Surrogacy
A New Zealand Legal Perspective

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Domestic Surrogacy

- Commercial surrogacy illegal in NZ – must be altruistic

- Surrogacy arrangements involving fertility clinics = ECART
- 2017: ECART 29 applications = 20 approved; 9 deferred
  - Early social work involvement re adoption
  - Individual, joint, and group counselling
  - Independent legal advice (all parties)
  - ECART application – meets 6 times annually
  - ECART approval required before AHR procedure by clinic
  - Adoption following birth of child
International Surrogacy: Location, Location, Location

- Since 2015 - New Zealanders advised NOT to undertake surrogacies in the following countries because ‘foreigners’ banned (this remains the current advice):
  - Cambodia
  - India
  - Mexico*
  - Nepal
  - Thailand
Locations: Officially Open

- **Canada**: altruistic – open to all
- **Greece**: altruistic - heterosexuals only
- **Republic of Georgia**: commercial - heterosexuals married
- **Russia**: commercial - heterosexuals only
- **Ukraine**: commercial - heterosexuals only
- **USA**: commercial – open to all
International Surrogacy: New Zealand Experience

- Still rare but numbers growing
  - 16 notified children born via international surrogacy in 2018
  - 7 notified children born via international surrogacy in 2017
  - Totalling 23 notified births via international surrogacy in 2017/18

- 19 children from USA (10 single births, 3 sets of twins, 1 set of triplets)
- 1 child from Philippines
- 1 child from Ukraine
- 1 child from Georgia
- 1 child from Australia
Nz Inter-Agency approach
NZ process: Domestic or International

- NZ law prevails: Status of Children Act 1969
  - Birth mother = mother of child
  - Birth mother’s partner = parent of child
  - Egg donor = no parental status
  - Sperm donor = no parental status

- Other country birth certificates and parentage orders unheeded

- NZ adoption to transfer legal parentage – Adoption Act 1955
  - Whether child born in or out of NZ;
  - Whether applicants domiciled in NZ or not;
  - Regardless of gender, relationship status, or sexual orientation
Overseas

- Check surrogacy contracts with NZ lawyer
- Surrogate willing to meet NZ needs
  - Adoption consent
  - Travel consent
- Birth certificate/parentage orders
- Other country passport (exl’ Greece, Republic of Georgia, and Ukraine)
Kiwi Style

- Child’s other country birth certificate/parentage orders – not recognised
- Apply for NZ visa for child – following Ministerial approval
  - DNA evidence – genetic link (optional)
  - Evidence of surrogacy
  - Preservation of child’s identity
  - Intention to adopt
  - Consent of surrogate to adopt/travel
- Depart approx. 6-8 weeks post-birth
Adoption & NZ Citizenship

- File adoption application
- Finalise social work involvement
- Adoption court hearing
- Adoption order
- NZ birth certificate
- NZ citizenship (if 1 parent NZ resident at birth)
- Visa status follows that of adoptive parents
Greece, Repl’ Georgia & Ukraine

- No passport issued by country
- Need a certificate of identity issued by DIA
- This is only considered by DIA after letter issued by Minister of Immigration and letter from the relevant authorities in country advising that the child is not eligible for a passport.
- NB: Some countries do not accept Certificate of Identity as a travel document. Therefore, need to plan transit countries carefully.
- Extended time post-birth due to paperwork requirements e.g. 3-4 months +
Mexico

- **State by state approach**
  - Tabasco and Sinaloa – surrogacy legal but only for Mexican citizens.
  - State of Mexico, Colima, Sonora, Zacatecas, Michoacan and Mexico City - implicitly allow for surrogacy (or the right to parenthood is mentioned in the Civil code), however there are no specific regulations about how this works, the obligations/rights of parties etc.
  - Quintana Roo (incl’ Cancun) - surrogacy is neither legal nor prohibited. Birth parents required to apply for child’s Mexican passport and consent to child travelling to NZ.
  - NZ official stance is that they continue **not** to recommend surrogacy in Mexico for non-nationals. The concern is over the lack of legal certainty; which could result in a repeat of Tabasco where laws are implemented or changed mid-way through, and a child is marooned in the country.
Questions

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