



AUSTRALIAN COUNCIL FOR ADOPTION

(Formerly the National Council for Adoption)
INCORPORATED IN QLD

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The Research Director,

Investigation into Altruistic Surrogacy Committee,

Parliament House,

George Street,

Brisbane, Qld, 4000

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3rd June, 2008

Dear Sir,

Thank you for the opportunity to make a submission to the Altruistic Surrogacy Committee.

We submit:

that the objectives of The Australian Council FOR Adoption relate to children who are already in existence, and whose biological parents, for whatever reason, are unwilling or unable to parent them. Conversely, surrogacy is an arrangement used to create a child for the perceived needs and wishes of the adults involved regarding a child not yet conceived.

We submit:

that the issues of legal Adoption and the accompanying legislation are quite separate from the issues of surrogacy and that accompanying legislation.

We submit:

That the differences between these issues were quite clearly defined by France's highest Court, the Cour de Cassation: French Court Decisions; (see enclosure)

We submit:

that legal adoption is a proven form of alternative child care which affords a child the sense of security, identity, permanency and the sense of belonging which is every child's right.

We submit:

that any level of shared parenting, which may occur in a surrogacy arrangement, may adversely affect the child's sense of security, identity and permanency.

We submit:

That, in the interests of any child born of a surrogacy arrangement, there must be strictly defined eligibility criteria for adults who wish to enter into such an arrangement. A desire or perceived need on the part of the adults to procreate a child under surrogacy conditions is not in itself enough reason to be accepted into a programme.


.....Doral D Law.....

Doral D Law (Secretary)

3rd June 2008

Law and Other Things

A Blog About Indian Law, the Courts, and the Constitution

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SATURDAY, JANUARY 12, 2008

Commercial Surrogacy II: An Overview of Laws in the US and France

Mr. Venkatesan put forth several interesting questions in response to a previous [post](#) on commercial surrogacy (see comment). There is a vast body of literature on surrogacy with a variety of views and concerns in play. This post is therefore not intended to be comprehensive and only attempts to address briefly the issues he raised.

French Court Decisions:

It was mentioned in the NYT [blog](#) that the practice has been outlawed in France owing to a decision by a French court. There are actually two pertinent decisions of France's highest court, the Cour de Cassation, and were based on two grounds: (1) it involves the sale of items that cannot be transacted commercially and therefore violates the doctrine of *ordre public* (which is somewhat similar to the English doctrine of public policy) (2) the purpose of the law of adoption is to provide a home for homeless children; a surrogacy arrangement which adopted a similar procedure amounted to an abuse of the law as it was a contractual arrangement to create a homeless child to take advantage of the provisions intended for genuinely homeless babies. The doctrine of *fraude à la loi* (which arises when a person, without openly violating the law, makes specific arrangements in order to evade it) therefore applies rendering the agreement null and void in French law. I quote this from a freely available [article](#) by Christopher Forsyth which provides a detailed account of these cases.

Laws on Commercial Surrogacy in the United States:

The [blog](#) report mentioned that there is no uniformity of laws in the US and there is a great deal of variation among states. As for the current state of laws, I quote from a review published last summer: