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

9 June 2022

Held via zoom on 9 June 2022

In Attendance

Iris Reuvecamp	Chairperson
Jeanne Snelling	Member
Angela Ballantyne	Member
Jude Charlton	Member
Mike Legge	Member
Emily Liu	Member
Analosa Veukiso-Ulugia	Member
Richard Ngatai	Member
Simon McDowell	Medical Expert Advisor
Sarah Wakeman	ACART member in attendance
ECART Secretariat	

Apologies

Mania Maniapoto-Ngaia	Member

1. **Welcome**

The Chair opened the meeting and welcomed all in attendance. The Chair acknowledged the recent resignation of Dr Tepora Emery who, as a result of increasing professional commitments, felt unable to continue to serve on ECART. Dr Emery's contribution to the committee over the past three years was acknowledged, including, in particular, the positive way in which she has influenced the Committee's perspective on certain issues.

2. **Conflicts of Interest**

No updates were offered.

ACART member in attendance Dr Sarah Wakeman declared a conflict of interest for application E22/097 and did not take part in the discussion for that application.

3. **Confirmation of minutes from previous meetings**

The minutes from the 12 April 2022 meeting were confirmed.

4. Application E22/086 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 recipient couple have primary male factor infertility and age-related infertility.
- The donor couple had male factor infertility and had a child conceived with ICSI treatment overseas. Their second child was conceived from their embryos created with donated eggs and they now consider their family complete.
- Their egg donor is a close friend, and she had indicated that she would prefer that any remaining embryos be on donated. The donor couple agree with this as they understand the experiences of infertility and wanted to help another family.
- They now wish to donate the remaining embryos to the recipient couple who they initially chose from clinic profiles and now feel connected to.
- The donor couple have declared that they are open with their children about their family story. Their children see the egg donor often as she is a family friend, who also supports openness. They are happy to be identified as donors to any children born of this arrangement and plan for the recipient couple to meet their children. The recipient couple have also declared intentions to be open with the potential child/ren about their family story from an early age.
- The donor couple have discussed their legal rights in relation to this donation and know that they can withdraw consent up to the point of transfer and that they can also refuse consent for use of further embryos. They are also aware that they cannot donate embryos to another couple if children are born to this recipient couple. They understand the decisions on termination of pregnancy rest with the recipient couple.
- The recipient couple have been informed that following transfer of an embryo the recipient woman will have legal rights to make decisions about the pregnancy and parental rights and that their names will be on the child's birth certificate.
- The egg donor and her partner have had counselling sessions as part of this application and are happy to be open about the role the egg donor played in the creation of the embryos. They understand the donor couple are the legal guardians of the unused embryos and that once transferred to the recipient woman that she has the right to make decisions about the pregnancy and the recipient couple are the legal parents.
- The donor couple considered their children too young for counselling but they agreed to contact with the counsellor. On contact with the counsellor, the children seemed very accepting of the embryo donation.
- The recipient couple have been trying to conceive for about five years with the help of fertility treatment and using their own gametes but without success. They were advised to consider egg donation or embryo donation and decided on embryo donation after counselling.

- Implications counselling has included discussion around parenting a child who is not genetically related. They have expressed that they would prefer the child not to have a genetic link to either of them (versus a genetic link to one of the parents only).
- There is no mention of any reason why one person's gametes are not able to be used. The Committee considered whether embryo donation is the best or only opportunity for this couple to have a family given that there may be an opportunity for a biological or genetic link if one of the couple could use their own gametes.
- The Committee discussed the factors it weighs up in approving embryo donation applications in circumstances where one of a couple might be able to use their own gametes. Those factors include the current waiting lists for egg or sperm donation, cost of certain treatments over others, the certainty of numbers of embryos available vs gamete donation where that is unknown until embryos are created.

In the context of this application, ECART was satisfied that it is the best opportunity for the couple to have a child (primarily because of the issue of access to donated gametes, noting that it might be years before the recipient couple could access donor gametes).

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.

Secretariat to draft a letter from the Chair to the Ministry of Health to raise the Committee's concerns around barriers to access for fertility treatment in relation to cost. Committee to review letter at its August meeting.

ECART to write to ACART to raise concern about equitable access to fertility treatment services.

5. Application E22/087 for embryo donation for reproductive purposes

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

Issues discussed included:

- The recipient couple do not currently have children and have been trying to conceive for the past decade. The recipient woman is now of advanced maternal age and has reduced ovarian reserve. Previous IVF treatment using her eggs has not been successful. The couple have also been on the egg donor waitlist and had a potential donor, but the donation unfortunately did not go ahead. Embryo donation has therefore been presented to them as an option and they have discussed the implications of embryo donation with their medical and health care specialists. The couple have worked through not having a biological link to a child.

- The medical reports for the recipient couple include an obstetric review, which identifies the risks to the recipient woman in carrying a donor embryo pregnancy at advanced maternal age and how those risks might be mitigated. There is no medical reason indicated against her carrying a pregnancy. The obstetric review recommends weight loss for the recipient woman before fertility treatment begins and that she receives obstetric care once a pregnancy is established.
- The donor couple have one child and consider their family to be complete. They wish to donate their remaining embryos created through their own IVF treatment, to the recipient couple so that they might use them to start their own family. There is no medical history of note for the couple that would need to be shared with the recipient couple.
- The donor couple have indicated that they wish to donate all their remaining embryos to the recipient couple and for the recipient couple to make all decisions about their use. The parties are aware that the donor couple can make the decision to on donate any remaining embryos in the event that the recipient couple do not have children from this donation.
- The parties were unknown to each other prior to the donation, which has been clinic-assisted, and they met in person for the first time at counselling sessions.
- Both parties have declared intentions to be open with any child/ren born of this donation about their conception story in the best way possible for the child and at an age-appropriate time. They know that the donors' details will be recorded on the HART Register.
- Whether or not the embryo donation is the "best or only" opportunity does not appear to be specifically addressed in the reports submitted with this application. Discussion around use of the recipient partner's sperm is not set out in the reports. While ECART is waiting on guidance from ACART about the biological link and the weight it ought to attribute to the importance of a biological link, in this particular case in terms of the recipient couple's overall journey, given the waiting time for an egg donor and the recipient woman's age, the embryo donation would appear to be the best opportunity for the couple to start a family.

Decision
The Committee agreed to **approve** this application noting the recommendation for the recipient woman regarding weight loss and, when pregnancy is confirmed that she consents to be referred for obstetric assessment and care.

The Committee notes that there has been discussion around decision making about the embryos in the event that either the recipient parents do not have a child or, if they do have a child, decisions around disposal noting they cannot be on donated in that circumstance.

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

Secretariat to draft an email from the Chair to clinics reminding them about the need for adequate provision of detail in the medical reports.

6. Application E22/088 for embryo donation for reproductive purposes

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

Issues discussed included:

- The embryos were created with donated eggs, with the donor parents now wishing to on-donate the embryos.
- The egg donor has donated multiple rounds of eggs in the past and is active in the fertility space. The egg donor has two children of their own and four donor-conceived children who live across three families overseas and New Zealand.
- The donor parents have one child who was conceived from the embryos. The donor parents have stated that they have now completed their family and are seeking to donate their remaining embryos.
- The donor parents approached the egg donor who posted on their online fertility page. From there, the egg donor connected with the intending recipient parents. The recipient parents currently have no biological children and have been together for eight years. They have five years of primary infertility procedures, including IVF which did not result in any embryos.
- The clinical assessment states that embryo donation will be their best chance at achieving a family and is preferable to using the recipient parents' gametes.
- The donor parents conceived their three-year-old via surrogacy and there is no evidence of any genetic risks that would be relevant to the donation. The donor parents understand that one embryo would be transferred at a time. The donor parents state that they feel lucky that they were able to conceive via egg donation and a surrogate and would like to pay this forward to help others start their own families.
- The recipient woman has some health issues that are not concerning to the clinic. The medical review suggests that these are all manageable and present minimal risk.
- The egg donor is a carrier for cystic fibrosis however, the embryos have been tested and are not carrying the gene.
- The recipient parents had initially looked at sourcing embryos overseas, however this did not happen due to disruption from the Covid-19 pandemic. The recipient parents also cited some discomfort at the anonymity of sourcing eggs from unknown donors overseas. They stated they are more comfortable with the New Zealand regulatory framework.
- The counsellor's report states that all parties have very similar expectations regarding contact and openness with their future children. The recipient parents plan to be open with their children regarding how they were conceived and that they have genetic siblings in another family. The donor parents have not yet discussed this with their child, as they feel they are too young to understand but will do so when they consider their child is at an appropriate age. All parties would like to maintain some contact between them.
- The recipient and donor parents noted that they are aware of *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. They are aware that embryos cannot be on-donated and have discussed what will happen with non-viable embryos, which would be to use them for embryology training.

- The donor man is of different ethnicity to the recipient couple and counselling has addressed this with the recipient parents, who understand that they will be raising a child with a different ethnicity to them. The donor parents have stated that they will encourage their child(ren) to learn more about their genetic history and cultural heritage.
- The counsellor noted that all parties have taken a child-centred approach.

The Committee also discussed the following:

- Whether there is enough evidence in the clinical report that suggests that this is the best or only option for the donor parents. The Committee agreed that five years of unexplained infertility would suggest that the donor family have tried multiple routes and treatments and that this would be the best option available to the donor parents.
- The Committee noted the egg donor is a carrier of cystic fibrosis. The Committee agreed that as the sperm donor was not a carrier and the test results relating to the embryos have shown that they are not carrying the gene that this should not be an issue.
- Whether enough attention was given in the counselling report to the fact that the recipient parents would be raising children who are a different ethnicity to them, and identity implications that the children may experience. The Committee noted that this may have been discussed in the counselling sessions. The Committee considered that, if this had not been discussed, it would recommend that further counselling take place in relation to the potential impact on a child and drafting an action plan that outlines how the child will be supported in relation to their cultural connections and development.

Decision

The Committee agreed to **approve** this application with the recommendation to pursue further counselling to ensure the child's cultural heritage needs are met.

Actions

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

7. Application E22/089 for surrogacy involving an assisted reproductive procedure

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

Issues discussed included:

- The application details a surrogacy arrangement between an intending mother and partner. Surrogacy has been recommended to the intending mother as the safest option to conceive due to health concerns.

- The intending parents have had embryos created from their own gametes and have contacted a birth couple via social media.
- The birth couple note that they feel their family is complete and are not seeking to have any more children of their own. The birth mother has been considering being a surrogate for some time and their partner is supportive of this.
- The counselling report raises no concerns, and the legal documents and adoption requirements are understood by both parties.

The Committee also discussed the following:

- The Committee noted that guardianship arrangements and wills have not been executed. The Committee agreed that these will need to executed before a pregnancy is established.
- Whether the intending mother's autoimmune disease could potentially impact any potential child. The Committee noted that her condition is not a genetic disease and whilst there is increased chance of the child developing the condition, it is of minimal risk.
- The Committee noted that the surrogate mother has acknowledged that this will be an emotional experience. The Committee agreed that this acknowledgement and a request to hold the child after birth does not indicate increased risk for not going through with the adoption process. It is also noted that the surrogate mother will be provided with counselling after the birth.
- Whether there are any concerns that should be raised regarding the surrogate's physical health in relation to previous pregnancies. The Committee noted vaginal tears in both births and post-birth haemorrhaging after one birth. The medical report states that there were vaginal tears, however the severity of the tears is not clear. The Committee noted that the mention of repair by a general surgeon which could indicate the tears were significant.

Decision

The Committee agreed to **defer** this application and requested that the birth mother is referred for a review by an obstetric specialist for an assessment of her suitability to act as a surrogate in light of her birth history; to ensure that she is fully informed of the risks of carrying a further pregnancy and another birth in light of her birth history; and, if the birth mother is considered suitable to act as a surrogate by an obstetric specialist and wishes to proceed, that a birth plan is developed to mitigate identified risks.

Actions

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

8. Application E22/090 for the creation of embryos from donated eggs and donated sperm

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

Issues discussed included:

- The recipient couple are a same sex couple using donor egg and clinic donor sperm for embryo creation.
- The egg donor is the sister of one of the recipient parents and the egg donor and her partner have 3 children and consider their family complete. She is at risk of elevated ovarian hyperstimulation syndrome which will be monitored and managed by the clinic but otherwise has no medical conditions of note and has been made aware that she may rescind consent to use of her gametes up till the point of insemination.
- Due to the familial connection with the recipients, there are consistent and healthy relationships formed between the recipient and egg donor parties.
- The recipient parent has been through many donor insemination and IVF cycles all of which have been unsuccessful. She has an otherwise uncomplicated medical history.
- The recipient partner has also been through donor insemination cycles which were unsuccessful and is affected by PCOS.
- The counselling report showed that the recipient parents have been counselled that it is unlikely that they will be able to conceive on their own and that donation of an embryo is likely their best opportunity to conceive.
- The sperm donor has a family history of breast cancer. This does not meet the criteria for genetic testing, but the recipients have been informed that there is some chance of inheritance.
- The recipient parents have been informed of the ability to on donate any unused embryos however they have no wish to do so as the egg donor does not wish for her genetic material to be used in this manner.
- The egg donor parents want to have contact with any resulting children and all parties intend to be open with the children about their conception story.
- The sperm donor has had counselling with their partner, and both are comfortable with the notion of donating gametes and the donor understands he can rescind his consent to use until the point of fertilisation. He is also aware of the deidentified report available to the recipients and has indicated he is willing to have future contact with any parties in the future.
- The sperm donor plans to be open with their own children and to let them know if there are any resulting genetically related half siblings from 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 E22/091 for the creation of embryos from donated eggs and donated sperm

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

Issues discussed included:

- The recipient is a single woman unable to conceive from several rounds with donor sperm. She had previously stored her own gametes. However, these did not survive the thawing process. Because of these factors and her age, she now requires a donor egg and donor sperm to conceive. The recipient has an uncomplicated medical history but given her advanced reproductive age has been counselled to undertake specialist care during pregnancy.
- The egg donor is the recipient's younger sister. The egg donor has one child with their partner and plan on having another once the donation process is completed. They have been made aware of the risks of egg donation and have a plan in place to deal with any medical issues that may arise from this.
- The sperm donor has one child and is a clinic sperm donor with no notable medical history. There is case of Parkinson's disease and Reynaud's syndrome in the family history. His genetic testing revealed no markers of concern.
- The counselling for each party included discussion about information sharing, storage arrangements, consent for storage and use of gametes, the HART Act, testamentary guardianship etc.
- There was no evidence of pressure placed on the egg donor to donate and while there has been no communication with the parents of the recipient mother and the egg donor this will occur once the pregnancy is confirmed.
- The recipient and the egg donor will have ongoing contact as sisters. They intend to be open with any resulting child/children early on in their lives.
- The sperm donor has received appropriate counselling and has been informed that the egg donor and the recipient are sisters and is comfortable with the arrangement. They understand the clinic's role in establishing contact in the future. The sperm donor is aware that contact could potentially occur should a child result from the use of his gametes. He plans to be open with his current child once she is old enough and any future partners about any resulting child/children

Decision

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

Actions

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

10. Application E22/092 for within family egg donation

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 egg donor is the partner of the recipient woman's step-cousin and has no medical or surgical history of note.
- The egg donor and her partner consider their family to be complete.

- The recipient couple have one child.
- The recipient mother has early-menopause and requires donor eggs in order to conceive.
- The increased risks as a result of the recipient mother's age and health issues have been discussed.
- Counselling was undertaken by both parties and both agree to share information with the wider family once a pregnancy is confirmed. Any resulting children would be informed of the donation.
- There was no sign of coercion on the part of the wider family or by any parties involved.
- The donor's children have been made aware of the donation and are supportive of the donation.
- The legal aspects of the donation were considered by both parties.

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.

11. Application E22/093 for embryo donation for reproductive purposes

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 donor couple required IVF to create embryos because the donor man had severe ogliospermia and the donor woman had PCOS. They have a high number of embryos to donate.
- The donor couple first thought about embryo donation immediately following treatment when they knew of the significant number of embryos that were created. They began researching more about this process following the birth of their second child and feel that their family is complete.
- Both of the donor couple have a history of low mood, depression and anxiety in relation to which they have independently sought support. The donor woman experienced post-natal depression following the birth of her first child. She is currently under the care of her GP, has seen a counsellor in the past and also uses medication. The donor man has managed his depression and anxiety through counselling and medication, also managed by his GP.
- At this stage they have not introduced the idea of this donation to their children, but their intention is to be transparent and honest about this process and they are hopeful that their children will have the ability to know of full genetic siblings in the recipient's family. The donor couple have spoken to one of the parent's children who is now an adult about their plans to donate. They have responded

positively to this information. They are not new to the concept of half siblings and sees this as an extension to this.

- The donor couple present with a clear understanding of the genetic relationship they will share with children born as a result of this donation and they have considered the feelings that are currently attached to that notion. They spoke openly about the emotional ties that will likely exist, but an understanding of the nature of donation.
- The donor couple met with recipient couple online some months ago. The donor couple would ideally like to remain in contact with the recipient couple and allow their children to understand the nature of the relationship to which they share with the resultant children.
- The recipient man is azoospermic. The recipient woman has endometriosis, adenomyosis, PCOS and has irregular cycles. The recipient woman has a history of anxiety which is well managed with medication.
- The recipient couple have been trying to conceive for several years without success.
- They have been considering the use of donated embryos instead of donated sperm for several reasons, both medical and emotional. Medically, the recipient woman has multiple diagnoses which are likely to impact on her own fertility; emotionally, they feel that embryo donation will enable them to feel equally connected as parents to their children. They feel that they have adjusted to the idea of raising a child who was not genetically theirs and feel strongly that they will bond with any resulting children as their own. They understand the genetic connection which will exist between any resulting children and the embryo donors, and the embryo donors' children, and recognise the emotional and social complexity of this dynamic.
- The recipient couple are hopeful that they will maintain contact with the donors into the future, envisioning an extended family relationship between the couples and resulting children.
- If there was a relationship or contact breakdown between the couples in future, the recipient couple would still support their children to access the donors in the future if the children wished.
- In joint counselling, both couples spoke of planning to be open with their children about the donation and the genetic and social connections created with each other and the donors. The recipients intend to be open with their children when they are still young and have said they will talk with the donors before identifying them. The donors said they plan to tell their children about the donation soon and are actively gathering resources to aid the conversation. The donors and recipients were in agreement that they would support the children in each family to connect with each other as all felt appropriate, and for the resulting children to have access to the donors particularly regarding the donation and genetic origins. Both couples stated they would still support contact even should the relationship between the two couples break down over time.
- The risks associated with pregnancy from embryo donation have been explained.
- The donors have completed genetic screening and the risk remaining of abnormality, disability and genetic disorder was discussed between the couples.
- The parties are aware of the legal implications of embryo donation. They know the donors can change their minds up to the time of transfer; that the donors

won't be informed of each transfer; that any unused embryos will be returned to the donors; that the donors won't be able to on donate if the recipient couple have children from these embryos; and that the recipient couple will be the parents on the birth certificate. The recipient couple would take over the costs of storage. All parties are aware of the need to apply to extend storage. All parties are aware of the right of any resulting child/ren to access information about the donors when they turn 18.

The Committee discussed whether this was the "best or only opportunity" for the recipient couple to have a child due to the possibility of the recipient woman being able to use her own eggs. The Committee agreed that, due to her medical history and the couple's fertility journey, as well as the wait list for donor sperm, and the recipient couple's specific consideration of the lack of a genetic link in the context of this application, that this was the best opportunity for the recipient couple to have further children.

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 E22/094 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 parents have two young children. They feel that their family is not complete. The intending parents have been married for many years and have one embryo left in storage and wish to try for a third child through surrogacy.

- The intending mother had a hysterectomy after her second pregnancy and birth. The resulting child would be a full genetic child of the intending parents.
- The birth parents have two children who are nine years old and 11 years old.
- The intending mother and birth mother are sisters.
- There is no evidence of coercion in the birth mother's offer to act as a surrogate.
- The counselling sessions have covered discussion and agreement between the parties around pregnancy and birth plans.
- The intending parents have discussed the surrogacy with their lawyer and have been advised of the relevant legal requirements.
- The medical report for the birth mother states that she is fit and well and notes that her previous pregnancies and births were without complication. She has previously had a heart-related episode which appears to have resolved. She has no significant genetic or inherited conditions.
- The parties understand that the decision to terminate the pregnancy lies with the birth mother with her health being paramount. Both parties would take medical guidance should foetal abnormalities be identified.

- The birth mother will continue to pay for her own life insurance. She understands that there is no commercial surrogacy in New Zealand and has no intention to accept any payments in return for her acting as a surrogate.
- The intending parents are described as having high insight into their mental health and a strong relationship with each other and the birth parents. They consider they will be able to navigate any conflict with open discussion should it arise.
- The birth parents have spoken to their children about the intended surrogacy arrangement. Their eldest child had concerns about what their friends might think, and the birth mother has indicated they will explore counselling if necessary.

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 E22/095 for surrogacy involving an assisted reproductive procedure

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

Issues discussed included:

- The birth parents are in a long-standing marriage in which they have three children together, and they consider they have completed their family.
- The intending mother is not able to carry a pregnancy due to severe endometriosis and adenomyosis. and has had previous fertility treatment without success. Surrogacy is now the recommended path that would offer the intending parents the best chance to start their family and the couple wish to pursue this option using their own embryos.
- The risks of carrying a surrogate pregnancy have been discussed with the birth mother generally and in light of her own birthing history. A specialist report submitted with this application also refers to a previous episode of anxiety and depression.
- The relationship between the intending parents and birth parents is a long-standing one and the couples socialise regularly. They describe a great relationship where they understand each other's boundaries. The birth mother had offered to be the surrogate for the intending parents. The intending parents originally had intended to go ahead with a different surrogate, but that arrangement did not progress, and the birth mother offered again to be a surrogate, which the intending parents accepted.
- The counselling sessions have covered discussion and agreement on pregnancy and birth plans. Both parties understand the decision to terminate the pregnancy rests with the birth mother and that her health is paramount.

- Both parties have received independent legal advice and have been advised about the requirements of the HART Act. The intending parents have been advised about what payments are permissible under the HART Act and they intend to pay for the birth mother's life insurance while she is pregnant.
- The Committee noted some inconsistencies with the information stated in the application, particularly the intending mother's ethnicity and the number of children the birth parents have. The Committee did not deem these discrepancies significant enough to defer the application pending further clarification but would encourage more thorough checking of applications before submission to ECART in future.
- The Committee noted that no letter from Oranga Tamariki was included in this application.

Decision
The Committee agreed to **approve** this application subject to receipt of a letter from Oranga Tamariki noting approval, in principle, of an adoption order.

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

14. Application E22/096 for surrogacy involving an assisted reproductive procedure.

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

Issues discussed included:
- The intending parents have been married for many years and have been trying to conceive for the past nine years. They have a history of unexplained miscarriages in the first trimester.
- The intending parents currently have embryos created from their own gametes and are seeking to create more using their own gametes if necessary.
- The birth mother is a solo parent with two children. She has noted that her first pregnancy was difficult and resulted in post-natal depression. This has been attributed to her difficult relationship with her partner at the time, the father of the child. She cites emotional and physical abuse, and drug addiction to be the determining factor in her mental health during and post-birth. Mechanisms have been put in place to prevent contact between the intending mother and their previous partner. Her second child was conceived with donated sperm. She considers her own family to be complete. She has a history of endometriosis which has not has not recurred for some years now. She reports nausea in her previous pregnancies; however, it was not severe enough to require medical attention and was manageable.
- The birth mother and the intending mother are close friends and have known each other for 10 years. They live within the same community.
- The birth mother and intending parents have declared intentions to be open with their children about the surrogacy and their relationship.

- Both parties have discussed their legal rights and the birth mother has noted that she will make any medical decisions during the pregnancy, however, they have agreed on grounds for termination of pregnancy.
- The intending parents have applied to Oranga Tamariki for an adoption order and have received approval in principle. The intending parents have appointed testamentary guardians in the event that they are unable to care for the child.
- Both parties have discussed dispute resolution and are confident that due to their relationship they will be able to address any issues as they arise.
- The intending parents have noted that they understand the potential stresses being a surrogate may have on the birth mother and are offering any support they can practically and in line with what is permitted in the HART Act.

The Committee discussed the following:

- Whether the intending birth mother would find being a surrogate difficult at this time while her own children are very young. The Committee considered deferring the surrogacy until the birth mother's youngest reached over one year old. The Committee noted however, that by the time the surrogacy process (ethics approval process, implantation, etc) had been completed that the child would likely be over one year old. The Committee agreed that the relationship between both parties, and the birth mother's close relationship with her family, shows that she has a strong support network.
- The Committee noted that the birth mother and intending parents live rurally, do not have immediate access to a hospital if there are any complications and have noted that there is some difficulty in finding a midwife in the area. There is access to a maternity ward in the town where they intend to give birth.
- The Committee noted the birth mother's medical history (the gastric sleeve surgery) and requested an obstetric referral.

Decision

The Committee agreed to approve this application on the condition that the intending mother agrees when pregnant, to be referred to obstetric care.

Actions

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

15. Application E22/097 for surrogacy involving an assisted reproductive procedure

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

Dr Wakeman declared a conflict of interest and did not take part in the discussion for this application.

Issues discussed included:

- The couple have permanent care of two children through Home for Life. The intended mother has had a hysterectomy and the intended surrogacy

arrangement offers the couple an opportunity to complete their family. The intended parents have four embryos created from their own gametes.

- The intended parents met the birth mother on an online platform. They have been building a relationship for the past year and describe a friendship that has grown to include daily contact by phone. They think that they will continue their friendship regardless of whether a birth results from the intended surrogacy arrangement.
- The birth mother has children of her own and has a blended family with her current partner. They raise their children together and consider their family to be complete.
- The birth mother describes a previous altruistic donation of her eggs to a friend made her want to investigate being a surrogate.
- The birth mother has a complex health history.
- Medically, she has endometriosis, is suffering from chronic pelvic pain that is multi-factorial and she suffered five miscarriages that were unexplained before she conceived her first child. Her first labour was difficult and resulted in her child needing to be resuscitated. She experienced medical complications as a result of this birth.
- An obstetric review included with this application sets out that she had post-traumatic stress disorder following the birth of her first child. She also suffered post-natal depression, which is attributed to her being in an abusive relationship at the time.
- The birth mother has a second child with her current partner. During her second pregnancy she experienced nausea that was managed with medication. There is a possibility that she may suffer nausea again as a surrogate.
- Her second child was delivered by c-section after induction failed.
- Both of her two pregnancies were characterised by irritable uterus for which she was in and out of hospital.
- She is at risk of having further miscarriages. Her medical report notes that the risk might be managed with progesterone support and with obstetric care.
- She describes being aware of the extra stress that being a surrogate will place on her family and will seek extra help as needed.
- The Committee noted that the independent obstetric concluded that the birth mother was medically qualified to be a surrogate; that the risks to her could be managed; and that she was physically and psychologically capable of being a surrogate.
- The Committee differed in its assessment regarding the appropriateness of the proposed surrogacy given the birth mother's clinical history: it considered that the unexplained miscarriages (six in total), the history of infertility with progesterone support, the irritable uterus requiring early induction of labour, the pain experienced during a previous egg collection procedure, the chronic pain experienced by the birth mother to the point she considered having a hysterectomy, her own previous pregnancy requiring 2nd or 3rd line antiemetics meant that a surrogacy would significantly compromise the birth mother's physical well- being, and potentially that of any resulting child, to the extent that the Committee did not feel able to approve this application.
- A report from a consultant psychiatrist was also included with this application. This sets out that the birth mother suffered post-natal depression after her first birth, was diagnosed with social anxiety and post-traumatic stress disorder

three years ago and had symptoms that involved flashbacks and memories of past abuse. That has improved with regular counselling. The birth mother is recorded as reporting that her mood has been significantly improved over the past year and that she would have the support of her husband and GP and her mother to get her through the surrogacy.

- The report concludes by saying that the birth mother has maintained wellness of mental state and notes that she has been remarkably resilient given her experiences.
- The counselling report notes that the birth mother has felt abandoned by her own family and felt anger over the years and that she has experienced considerable adversities in her childhood, including sexual abuse.
- The Committee noted the resilience of the birth mother in light of the challenges she had faced. The Committee also noted that the birth mother had maintained wellness of mental state. However, the Committee was of the view that it had insufficient information about the extent to which the birth mother was able to manage due to her post traumatic stress disorder and trauma history, which was not addressed in the report. In any event, the Committee noted that the post-traumatic stress disorder stemmed from matters relating to her previous pregnancies. The Committee considered that, on the basis of the information it had, the stress of a surrogacy could compromise the birth mother's mental well-being and felt that the risks associated with a surrogacy in the context of the birth mother's mental health history were too significant, meaning that it was not able to approve the application on this basis also.
- Both parties are aware that the birth mother has the legal right to make decisions during the pregnancy. They are aware of the requirements of the HART Act and the prohibition of commercial surrogacy. The intended parents have looked at ways to practically support the birth mother during any pregnancy.
- The intending parents' plans have been shared with key family members and they have declared intentions to be open and transparent about the arrangement, including with any child born of this arrangement.
- The parties have discussed pregnancy and birth plans, and what they would like to happen following the birth of a child. There are cultural aspects to this intended arrangement. The birth mother has indicated that she would like the baby's placenta to be returned to the earth if the intended parents are open to doing so. It is unclear whether this has been communicated to the intended parents.
- The intended parents have received independent legal advice and have been advised about their rights and the process in relation to an adoption. They intend to adopt the child but have also nominated testamentary guardianship in the event that they are not able to care for the child.
- The intended parents are aware that they can seek further counselling and have indicated that they might do this independently of the clinic. The clinic counsellors have suggested resources they might consider if they were to seek further, independent counselling.

Decision

The Committee was of the view that the birth mother's obstetric history alone means that there is too much risk of an adverse outcome for both the birth mother and any potential child. In addition, the Committee was of the view that the surrogacy

arrangement may place too much stress on the birth mother's mental health. In coming to this decision, the Committee took into account that its role is to ensure that parties do not proceed with an assisted reproductive procedure that carries high risk that the health and well-being of a potential child is compromised, or where the assisted reproductive procedure does not protect the health and well-being of (in this case) a surrogate.

The Committee therefore 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.

16. Application E17/55 for embryo donation for reproductive purposes

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 couple have two children and want to try for another child.
- They therefore seek an extension of an approval for donated embryos.
- The application describes the ongoing relationship between the two families (donors and recipients) and provide an updated medical report which notes that there were no issues with the previous pregnancy or birth and no concerns about a further pregnancy.
- The Committee had no concerns about extending the approval for another three years.

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

17. Response to deferred decision for application E22/060 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:

- The Committee considered this application at its April meeting and agreed to defer it to request further information about the arrangements in place to care for any resulting child in the event that the intending mother's health deteriorated, as well as confirmation that legal arrangements will be put in place with respect to testamentary guardianship in the event of a pregnancy.
- The response states that both parties have received follow up counselling around the issues noted above.

- In the event that the intending mother dies before any resulting child is born, the birth parents will relinquish the baby to the care of the intending father and follow all the normal adoptive processes as planned.
- The birth parents are listed as testamentary guardians to any resulting child.
- The intending parents have consulted their lawyer to have this explicitly stated in their will. They report no ambiguity about what would happen in the above-mentioned events.

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.

18. Consideration of extended storage applications

Meeting close
Confirmation of next meeting on Thursday, 11 August 2022.

Confirmation of ECART member in attendance at next ACART meeting on Thursday, 30 June 2022. Iris Reuvecamp to attend.