



17 March 2009

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By email; acart@moh.govt.nz

Dear Sylvia

ACART Discussion Documents

The Society's Health Law Committee (the Committee) is grateful for the opportunity to comment on the ACART discussion documents *Draft Guidelines on the Use of Donated Eggs in Conjunction with Donated Sperm* and *Consultation on the Use of In Vitro Maturation in Fertility Treatment*.

Draft Guidelines on the Use of Donated Eggs in Conjunction with Donated Sperm

The Committee has followed the questions asked at the back of this discussion document in preparing this submission.

Question 1 (Whether the procedure could involve a surrogacy arrangement)

The Committee supports option (ii), and considers this to be an ethical question rather than one on the function of the law. This needs to be examined on a case by case basis. The Committee supports ECART as the deciding body, and considers making these decisions to be one of its primary functions. A blanket rule is not justified (and could lead to discrimination on the grounds of family status). The use of a surrogacy arrangement in conjunction with donated eggs and sperm should be an exceptional arrangement. It is unclear how many potential parents would be in existence, and the best interests of the child must always be paramount. The Committee notes that previously it was required that surrogacy arrangements have needed to involve one genetic parent.

Question 2 (Whether there should be a limit to the number of siblings)

There is a marked difference between this approach and that in equivalent Australian law (which sets the limit as 10 families). There is no such provision in the Adoption Act. Once there is more than one family involved, the number is irrelevant. While a cautionary approach will assist, over-regulation may detract from the ability to consider individual cases, which the Committee considers to be an important ECART function.

Question 3 (Informed consent and decision making)

The Committee appreciates that this is new territory and raises many ethical issues. The conditions for the withdrawal of consent must be made clear to all interested parties at the start of any procedure. A part of the informed consent process should be an understanding of the “point of no return”. Individual clinics could develop their own policies, but the paramount issue is the clear indication to the parties involved of what the policy is. Again, there should be no blanket rule, but provision for these cases to be treated individually and referred to the Ethics Committee to resolve any uncertainty and appeals from both angles to be considered.

Question 4 (Issues of particular interest to Maori)

Under the Code of Rights, people have the right to involve support people in a decision making process and this could be better used in practice to extend to whanau.

*Question 5 (the draft guidelines)*Clause 2

This should be worded positively. An example of the main clause would be:

“ECART may approve an application for the creation and use, for reproductive purposes, of an embryo created from donated eggs in conjunction with donated sperm unless:”

Clause 3(a)(i)

The Committee suggests redrafting this clause as follows, to make it clearer:

“When considering an application for the creation and use, for reproductive purposes, of an embryo created from donated eggs in conjunction with donated sperm:

- (a) ECART must determine that:*
 - (i) such a procedure is appropriate because medical conditions (including unexplained fertility) affecting the intending parent/s mean that there are no feasible reproduction alternatives...”*

Clause 3(a)(ii)

For the purposes of consistency, the Committee suggests substituting “intending parent” for “person or couple”.


Consultation on the Use of In Vitro Maturation in Fertility Treatment

The Committee notes that the Consultation Document forms part of the procedure that ACART is required to take under s 6 of the Human Assisted Reproductive Technology Act, for the Minister to receive advice on whether this should become an established procedure. This is an emerging technology and, as such, guidelines need to be developed. As long as the Minister is

satisfied that all steps under s 6 have been followed there is no barrier to this becoming an established procedure.

Should you have any questions please contact the Committee secretary, Diana Brown, by phone (04) 463 2967, or email diana.brown@lawsociety.org.nz.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Alison Douglass', with a period at the end.

Alison Douglass
Convener, Health Law Committee