

Surrogacy : an industry in Canada?

Context

On September 30, 2016, the Canadian Government announced its intent to introduce regulations to support the Assisted Human Reproduction Act. Health Canada planned in particular " to clarify eligible reimbursable expenses for parties involved in surrogacy arrangements, and semen and ova donation "(section 12 of the HRA). A proposal was then circulated and submitted for comments. Regarding surrogate mothers, categories of expenses to be covered were suggested. It should be noted here that the proposed reimbursement of certain fees could be perceived as a payment because it's financially advantageous.

In July 2017, Health Canada conducted a new consultation this time providing " an overview of the key policy proposals that will help inform the development of regulations to support bringing into force " section 12, amongst others. More specifically, the policy proposals presented described "the Department's position on expenditures that may be reimbursed, process for reimbursement, creation and maintenance of records" and in the introduction to section 12, the document described the projected system as altruistic.

And now, in November 2017, Health Canada charges back to clarify its intention: "Health Canada is seeking input from the Assisted Human Reproduction (AHR) industry in the preparation of the Cost-Benefit Analysis (CBA) component of this regulatory proposal. Your responses will help Health Canada assess the potential administrative and compliance costs on the Canadian AHR industry."

See, in the following, excerpts from documents presenting the last two consultations and questions that arise from their reading

Excerpt from the July 2017 consultation paper titled:

Toward a Strengthened Assisted Human Reproduction Act: A Consultation with Canadians on Key Policy Proposals

4.2. Section 12 Reimbursement

4.2.1. Context

Sections 6 and 7 of the AHR Act prohibit the payment for surrogacy and the purchase of sperm and ova from a donor or a person acting on behalf of a donor, respectively. Despite these prohibitions, Parliament recognized that in order to promote an altruistic system, donors and surrogates should be permitted to be reimbursed for out-of-pocket expenditures incurred as a result of their donation or surrogacy. (Page 24)

Excerpt from the document dated November 2017 titled:

TO ASSISTED HUMAN REPRODUCTION INDUSTRY¹ STAKEHOLDERS
Survey for Assisted Human Reproduction stakeholders affected by Health Canada's proposal to develop regulations under the Assisted Human Reproduction Act.

[...]

Health Canada is seeking input from the Assisted Human Reproduction (AHR) industry in the preparation of the Cost-Benefit Analysis (CBA) component of this regulatory proposal. (Page 1)

Records - Reimbursement

16. It is proposed that persons who issue a reimbursement in relation to expenses for which reimbursement is permitted under section 12 of AHRA (e.g. expenses incurred by a donor in the course of donating sperm or an ovum; expenses incurred by a person in the maintenance or transport of an in vitro embryo; or expenses incurred by a surrogate in relation to her surrogacy) be required to keep all forms, documents and receipts for a period of 6 years after the reimbursement is issued.
- a. Would you incur additional costs to keep records of reimbursement forms, documents and receipts?
 - b. Would you be able to incorporate reimbursement records within your existing records management system?
 - c. What would be the estimated time needed, on an annual basis, to create and maintain these records? What would be the hourly wages of the personnel assigned to perform this task? (Page 5)

Questions:

What is the true intent of Health Canada? Are we witnessing a shift in policy? The law has not been amended and it is clear. It prohibits payment for surrogacy and anyone from acting as intermediary.

If the government claims to allow reimbursement of expenses incurred by surrogate mothers to promote an altruistic practice, why does it include rules regarding the said reimbursement in a survey aimed at the actors of the "Assisted Reproduction Industry"?

¹ Emphasis added

Have we already passed the stage of legitimizing the commercialization of the practice of surrogacy in Canada? While we demand an informed debate on the legitimacy of surrogacy, is Health Canada ready, not only to go one step further, but to open up the leads to the commercialization of this practice?

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