

19 March 2014

Secretariat
Advisory Committee on Assisted Reproductive Technology
PO Box 5013
Wellington

By email: acart@moh.govt.nz

Import and export of gametes and embryos: proposed advice to the Minister of Health

The New Zealand Law Society (Law Society) appreciates the opportunity to comment on the Advisory Committee's consultation document, *Import and export of gametes and embryos: proposed advice to the Minister of Health, January 2014* (consultation document).

The consultation document has been considered by the Law Society's Family Law Section and Health Law Committee. The Law Society believes the proposed advice is helpful, and makes the following brief comments:

1. The primary recommendation – that the principles and requirements of the Human Assisted Reproductive Technology Act 2004 (HART Act) should apply in all cases where gametes and embryos are imported and exported (proposed advice 3.2, 3.3) – is supported. This would be an improvement on the current situation because it would provide a record of identifying information for children created as a result of donor gametes in all cases, not just those where the procedure is carried out in New Zealand.
2. But, if it is to apply to cases where embryos and gametes are being imported, potentially there will be a breach of section 13, which prohibits the commercial supply of gametes. Most parties who investigate reproductive treatment overseas will pay for the donated gametes. Currently section 13 does not have extraterritorial effect so no offence is committed. But if the legislation is to apply to the import of embryos created from commercially supplied eggs then a breach may occur. The proposed advice recommends that the Ministry of Health should be asked to consider providing guidance to fertility service providers in respect of increased levels of compensation to egg donors in New Zealand but makes no mention of amending section 13.
3. We also note there may be an enforcement issue in relation to proposed advice 3.3 and that gamete providers should be advised accordingly. Proposed advice 3.3 states that “export of gametes and embryos should be possible, *provided that the subsequent use of the gametes and embryos will be consistent with the principles and requirements of the HART Act, including any prohibitions*, and all gametes providers, including donors, have given informed consent to the export of their gametes or of embryos created from their gametes” (emphasis added). If fertility clinics are to be the gatekeepers there should be a declaration or certificate stating that to the best of their knowledge the particular use of the particular gametes for export complies with the

principles and requirements of the HART Act. That will be difficult for a foreign clinic to certify in importing cases but the receiving clinic will be in New Zealand and should be able to certify that it has made clear to the overseas clinic the legal requirements and expectations of this jurisdiction. That might be something that could be addressed as part of any proposed regulations.

4. In terms of appropriate levels of compensation to donors and surrogates, the proposal (proposed advice 3.7, and see also paragraph 97) recommends the third category of recompense (recognising that donation involves both financial and non-financial losses). The Law Society agrees it is important to retain the distinction between the altruistic and commercial supply of gametes and embryos, and that “an increase in the level of expenses should be at a rate that does not leave donors in a significantly better position than they would have been in without donating” (paragraphs 96, 98). It would be helpful to have published guidelines regarding the kinds of costs that would be considered appropriate “recompense”. The Law Society understands other jurisdictions have experienced difficulties in the determination of “approved” payments. Again, this is a matter that should be addressed as part of any proposed regulations.

If you wish to discuss the comments, please do not hesitate to contact the Law Society through Legal Officer Jo Holland (04 463 463 2967, jo.holland@lawsociety.org.nz).

Yours faithfully

A handwritten signature in black ink, appearing to be 'Chris Moore', with a long horizontal line extending to the right.

Chris Moore
President