

# **Ethics Committee on Assisted Reproductive Technology Application Form for Ethics Approval of Surrogacy Arrangements involving Providers of Fertility Services**

## **SECTION 4A: Report by legal adviser for IM and IP**

**Note: This section is to be filled in by IM and IP's legal advisor who must be independent from BM and BP's legal advisor.**

Please note:

- All sections of the application are to be word processed - the text boxes for answers will expand as you type.
- All headings are to be included in your application. If you consider a section or part of a section does not apply to your application, please explain why.
- The final report date of each section (medical, legal, and counselling) must not be more than six months prior to the date of application submission to ECART.
- Additional relevant information that the headings do not allow for may be appended.
- Do not include personal identifying information about the involved parties. Please refer to the intending mother as IM, the IM's partner as IP, the birth mother as BM, and the BM's partner as BP.

4A.1 Name of legal adviser: Margaret Mary Casey  
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Telephone: 01 234 5678

4A.2 Give the location and date of the meeting with the intending parents.

Met with the intended parents at my office on Day Month Year.

4A.3 Provide details of the information given and the intending parents' understanding of the legal aspects of surrogacy arrangements, using the following headings:

(a) Surrogacy arrangements are legally unenforceable.

I explained to the intended parents that surrogacy arrangements whether they are verbal or written are not legally enforceable. Any baby born as a result of this process who becomes the subject of a dispute between the parties will have to have his or her future determined by the local Family Court. There is no ability therefore to enforce any prior agreement between these parties and any decision about the baby's future will be based on what a Court considered to be in the child's best interests.

(b) The resulting child will legally be the child of the birth mother and her partner.

The effect of the current legislation is that at law the birth mother is treated as the child's mother. Because she is married at the time of this procedure and her husband has consented to it, he is deemed at law to be the father of the child. In this regard I explained to the intended parents that both the birth parents should record their names on the baby's first birth certificate and that the intended father, in particular, should not

record his name on the original birth certificate. The parties must wait until the Adoption Order has been made before the second birth certificate is issued correctly recording the baby's biological parentage.

- (c) New Zealand has specific procedures and requirements relating to the day-to-day care of children (e.g. guardianship, care arrangements and adoption).

There are specific adoption requirements. In this case the parties would wish to formalise their status in respect of the child by having an adoption order and not by parenting orders or additional guardianship orders. They have participated in the Adoption Information sessions, have completed the preliminary paper work and have discussed the surrogacy process with their Adoption social worker. They were, therefore, aware of the procedures and requirements associated with an adoption application and the need for that to apply in the circumstances of their surrogacy.

- (d) Outline the discussion, understanding, and declared intentions between the parties about the day-to-day care, guardianship, and adoption of any resulting child.

**(Note: The *Guidelines* require that ECART must determine that there has been discussion, understanding, and declared intentions between the parties about the day-to-day care, guardianship, and adoption of any resulting child.)**

As noted above they were aware of the Child Youth & Family requirements for adoption. I spelled out for them the following requirements which are a combination of legal and practical matters necessary in order for the adoption to proceed:

1. Their social worker should be advised as soon as possible in the event of a pregnancy occurring.
2. They were aware of the necessity for a 10 day stand down period between the date of birth and the signing of the birth parents' consent to the adoption. Because in reality this must be 10 clear days from the date of birth it is usually calculated by taking 12 days from the date of birth of the child.
3. Once the consent has been signed (and in this case both the birth mother and birth father should sign the consent in front of an independent solicitor) the Social Worker will issue an approval as to placement. When the placement approval has been signed off then that is the point at which the baby may formally be placed in their care.
4. Obviously, this raises issues about the care of the baby during the 10 day period because of the prohibition in the legislation on a child being placed with prospective adoption applicants before such a placement certificate has been issued. This was discussed by the parties in the joint counselling session and at this stage the expectation is that the intended parents will stay with the birth parents in their home (or nearby) to assist with the care of the child and ease the transition to the baby's new family.
5. It was my recommendation that closer to the actual date of birth the parties should discuss specific arrangements about placement with the social worker and their lawyer to ensure that the arrangements agreed upon are acceptable from a legal perspective and would not compromise their application in any way.

- (e) Payment of costs relating to surrogacy must comply with section 14 of the HART Act 2004. Please outline the discussion with IM and IP regarding any intended payments, ensuring it is clear what is permissible in terms of the HART Act.

I provided the parties with a copy of section 14 which spells out the prohibition on payments as a result of the surrogacy arrangement. I highlighted the offence sections. The parties were aware that any financial compensation or reimbursement for any pregnancy costs could be deemed as a payment for the adoption which is something which is prohibited by the Adoption Act.

- (f) Processes for resolving any disputes that may arise.

**(Note: A court might have to ultimately resolve disputes.)**

Given the co-operative relationship between all parties at this stage the intended parents feel confident that there would be a good possibility of resolving any issues with direct discussion. In the event that that proved impossible they are all agreed that they would utilise the services of Fertility Associates' counsellors. If that did not work then they were aware that the matter would have to be resolved by seeking legal advice and that ultimately a Court might have to make a decisions about the issues that had arisen.

- (g) Provide comment and any further information you consider relevant to this application.

1. I discussed with the intended parents the necessity for having Wills and for appointing testamentary guardians in the event that this child arrives. They have discussed this issue between themselves and with the birth parents and the expectation was that if testamentary guardians were appointed it would not be the birth parents but Someone from the extended family of either of the intended parents.

2. This couple have thought long and hard about the path that they are taking and are confident and hopeful that this arrangement provides them with an opportunity to create a family. They are aware of the issues and are grateful for the opportunity to pursue this as an option. There did not seem to be any other legal issues that I needed to address with them. This report was dictated in their presence and a copy provided once it had been completed.

**Declaration**

The information supplied in this section is, to the best of my knowledge and belief, accurate.

Signature of legal adviser for IM and IP: \_\_\_\_\_

Date: \_\_\_\_\_