they heard that the process was a safe and robust one and this informed their preliminary conclusions put forward in the issues paper. The NZ Law Commission also thanked ECART for its letter of response noting that it was able to reflect ECART's comments in their issues paper.

The NZ Law Commission noted it was interesting to hear discussion on the practical ways that ECART considers applications as they have heard from intending parents and surrogate mothers who have raised practical concerns around resourcing and time it takes to prepare an application. They have also heard from counsellors about the time it takes to prepare an application being important, especially in cases where applicants do not have pre-existing relationships. A range of different views have been received and the NZ Law Commission would welcome ECART's response, particularly in the issues paper, on practical concerns relayed and the options that have been put forward to improve the process.

ECART is welcome to contact the NZ Law Commission at any time should it have questions.

ECART explained to its guests that ECART holds meetings in public in relation to general issues but, although it considers deidentified applications, its consideration of those applications are in closed session. ECART noted that the Law Commission had been invited to observe ECART's consideration of applications in closed session to assist them in understanding the current process, and that what was discussed was confidential. It noted that the minutes are heavily deidentified to protect the privacy of the people involved but are publicly available.

### **Action**

A response to the issues paper is due by 23 September 2021 and ECART agreed that it would set aside a day for preparation and a day to meet and develop a response to the NZ Law Commission's issue paper.

Meeting date: 31 August 2021, 11am-1pm

### **ECART application form update/redesign**

The ECART Chair has developed an outline of a possible new form to act as a starting point for updating ECART's application forms to be in line with the ACART *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*.

Ideally, ECART would look to have one form across its different applications with different sections that are completed as relevant and that follow the ACART guidelines as they now stand. The form should reflect the requirements of the Guidelines and ensure that ECART is provided with all the information it needs to consider an application.

The suggested form is structured as follows:

1. **Application Summary** (containing applicant information only and principles of the HART Act with checklist in the current forms removed).
2. **Section 2 medical reports** – sections for intending parents, embryo donors, gamete donors, surrogates. In relation to each of those the Chair has listed required questions in terms of health.
3. **Section 3 counselling** – could state that the reports need to address all matters set out in an attached guideline. The Chair has drawn together all of the requirements set out in the guidelines; and separately, headings routinely used by counsellors in their counselling reports. Other factors to be included are the cultural appropriateness of counselling, the availability of counselling throughout the process, provision of counselling to whānau and extended family and existing children, and any other relevant factors ECART needs to be aware of.
4. **Section 4 legal advice requirements** – legal advice requirements with the statement that surrogacy arrangements require independent legal advice. With respect to other types of application, applicants ought to be aware of the opportunity to seek legal advice. Legal reports attached.

The Chair's proposed form would remove some of the duplication that is in the current forms. Having four clear sections would clearly set out what ECART needs to make a decision.

Terminology for applicants has been suggested as 'intending parents (1 and 2)', instead of 'recipients' and, 'surrogate' and 'surrogate partner' instead of 'birth parents'. The Committee also noted that the use of the word 'surrogate' reflects current legislation.

At the meeting it was suggested that if someone is returning for a second application that they need to include detail about their previous applications and ideally a reference number.

It was also noted that there needed to be a section relating to Oranga Tamariki and attaching letters of support if the applicants wished to provide these.

The Ministry is to lead translation of the content, once this has been agreed by the Committee, and consulted on with stakeholders, into a hard copy/editable form initially and then into an online form for use on the online application platform, ERM. It is unclear how long this process will take but a project plan will be developed, and the online form developers will likely become involved early in 2022.

As the Committee and secretariat work together to develop the forms, the intention is that the forms developed in the interim will be paper forms that are in line with the current ACART guidelines.

### **Actions**

The Committee agreed that it would set aside a day to read through the outline of the suggested new form and a day to meet again as a committee to offer feedback. The feedback from the fertility service providers provided to the secretariat to date will also need to be considered and incorporated prior to the ECART meeting. If there is rough

agreement on the form at the meeting, the secretariat will then work to refine the questions to get a working prototype that it would test with the clinics.