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Incorporating Trinity College

13 MAY 2008

08-05-08

Dear Liz,

I am writing on behalf of the elders of Gladstone Baptist Church in response to your letter inviting submissions relating to the Parliamentary debate on changes to the Altruistic Surrogacy laws.

The Australian Christian Lobby has made a submission to the WA Legislation Committee Inquiry into the Surrogacy Bill 2007. We would agree with the thrust of its content. A copy is attached.

Additionally we note that children should be born out of the relationship of marriage and into the relationship of family. Children should be born and not made. These are the guiding principles upon which any law regarding surrogacy should be considered. Surrogacy refers to the circumstance whereby a woman offers her womb as an incubator for another couple's child. The woman is often thought of as a surrogate mother though arguably she is not a mother at all. She gives birth to a baby who is not her own. This can lead to a confusion of role, disputes over 'possession' and is not ideal. Nevertheless, in this less than ideal world, circumstances may be considered which may make such an option reasonable though not all of us would agree.

One of these circumstances may well be infertility. However, Infertility due to an abnormal or absent uterus is rare. Care needs to be taken where laws are made to cater for the exception since the exception can easily become the rule. An assessment should be made as to where the pressure for change is coming from and what motivates that change. Downstream adverse change needs to be anticipated and thwarted.

~~One might imagine surrogacy of convenience or commerce. One also might imagine a~~

homosexual couple seeking to combine their sperm cells in an enucleated donor egg to be nurtured in a surrogate woman. We consider this to be a very real possibility give that homosexuals constitute the greater number of infertile couples.

We would emphasize the need for clarity in a surrogate relationship. In our estimation, though, surrogacy needs to be reserved for circumstances where uterine pathology causes infertility. The child should always be considered to be the child of its genetic parents. The surrogate mother should have no right to abort unless the circumstances are quite extraordinary and life threatening. They should have no right to adopt. Likewise the parents should also relinquish any right to terminate the pregnancy. One could easily imagine the circumstance where either the genetic parents(s) or the surrogate mother might not wish to proceed with the pregnancy against the will of the other party. In Queensland termination of pregnancy is legal where there is a risk to the mother's life. However it is the surrogate mother and not the genetic mother who carries the physical risk of pregnancy and may thus wish to abort the pregnancy. The genetic mother may alternatively carry a life threatening psychological risk of pregnancy and insist on termination against the surrogate's wishes.

Furthermore the surrogate mother may claim that the child is her child and be unwilling to relinquish the child. Presumably these traumas will be fought out in the courts and risk the child being reduced to a disputed possession. Introducing a third party into the marriage relationship is indeed quite problematical. We most certainly need to tread with great care.

We trust that this will assist you with your deliberations.



Rev Stewart Pieper (On behalf of the GBC Eldership)

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Parliament House
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17th January 2008

Dear Sir or Madam,

The Australian Christian Lobby is pleased to make the enclosed submission to the inquiry on the Surrogacy Bill 2007 as referred to the Legislation Committee.

The submission acknowledges some common points the ACL has with the bill, and makes further recommendations to improve the legislation.

We would be pleased to answer any questions regarding our submission or to make any points of clarification that may be required.

We wish the committee well as it undertakes this most important inquiry.

Yours sincerely

Michelle Pearse
ACL West Australian Chief of Staff



***Submission to the
Legislation Committee
Inquiry into the Surrogacy Bill 2007***

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Introduction

The Australian Christian Lobby (ACL) recognizes the deep pain of childless couples but believes that the benefits that surrogacy provides for parents is outweighed by the negative impact that surrogacy would have on the child/children if the Surrogacy Bill 2007 is passed as it currently stands. Acknowledging that the Legislation Committee cannot dispute the policy of the Surrogacy Bill 2007, the ACL will set out to provide a list of recommendations that will protect all parties involved in the surrogacy process including the biological mother, the biological father, the surrogate mother, and most importantly the child, and the unborn child.

The ACL is grateful for specific measures in the bill including mandatory counselling, independent legal advice, and an approved plan by the biological and arranged parents. However, ACL believes that the bill relies too heavily upon the Human Reproductive Technology Act 1991 and needs to create separate measures for those wishing to enter into a surrogacy arrangement.

ACL recommends that:

- (1) The implanted embryo is produced from gametes derived from the commissioning mother and father.
- (2) The surrogate mother is either a close relative or close friend to the commissioning couple.
- (3) The arranged parents are in a married relationship.
- (4) Counselling is independent of the IVF clinic.
- (5) The child is fully informed of the circumstances in which he/she was born.

This submission will firstly outline our consultation process then provide support for each of the recommendations made.

Views within the Christian constituency

In reaching a position on surrogacy that is consistent with the Christian constituency, ACL contacted a number of leading Christian groups and individuals to seek their views on surrogacy. Theologians of many denominations were contacted including Anglican, Baptist, Evangelical, Catholic and Presbyterian and only one of these has supported surrogacy. Concerns included the ethical dilemma of excess IVF embryos; a view that surrogacy is akin to adultery in seeking to allow one party a biological child outside the marriage; and, primarily, a concern about the impact on children born through surrogacy. Christians with a focus on women's rights have tended not to support surrogacy, often believing it is 'womb's for hire' and some fearing altruistic surrogacy will be a slippery slope to commercial surrogacy, which will exploit poor women in particular.

ACL's Recommendations

- (1) The implanted embryo is produced from gametes derived from the commissioning mother and father.

This recommendation respects the marriage bond by ensuring that the parents are equal partners. It also excludes donors of any kind, therefore protects complex surrogacy arrangements.

In acknowledging the child as the most important factor in a surrogate arrangement, ACL believes it is not in the best interest of the child to have multiple parents. This can lead to 'genetic bewilderment' and a confusion of identity. In the current bill, a surrogate can become pregnant under the guidelines provided in section 23 of the Human Reproductive Technology Act 1991. In a surrogate arrangement, the birth mother can be inseminated in the following ways;

- a) The sperm of the arranged father and the egg of the arranged mother
- b) The sperm of an outside donor and the egg of the arranged mother
- c) The sperm of the arranged father and the egg of an outside donor

Option (a) is in the best interest of the child, as the child can be comfortably reassured that their arranged parents are also their genetic parents. This is the best possible surrogate arrangement and will provide a secure environment for the child to be brought up in. It is especially important that a child is brought up in a secure environment when the child has been born through surrogacy. Having a separate birth mother can create confusion for the child, thus it is important that the environment is as safe and secure as possible and this is created by a child being confident that their arranged parents are their real parents.

Option (b) and (c) provides unequal partnership of the couple, as one parent will be genetically related to the child and the other parent will not be. This may result in an unstable upbringing. Undoubtedly, in some or most cases, the child will want to know their origins, whether it be their genetic mother or genetic father, and will seek to do so. In relating this to adoption, Margaret Kornitzer ("The adopted adolescent and the sense of identity", *Child Adoption*, no. 65, 1971) writes 'Background knowledge of one's family is like baby food- it is literally fed to a person like normal nourishment that builds up his mental and emotional structure and helps the person to become acquainted with what he is so that he can seize his inheritance of himself.' The child may feel more attached to their genetic parent which may put stress on the family. There are a number of authorities that reiterate the fact that a healthy sense of identity is often sought by knowledge of one's genetic parents. To have three 'types' of parents, a genetic parent, an arranged parent, and a birth parent, may further complicate this process and cause genetic bewilderment and confusion of identity. The child may even become angry that he/she was brought into the world through this arrangement.

Whilst recognizing the pain of an infertile couple who would dearly love to have children, ACL believes it is unhealthy for the marriage relationship if a child is created outside of this bond with one party being the genetic parent and the other having no genetic connection with the child. If a couple truly shares everything, then it is not one party who is infertile but the couple itself. Adoption is the best option in this case as neither parent will be the genetic parent, it will give the child the best chance of a healthy upbringing, and the married couple will have an equal relationship to the child.

(2) The surrogate mother is either a close relative or close friend to the commissioning couple.

This recommendation reduces the anguish and anxiety reported by surrogate mothers during and after their pregnancy and meets the natural desire to bond with the child born through the arrangement.

In surrogate arrangements there will always be a risk of the birth mother wanting to keep the child and this risk should be minimized as much as possible. One way of minimizing this risk is to make sure that the surrogate mother is either a close relative or long-term close friend to the commissioning couple. This means that the surrogate mother is able to keep regular contact with the child without risking complete isolation. If an outside person was chosen as the surrogate mother, it adds further complication to this process and makes it easier for the surrogate mother to claim rights to the child. A surrogate mother may start with the best intentions to give up the baby however throughout the pregnancy may begin to feel more attached to the child. As Dodds and Jones ("Surrogacy and autonomy", *Bioethics News*, vol. 8, no. 3, pp. 6-18) explain that every woman experiences pregnancy differently, thus a woman cannot give fully informed consent to part with a child that she felt growing and developing inside of her without knowing the kinds of feelings and emotions that this will produce. On the other hand, a surrogate mother could feel that the pregnancy is inconveniencing her, or that it is harder than imagined and this may result in the surrogate mother having an abortion. This poses a problem that may only be fixed through further litigation thus making the process more complicated. This is unlikely to happen if the surrogate mother has a strong connection with the parents. Another risk is the possibility of the surrogate mother requiring additional money during the pregnancy to compensate for unexpected discomfort or expense. This could result in bribery or manipulation for extra funds and could risk becoming a commercial arrangement that is not easily proved. All of these possibilities and more could arise if the surrogate mother is not close to the commissioning couple. For the best outcome in a surrogate arrangement, it is integral that the surrogate mother is either closely related or a close friend of the parents to be.

(3) The arranged parents are in a married relationship.

Having a child through a surrogate arrangement requires the mutual support and encouragement provided by a stable relationship. This is more important in a surrogate arrangement than any other arrangement because of the emotional consequences.

Considerable research shows that children are more successfully raised in an environment where they have a mother and a father. Coira, Zill & Bloom ("Health of our nations's children. National Center for Health Statistics" in *Vital Health Statistics*, 1194, vol 10, p191) write that young children without two biological parents are three-times more likely to suffer behavioral problems such as attention deficit disorder or autism. In the US, male teens without a biological father are twice as likely to be incarcerated then teens from two-parent homes. (Harper C & McLanahan S, Father absence and youth incarceration, 2003, Center for Research on Child Wellbeing Working Paper, p99-103). It is important that in a surrogate arrangement, children are given the best possible upbringing considering the confusion or bewilderment associated with having an outside birth mother. The child will have the best chances of this with a mother and father in a married relationship.

(3) Counselling is independent of the IVF clinic.

It is important that the legislation indicates that counselling is independent of the IVF clinic. The IVF clinic has a competing agenda in securing the financial benefits from a client in a surrogate arrangement.

There are more issues involved in surrogacy then normal IVF procedures, and the women involved will require external counselling dealing with issues that prepare the woman to give the baby away. Also, surrogacy may not be the best arrangement for the woman and counselling may help her to understand why she is not fit to be a surrogate mother. The external counselor would have no benefit either way where as an IVF counselor would encourage the woman to have the procedure. Thus it is important that counselling is independent of the IVF clinic.

(4)The child is fully informed of the circumstances in which he/she was born.

It is important that the child is respected with honesty about the situation in which he/she was born and understands the roles of all people involved in the relationship.

In a recent story in The Australian, twins who were separated at birth and adopted, later met each other without knowing they were siblings. They fell in love and were married only to find out years later of their relation. (14/1/08). This is a typical example of hiding key factors of a child's existence. A successful surrogacy case in Australia shows the outcome of being honest to the child. In May 1988 Linda

Kirkham gave birth to her niece, Alice, who was the daughter of Maggie and Sev. With commendable forward planning, the family has been able to handle the emotional issues extremely well and Maggie, Linda, and Alice are now sought after speakers and authors on surrogacy issues.

The information must easily be made available to the child. This can occur by a letter being sent to the child when he/she is at an age of understanding; a consultation between the courts and the family to make sure the child is aware; or arranged separate counselling sessions with all members of the surrogacy arrangement including the birth mother, arranged parents; and child. A child or adult is likely to be angry if the origins of their birth were not told to them and they find out by accident. To avoid further complications or emotional upheavals, it is important that the child is fully informed of the circumstances in which he/she was born.

Conclusion

The Australian Christian Lobby is concerned about the implications that would arise from surrogacy arrangements, affecting the birth mother, arranged parents, and most importantly, the child.

ACL acknowledges the lengths that the committee is going to, to ensure a legislation that protects all those involved although it does not go far enough. More attention needs to be paid to the counselling process, the IVF procedure, the eligibility of those seeking to make a parentage order, and the honesty to the resultant child.

Surrogacy is a fragile arrangement which needs to be handled with care and sensitivity. I commend the diligence of the committee in their study of the detail of this legislation.