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

**11 February 2021**

Held via zoom on 11 February 2021

**In Attendance**

Iris Reuvecamp Chairperson

Paul Copland Member

Michele Stanton Member

Mike Legge Member

Mania Maniapoto-Ngaia Member

Jude Charlton Member

Tepora Emery Member

Mary Birdsall Member

Calum Barrett ACART member in attendance

Hayley Robertson Senior Advisor, Ethics

Kirsten Forrest Senior Advisor, Ethics

Zoe Benge Assistant Advisor, Ethics

Tania Siwatibau Administrator, Ethics

1. **Welcome**

The Chair opened the meeting by welcoming all present.

1. **Conflicts of Interest**

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

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

The minutes from the 7 December 2020 meeting were confirmed.

1. **Application E21/001 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 have embryos created from their own IVF treatment that they now wish to donate as they have completed their own family.
* The medical report for the donor couple states that there are no medical issues that would affect any child born of this donation.
* The recipient couple have an existing child conceived using donor sperm and a clear medical reason exists for not using their own eggs. They are a same sex couple who wish to expand their family with the help of donated embryos and the application contains separate medical reports for each of the applicants to both have the opportunity to conceive using the donated embryos.
* The donor couple’s motivation for donating has been explored in counselling sessions. They have four embryos to donate and have offered to donate to the recipient couple with whom they share the same values. They are comfortable having a child who has no genetic link to them or their existing child. All parties have declared intentions to be open with any child born of this arrangement and the donor couple’s children as biological full siblings.
* The recipient couple and the donor couple initially met online and now know each other well. The couples believe they have formed a sound relationship and that they could resolve any future conflict should it arise. They are aware of the dispute resolution process.
* The implications counselling has covered the issues well and both couples understand the legal issues associated with embryo donation.

**Decision**

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

**Actions**

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

1. **Application E21/002 for non-binding ethical advice on traditional surrogacy**

Iris Reuvecampopened 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 in an application for a non-binding ethical opinion concerning traditional surrogacy where a clear medical reason for using donor eggs and surrogacy exist.
* The committee noted the recipient couple’s long and difficult reproductive journey and stated that this was a well put together application.
* This is the applicants’ second application to ECART, following their application in 2020 for surrogacy with egg donation. The egg donor in the previous application has now offered to donate her eggs as well as gestate the pregnancy, upon hearing about the various and difficult issues that the couple have faced on their fertility journey.
* The birth parents have completed their family. The birth mother previously donated eggs to the intending parents and has had the risks of carrying a surrogate pregnancy explained to her. She is healthy herself and has had previous uncomplicated pregnancies.
* The intending parents and the birth parents initially met online and now know each other well. The couples believe they have formed a sound relationship and that they could resolve any future conflict should it arise.
* The issue of termination has been discussed and the intending parents understand that once an embryo is transferred to the birth mother that she has the legal right to make any decisions about the pregnancy including the decision to terminate a pregnancy. The intending parents intend to ensure that life insurance is in place for the birth mother before an embryo is transferred.
* Both the intending parents and the birth parents have sought independent legal advice and the legal issues have been discussed at those sessions as well as during their counselling sessions.
* The counselling sessions have also canvassed the following topics: support from the close family and networks of people the potential child would be welcomed into, the intending parents’ views on openness with their children, and any child born of this arrangement and ongoing contact with the birth parents and their children.
* The intending parents have sought a preliminary assessment from Oranga Tamariki for an adoption order.

**Decision**

The Committee was of the view that this was a comprehensive and considered application. It did not have any concerns regarding this application or see the need to make any recommendations.

**Actions**

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

1. **Application E21/003 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:**

* The donor couple have embryos created from their own IVF treatment that they now wish to donate as they have completed their own family. The donor couple have children born from the embryos and consider their family to be complete. They would like to give their remaining embryos a chance at life.
* The medical report for the donor couple states that there are no medical issues that would affect any child born of this donation.
* The initial connection between the donors and recipients was arranged through the clinic and the application notes that the donor couple were looking to donate their remaining embryos to a couple who shares their values and religious faith, and are willing to give all of the remaining embryos a chance at life.
* The committee noted that one of the donors and their existing children have Māori heritage. They discussed the importance of any resulting children growing up with awareness of their Māori whānau and the ability to connect with their whakapapa through the proposed donation arrangement.
* The committee would like further counselling to be undertaken to ensure the requirement in the *Guidelines for family gamete donation, embryo donation, the use of donated eggs with donated sperm and clinic assisted surrogacy* at section A.6 that “the potential genetic, social, cultural and intergenerational aspects of the proposed arrangement safeguard the wellbeing of all parties and especially any resulting children”.
* The Committee discussed the requirement in the *Guidelines for family gamete donation, embryo donation, the use of donated eggs with donated sperm and clinic assisted surrogacy* at section A.4 that “the procedure is the best or the only opportunity for intending parents to have a child” and queried whether the recipient couple had considered using the recipient woman’s eggs.
* The committee noted that the recipient couple felt that it would be better for their adopted child if another child also had no genetic link to the recipient couple.
* The committee noted that due to Covid-19 restrictions, aspects of the counselling were conducted online and suggested that the parties explore the above issues in a face to face session.
* The counselling sessions have explored the topic of termination and note that while the donor couple do not agree with termination, they understand that this would ultimately be the decision of the recipient couple.
* The counselling sessions have also canvassed the support from the networks of people the potential child would be welcomed into, the recipient couple’s views on openness with their existing and potential children, ongoing contact with the donor couple and the requirements of the HART Act including the HART Act register and the right for any child born of this arrangement to have access to information about the donor couple and any siblings.

**Decision**

The Committee agreed to **defer** this application for the recipient couple to attend face to face counselling with a view to specifically considering the reasons for pursuing embryo donation rather than using the recipient woman’s eggs; working through the reasoning provided that it would be better for their adopted child to have a sibling who was not genetically related to the recipient couple; and further consideration of how any resulting child/ren’s knowledge about their Māori heritage might be supported and safeguarded.

**Actions**

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

1. **Application E21/004 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:**

* There is a clear medical reason for the creation of embryos with donor eggs and donor sperm in this application. The intending parents in this application have had a number of different procedures in past years without success. They are otherwise fit and well with no medical conditions of note.
* The committee noted that the intending parents had an application for the creation of embryos with donor egg and donor sperm approved by ECART in 2019 which did not result in any embryos for transfer.
* The egg donor in this application has children and considers her family complete. The risks of egg collection have been outlined to her. The application notes that the egg donor and her partner have undergone IVF in the past and have an understanding of what is involved.
* The egg donor is the intending parents’ sister in law. The egg donor’s offer to donate her eggs was a well-considered offer that was welcomed by the intending parents as there is a close familial connection and the relationship between the parties is one that is close and protects the interests of all parties including existing and potential children.
* The issue of openness and relationships have been discussed and all parties envisage that the any resulting children will grow up knowing their birth story and envisage the egg donor as a special as well as social aunt to the resulting child.
* The committee noted a reference in the application to the intending mother’s specialist obstetric review. However, this was not provided in the application papers. The committee agreed that it needed to see this report in order to make an informed decision in this case, due to the advanced maternal age of the intending mother in gestating a pregnancy.
* The committee also noted that the fertility clinic was unable to get in contact with the sperm donor for this application, and instead included the previous reports from the intending parents’ previous application to ECART with the same sperm donor.
* The committee noted that the guidelines have changed since the application was put together, and that consent would be required for any on-donation of the embryos.

**Decision**

The Committee agreed to **defer** this application to request a copy of the intending mother’s obstetric report.

**Actions**

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

1. **Application E21/005 for the Donation of sperm between family members**

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 noted that a clear reason to justify the use of donated sperm exists - the recipient woman in this application is single and requires the use of donated sperm to start her family.
* There is a familial connection within this intended arrangement and the relationships are described as close knit with the parties being in regular contact.
* The issue of openness and relationships have been discussed and all parties envisage that the any resulting children will grow up knowing their birth story, and that the gamete donors will have the same kind of relationship of social Aunt and Uncle to any resulting children as the recipient woman has with their existing children.
* All parties involved understand that the recipient woman has the legal right to make any decisions about the pregnancy including the decision to terminate a pregnancy.



1. **Application E21/006 for Surrogacy involving an assisted reproductive procedure (and egg donation)**

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 have previously completed an IVF cycle with the egg donor and intend to use the embryo created in this arrangement.
* The intending mother has a medical condition that impacts her ability to use her own eggs and also to carry a pregnancy. The counselling sessions have addressed the intending parents’ fertility history and the committee noted the recipient couple’s long and difficult reproductive journey.
* The egg donor has children and considers her family to be complete. The committee noted that the eggs were previously donated and the embryos were created at that point and cryopreserved, so the egg donor is not required to go through any new medical testing or procedures.
* The birth mother in this application has completed her family. She is a close friend of the intending parents and has offered to gestate their last remaining embryo. The birth mother has had the risks of carrying a surrogate pregnancy explained to her. There are no known risks to the birth mother beyond the usual risks associated with a surrogate pregnancy and they will be managed with appropriate medical care.
* The birth mother has disclosed a history of mental health issues and a comprehensive report from a specialist included with this application indicates that there are no psychological barriers to her gestating a pregnancy for the intending parents.
* The reports in the application are complete and show the HART Act principles in this application have been respected and the counselling reports are thorough and have addressed the implications of the intended arrangement well. All parties felt that counselling had been culturally appropriate.
* Both parties have received independent legal advice and understand the legal issues involved.
* Oranga Tamariki assessments have resulted in the decision that an adoption order in principle is approved.

**Decision**

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

**Actions**

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

1. **Application E21/007 for Embryo Donation for reproductive purposes**

Paul Coplandopened 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 embryos created from their own IVF treatment that they now wish to donate as they have completed their own family. The donor couple’s motivation for donating has been explored in counselling sessions and they would like to give their remaining embryos a chance at life.
* The medical report for the donor couple notes that the donor man was of advanced paternal age at the time of sperm collection. The committee discussed the evidence that advanced paternal age increases the risk of autism spectrum and schizophrenia in children and, weighed the principle of the best interests of the resulting children against other factors in the application. The recipient couple have had these risks explained to them and wish to proceed with treatment if this application is approved.
* The counselling sessions have addressed the intending parents’ fertility history and they have been able to openly discuss the effects on their lives of their grief following an event in their journey and they have come to terms with both embryo donation and adoption. The recipient couple were approved by ECART for embryo donation in 2019 but sadly the transfers did not result in a pregnancy.
* The donor and recipient couple do not have an existing relationship. They have shared and accepted each other’s profiles through the clinic. Both parties report sharing a strong belief that life starts when embryos are created and that those embryos deserve a chance.
* The recipient couple are aware that the donor woman has also donated eggs through the clinic. They understand that no children have been born from this donation at this stage but that a child may be born in the future. It was important to them that any resulting children would be able to access information about any siblings in the future and this has been explored in counselling.
* The counselling sessions have also canvassed the support from the networks of people the potential child would be welcomed into, the recipient couple’s views on openness with the children, ongoing contact with the donor couple and the requirements of the HART Act including the HART Act register and the right for any child born of this arrangement to have access to information about the donor couple and any siblings.
* The implications counselling has covered the issues well and both couples understand the legal issues associated with embryo donation. Both parties understand that the donor couple can withdraw their consent up to the time the embryos are transferred.

**Decision**

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

**Actions**

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

1. **Application E21/008 for Creation of embryos from donated eggs and donated sperm**

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:**

* The recipient is a single woman and the application sets out a clear need for an egg donor and sperm donor. She has had the increased risks of carrying a pregnancy at an advanced maternal age and with non-genetically linked embryos explained to her and discussed how those increased risks will be managed. Findings from a specialist are referred to in the application but the specialist report is not included.
* Both donors in this application are clinic donors and both donors have children of their own and consider their families to be complete.
* The sperm donor has been informed about the new rules of on-donation with his consent, 10-year storage period and the information about him that will be stored on the HART Act Register that a child could access from age 18.
* The sperm donor has also declared that he would be open to contact in future with any child born of this arrangement and he and his partner also plan to be open with their children about his decision to donate and that they may have half siblings.
* The egg donor has declared that she is open to future contact with any child born of this donation should the child/ren desire contact and she would wait for the child/ren to initiate any contact. The donor couple have children of their own and plan to talk with them about the donation if ECART approves this application.
* The egg donor has had the risks of egg collection explained to her. She is a carrier for a medical condition and testing has revealed the risk to the potential child of developing the condition is remote. She is currently taking medication and her mood is described as stable and she has no health history of significance.
* The egg donor has declared that she is open to future contact with any child born of this donation should the child/ren desire contact and she would wait for the child/ren to initiate any contact. She and her partner plan to talk with their own children about the donation if ECART approves this application.
* The recipient woman has expressed that she would be open to connecting with her two unknown donors in future for the benefit of any child born of this arrangement and that she would be guided by her child as to their needs around future contact.
* Her counselling sessions have canvassed the issues of her not having a genetic link to a child, information sharing, supports, guardianship and coping with possible outcomes including the possibility that the treatment is not successful.

**Decision**

The Committee agreed to **defer** this application to request a copy of the obstetric physician’s report for the recipient woman referred to but not included in the application.

**Actions**

Secretariat to draft a letter from the Chair to the clinic informing the medical director of the committee’s decision and agreement that it will view the report in between meetings.

1. **Application E21/009 for Embryo donation for creation of embryos from donated eggs and donated sperm**

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

**Issues discussed included:**

* The recipient woman in this application is a single woman who has had fertility treatment using her own gametes without success. Medical opinion is that the chance of success of a pregnancy using her own gametes is low and that donor gametes would offer a better chance.
* The egg donor is a personal friend of the recipient woman and the application describes their relationship as having grown into one of a family type relationship in which the recipient woman’s potential child/ren would be welcomed and in which the true nature of the child’s genetic inheritance would be communicated openly and from an early age. The egg donor would like to be seen socially as an auntie to any child born of this arrangement. She has been informed of the HART Act requirements in relation to donor identity.
* Having ED as her egg donor is a comfort to the recipient woman as she is of the view that this allows for the potential child to have a social link to their genetic connections.
* The egg donor has been informed of possible on-donation for surplus embryos but understands that the recipient woman would like more than one child if possible. The egg donor would plan to discuss on-donation with the recipient woman in future should that be an option she wishes to consider.
* The egg donor is a young woman who has expressed a desire to have children of her own and would plan to have a family with her partner in the future. She has had the risks associated with egg collection explained to her by her medical specialist and still wishes to proceed with the treatment. She is making some lifestyle changes that would see her optimising her health and weight before treatment begins. She has disclosed a family history of a medical condition that is not genetic and would not affect any potential child/ren.
* Her counselling sessions have canvassed her thoughts around receiving treatment, her rights in relation to any decisions prior to the embryos being created and, the recipient woman’s rights thereafter and possible treatment outcomes.
* The medical risks to the recipient woman and her potential child have been explained in medical sessions along with advice on how they could be mitigated. She intends to nominate a testamentary guardian in her will.
* Counselling sessions for the recipient woman have canvassed the issues of the possibility of treatment not being successful, information sharing with the potential child, guardianship in the event she could not care for the child, termination of pregnancy and parenting a child born with a disability and on donation of embryos.
* The sperm donor is a clinic donor and has no biological children of his own. He is in a relationship and has a parenting role in his partner’s child’s life. He has declared that he would be open to contact with any child born of this arrangement and he is aware that his details will be available to a child through the donor register when the child turns 18 years of age. He is aware of donor and storage requirements set out in the HART Act.
* Counselling sessions for all parties have included discussion of the new ACART guidelines provision that embryos created in this arrangement can be on donated with donor consent in a total of two families.

**Decision**

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

**Actions**

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

1. **Request for reconsideration of application E20/154 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:**

* Following its consideration of this application on 7 December 2020. ECART agreed to defer its decision in order to receive further information about the extent to which the recipient man had made changes to his lifestyle and a medical report for the egg donor from one of her specialists seeking an expert view on the egg donor’s potential response to the treatment.
* Additional letters of support from members of family and community were provided which demonstrate the changes the recipient man has made to his life are very positive. Full disclosure has been made and this has allayed the committee’s concerns.
* One matter not addressed entirely was the impact on the egg donor of donating eggs, but the committee was satisfied with the response in terms of the level of support in place for her and how she would manage generally.

**Decision**

The Committee agreed to **approve** this application

**Actions**

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

1. **Response to deferred decision for application E18/108 for Surrogacy involving an assisted reproductive procedure**

Iris Reuvecamp opened the discussion for this application. The committee considered this application in relation to the *Guidelines for 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 first considered this application in 2018 and had requested more information at that time, including an obstetric specialist report for the birth mother, confirmation that all risks for the birth mother had been discussed with all parties, a report for the intending mother on her mental health status, further detail on how the intended whangai arrangement would work and the outcome of Oranga Tamariki’s reconsideration of the intending parents’ application for an adoption order.
* ECART reconsidered the further information in July 2019 at which time it agreed that the further information received largely addressed its concerns. However, it deferred making a decision as an outcome from Oranga Tamariki was outstanding at that time.
* The outcome has now been received along with updated counselling reports. Oranga Tamariki have approved the adoption order in principle.
* The intending parents have been in this process for some time now and have provided ECART with all the information it has asked for over an extended period of time.
* It was acknowledged that intending parents had worked hard to obtain approval from ECART in circumstances where they could have potentially chosen other options open to them.
* The intending parents have indicated they would wish to proceed with adoption but also raise any child born of this arrangement within an extended family environment.
* The intending parents have moved away from where they were living when this application was first submitted and are now a short distance away from the birth parents’ home. Despite this, they have continued their relationship and kept community ties alive.

**Decision**

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

**Actions**

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

1. **Request for further consideration of E20/83 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.

Dr Mary Birdsall declared a conflict of interest and the committee agreed that she would not be present for the discussion about the application as a whole.

**Issues discussed included:**

* The basis for the decision that the Birth Mother was not a suitable surrogate. The committee was of the view, on the basis of its extensive experience considering surrogacy applications, that there are multiple risks in relation to this potential BM which the Committee agreed are not viable in the context of a woman acting as a surrogate birth mother. The Committee noted that the letter from the specialist did not appear to consider the risks involved in the context of a surrogacy. The committee considered that it was its role to apply the principles of the HART Act, and to consider whether the risks involved for the BM were reasonable. These risks were clearly spelt out in the letter from the specialist. The Committee did not consider these were acceptable risks in the context of a potential surrogacy.
* In relation to the intending mother’s mental health history, ECART is concerned that it has not received the information it needs to fully consider the application. It notes that, in the letter from IM’s gastroenterologist since 2008 he states “in the context of IM’s surrogacy, I am not aware of any relevant medical or psychiatric diagnoses.” A letter from IM’s GP of five years states “she has no relevant mental health or psychiatric history in the context of a surrogacy application”. The counsellor states she has not approached IM’s health care providers directly which is different to the usual process. The Committee is concerned that information is being filtered or withheld from it relating to the intending mother’s mental health. It does not believe that those concerns are addressed by the intending mother seeing an independent psychologist who does not have access to the intending mother’s previous medical and mental health records.

**Decision**

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

**Actions**

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

1. **Correspondence**
* The Committee considered correspondence from a fertility provider and applicants in relation to an ECART decision to decline an application for embryo donation. The fertility provider seeks ECART’s view on how many treatments using single egg thawing would be needed before revisiting the possibility of embryo donation and is also seeking confirmation from ECART in relation to eligibility around medical condition prior to embarking on a full application; and whether some/all of the information from the previous application could be reused. ECART noted that some current statistics quoted on egg freezing are a woman 36 years old or younger with 10 eggs frozen will have at least a 50% chance of conceiving a baby. ECART is of the view that if the applicants were to collect 10 eggs and use them all without success, it would be open to the applicants to apply for embryo donation. ECART is happy for information from the previous application to be reused, provided it remained current, and acknowledging that aspects of the application would need to be made afresh.

**Meeting close**

Confirmation of next meeting on Thursday, 8 April.

Confirmation of ECART member in attendance at next ACART meeting on 19 February 2021. Iris Reuvecamp to attend.