Advisory Committee on Assisted Reproductive Technology

Import and Export of Gametes and Embryos: Proposed advice to the Minister of Health

Feedback Form

Please provide your contact details below.

Name:	John Kleinsman, PhD
If this feedback is on behalf of an organisation, please name the organisation:	The Nathaniel Centre – the New Zealand Catholic Bioethics Centre
Please provide a brief description of the organisation if applicable:	
Address/email:	PO Box 12243 Wellington 6144 email: administrator@nathaniel.org.nz
Interest in this topic (eg, user of fertility services, health professional, researcher, member of the public):	The Nathaniel Centre is an agency of the New Zealand Catholic Bishops' Conference. Its role is to address bioethical and biotechnology issues on behalf of the Catholic Church in New Zealand.

We will place all feedback on ACART's website, except where we are asked that feedback be withheld in full or part for reasons of confidentiality. We will remove contact information from all feedback.

☐ I **request** that my feedback be withheld in full or part from publication on ACART's website (if you wish a part to be withheld, please clearly indicate which part).

Please note that all feedback may be requested by any member of the public under the Official Information Act 1982 (the Act). If there is any part of your feedback that you consider should be properly withheld under the Act, please make this clear in your feedback, noting the reasons.

If information from your feedback is requested under the Act, the Ministry of Health (the Ministry) will release your feedback to the person who requested it. The Ministry will remove your name and/or contact details from the feedback if you check one or both of the following boxes. Where feedback is on behalf of an organisation, the Ministry will not remove the name of the organisation.

☐ **I do not** give permission for my name to be released to persons under the Official Information Act 1982.

☐ I **do not** give permission for my contact details to be released to persons under the Official Information Act 1982.

We will acknowledge all feedback.

Introductory Comments

We appreciate the opportunity to provide feedback on this issue and commend the extensive process of consultation undertaken by the ACART Committee in preparing its advice to the Minister of Health.

In our previous feedback on the import and export of gametes and embryos we raised concerns about the ongoing viability of the current New Zealand framework in the face of increased opportunities to access human reproductive technologies overseas. We are pleased to see the strong emphasis in the Proposed Advice on upholding the well-established principles and values that underpin the HART Act, including in particular the long-standing commitment to altruism. Altruism is, as noted in the proposed advice, a cultural value consistent with other areas of domestic policy. It also lies at the heart of a 'gift-based approach'. For us, the idea that life is a gift represents a critically important ethical 'marker' in assessing the acceptability of using technology to assist the transmission of human life.

The logic of 'gift' is, we believe, inherent in the 'natural' form of human procreation, evidenced among other things by the language traditionally used to speak of the birth of a child. On the other hand, the use of technology, defined as it is by notions of production, (quality) control and efficiency, reveals a very different logic, one that is of its very nature *antithetical* to the gift. Thus, it is to be expected that the increased use of technology in human procreation naturally inclines us away from, and therefore poses a potential threat to, a gift-based approach to the transmission of human life. This is amply witnessed in the language thrown up by debates about the use of human assisted reproductive technologies. It is also evident in the various practices which, in many countries, mean that gametes and embryos are being increasingly treated as tradeable objects subject to little more than the market norms of supply and demand. It is all too obvious that in certain parts of the world the harvesting and sale of eggs and the contracting of surrogates has become a 'booming business' creating significant wealth for those providing the service. Somewhat ironically, the appeal to children as a 'gift' is often used to market human assisted reproductive technologies by those who have most to gain financially from this 'business'.

A gift-based framework clearly reflects the central Christian belief in the divine and spontaneous origins of all life. However, it is also recognised by many secular philosophers and anthropologists as the traditional basis for describing the transmission of human life independently of any religious perspective. In other words, the shift to view and treat human procreation more and more in terms of the marketplace represents a significant departure from the long-standing way in which societies across many cultural and religious divides have thought about parenting and the role of children. It is a shift that we strongly believe is detrimental to viewing and treating each child as a unique person who demands unconditional respect. It is a shift that needs to be consciously fought against, just as human slavery was and continues to be opposed on the basis that it involves the commodification of human beings.

As the use of technology comes even more to the fore in human procreation, it will take considerable and intentional effort to continue to protect the transmission of human life as a 'gift' rather than a tradeable commodity. This remains one of the most serious concerns for us. We therefore welcome the determination being shown by ACART to preserve the ethical values and associated policy in the HART Act in its proposed advice to the Minister of Health.

Questions about the proposals discussed in the paper

Question 1: Import and subsequent use of gametes and embryos

Do you agree that the principles and requirements of the Human Assisted Reproductive Technology Act 2004 should apply in all cases where people wish to import into and use in New Zealand gametes and embryos sourced or created in other countries?

Yes ☐ No ☐

Please give reasons for your views.

As noted in our introductory comments, we are firmly of the view that the principles that underpin the HART Act need to be upheld.

At the same time, this stance presents a dilemma for us given our belief in the inviolable right to life of the embryo *no matter what the circumstances of its origin*. As we have noted in other submissions, a consistent commitment to the principle of unconditional respect for the embryo rules out all activities on embryos already created by IVF other than for the purpose of implantation and bringing to birth the human life that has already begun.

On this basis, we would like to see an 'exception' being made in certain carefully defined cases where the circumstances do not meet New Zealand requirements for importing; namely those cases where a couple (or individual) seek to import *embryos* containing the genetic material of one of the applicants (or applicant) if those embryos were created while the applicant/s were resident overseas (in contrast to reproductive tourism) *and* where the embryos are to be used for the sole purpose of extending their family *and* where the couple had previously undertaken at least one cycle of IVF overseas using 'sibling' embryos. We do not think that there would be great difficulty in determining which cases met such a test (n. 58, Consultation document).

We admit that this could be seen by some as creating a situation of inequality (n. 59) thereby contradicting the principled stance taken by ACART to preserve the ethical values and associated policy in the HART Act (n. 57) which we whole-heartedly approve of. In our minds, however, we see such cases as the 'exception' to the rule, and therefore as sitting *alongside* the rule rather than undermining it or creating a precedent for other cases.

Question 2: Export of gametes and embryos

Do you agree that export of gametes and embryos should be possible, provided that:

- the subsequent use of gametes or embryos is consistent with the principles and requirements of the Human Assisted Reproductive Technology Act 2004, including any prohibitions, and
- all gamete providers, including donors, have given informed consent to the export of their gametes or of embryos created from their gametes?

Yes [√] No [ ]

Please give reasons for your views.

We have previously stated our strongly held view that the deliberate separation of the biological, gestational and/or social aspects of parenthood are not in the best interests of the child. We believe that a sense of personal well-being is fundamentally linked with a healthy self-identity, which, in turn, is intimately and inextricably tied in with a lived knowledge of our biological ties - whakapapa. This knowledge is put seriously at risk by arrangements that exclude children from growing up within the families of their biological origins or, worse, deny them knowledge of their biological origins. The export of gametes and embryos means that in many cases children will effectively be denied the right to grow up surrounded by the family networks that are generated by their biological ties.

It follows that gametes and embryos that originate within New Zealand should have been sourced or created within the parameters of the HART Act. It will, of course, be difficult to follow up on the subsequent use of gametes and embryos once they have been exported, which means the approach being suggested is essentially based on a high level of trust. This parallels, in many ways, the approach taken by the health and disability research committees who make particular recommendations to researchers without knowing if they will always be followed through. Relying on the good will of those who make the application to export gametes or embryos means there may well be instances where the commitment made is (quite intentionally) not followed through. Even so, and without being able to identify or eliminate such cases, making the subsequent use of gametes and embryos subject to the requirements of the HART Act will send the strongest message possible about the robustness and integrity of our current New Zealand approach, as well as our commitment to the key principles and values that underpin the Act. To do anything else would expose us to the criticism of being ethically inconsistent.

We agree that gamete providers need to give informed consent to the export of gametes or embryos created from their gametes. The information provided as part of the consent process should include information about the HART Act as it applies, and the reasons for its requirements, so that the provider (donor) has a proper understanding of the reasons why New Zealand imposes the restrictions it does on the subsequent use of gametes and embryos. Any donors need to be appraised of the fact that ultimately New Zealand has no control or jurisdiction over the way in which gametes and/or embryos will be used overseas.

Question 3: Decisions about import and export for assisted reproductive procedures

Do you agree that fertility services providers should continue to make decisions about whether the import and export of gametes and embryos for assisted reproductive procedures is consistent with the principles of the Human Assisted Reproductive Technology Act 2004, and New Zealand requirements?

Yes [√] No [ ]

If you disagree with the proposal, who or what should make decisions about whether the import and export of gametes and embryos for assisted reproductive procedures is consistent with New Zealand requirements?

In general we agree that fertility services providers should continue to make the decisions about whether the import and export of gametes and embryos is consistent with the principles of the HART Act. We do however have concerns about providers making decisions relating to the export/import of gametes/embryos given the not insignificant financial stake they have in the procedures. Therefore we approve of moves to introduce more detailed and transparent requirements as outlined in the Consultation document (n. 70).

With respect to decisions relating to the importing of embryos that fit the 'exceptional case' that we have argued for in question 1 above, we believe ECART should provide an independent review and be responsible for the final decision. We understand that this would involve only a small enlargement in terms of the scope of ECART's existing functions and its current workload. As noted in the Consultation document when referring to "those prevented from bringing embryos back to New Zealand": "New Zealanders involved in trans-border reproduction appear to be a small proportion of those using assisted reproductive procedures in this country" (n. 53). The particular fertility services provider could be made responsible for preparing the application and ensuring the information provided therein was correct.

Please give reasons for your views.

See above

Question 4: Decisions about import and export for human reproductive research

Do you agree that the role of the Ethics Committee on Assisted Reproductive Technology in respect of human reproductive research should explicitly include considering and deciding applications to undertake human reproductive research involving imported and exported gametes and embryos?

Yes [√] No [ ]

If you disagree with the proposal, who or what should be responsible for making decisions about research involving imported and exported gametes and embryos?

[ ]

Please give reasons for your views.

As we have previously noted on numerous occasions, we are opposed to all research involving human embryos, including those that are so-called 'spare'. A thorough exposition of our reasons for this are outlined in a submission made to ACART on "The use of gametes and embryos in human reproductive research: Determining policy for New Zealand" in Feb 2007.

Question 5: Regulations

Do you agree that regulations should be made about the requirements for the import and export of gametes and embryos?

Yes [√] No [ ]

If you disagree with the proposal, how should requirements for import and export be set out?

Please give reasons for your views.

We agree that a detailed set of rules would correct some of the weaknesses inherent in the current system which, as noted in the Consultation document, currently relies "on providers' interpretation of high level Ministry advice [which] carries the risk that import/export may not be carried out in a consistent way. (n. 83).

Question 6: Donor compensation

Do you agree that the Ministry of Health should be asked to consider guidance to fertility services providers that allows for increased levels of donor compensation, particularly for egg donors?

Yes [√] No [ ]

Do you agree that such guidance should, for consistency, include the expenses available to surrogates?

Yes [√] No [ ]

If you agree with the proposals, do you have a view about appropriate maximum levels of compensation to donors?

This aspect of the Consultation document concerns us greatly. As argued in our Introduction, we agree whole-heartedly with retaining the critical distinction between altruism and commercial supply. However, we are specifically disconcerted by the suggestion of providing "compensation" for non-financial losses (n. 97) and in particular the *rationale* behind the idea that any increase in the level of expenses "should not leave donors in a *significantly better position* [presumably better *financial* position] than they would have been in without donating" (n. 98). It is not that we disagree with what is here being stated. Rather, we think the statement is potentially contradictory in so far as it, perhaps unwittingly, shifts the line between altruistic donation and doing something for financial gain.

In keeping with the real-life meaning of a 'donation' or 'gift', it is to be expected that normally speaking a donor is, in a tangible way, left 'worse-off' – worse off in the sense of having willingly taken on a 'cost' or 'burden' (whether financial or temporal) for the benefit of another. This is, surely, the whole point of giving – giving something of one's self or one's possessions to enhance the well-being of another who lacks something, while accepting that it involves a real personal sacrifice. Providing a monetary donation to an aid organisation is a good example of this – apart from any satisfaction associated with the act of giving, the giver is left, literally, 'out-of-pocket'. If that were not the case it could not be genuinely described as a 'donation'. Conversely, when a person does something for another on the basis of securing a tangible return, either *because they don't want to be left worse off*, or because they *may even find themselves better off* – whether "significantly" or otherwise is irrelevant – then that type of action no longer qualifies as a true gift or donation. The act is not necessarily a 'bad' one for that reason but, and this is our key argument, *the possibility of describing that act as an altruistic one*, and consequently the opportunity to provide a gift or donation, no longer exists. The act then belongs to a different class of action; it is, quite simply, more akin to a marketplace *trans*-action.

How does this thinking apply to compensation for donors of gametes or surrogates? We accept that persons should be entitled to receive adequate "reimbursement" (n. 97) for real *financial* losses or costs such as visits to health professionals. These are easily determined. However, we oppose in the strongest possible terms the idea of people being "compensated" (as defined in the Consultation document) for discomfort or other non-financial losses (n. 97) in the form of any payment or fee for services. We believe this would take the conception of such a child out of a gift paradigm and, by default, into an economic paradigm. We cannot justify in our minds what would amount to a purely utilitarian rationale that placed outcomes (e.g. greater number of egg donors – n. 102) before the preservation of the 'dignity' of human persons which we understand as requiring an absolute rejection of the commodification of human life. Compensation for non-financial losses would result in opening the door, even if only a crack, to the eventuality of people being 'paid' to be donors or surrogates. Ongoing commitment to the principle of altruism, and thus to the concepts of non-commodification of children and non-commercialisation of body parts, demands nothing less than *a rejection of any financial payment for non-financial losses.*

Furthermore, such a move would have a flow through effect. Above all it would prejudice the altruistic values that have long been part of the culture of donating blood, kidneys and other tissues for New Zealanders. In addition, once the prospect of financial 'gain' for non-financial losses enters into the equation, it introduces a risk for informed consent; as soon as money is on the table, informed consent is too easily compromised or manipulated.

Question 7: Public health information

Do you agree that the Ministry of Health should be asked to consider public health information about:

- the impact of age and other factors on fertility, and
- gamete donation?

Yes [√] No [ ]

Please give reasons for your views.

We believe that there is a considerable lack of knowledge amongst New Zealanders about their fertility, something that could easily be addressed through the secondary school curriculum as well as various other means.

Question 8: Data about offshore fertility treatment and outcomes

Do you agree that the Ministry of Health should be asked to consider strategies for collecting data about the use and outcomes of offshore fertility treatment by New Zealanders?

Yes [√] No [ ]

If you agree, do you have ideas about how such information could be collected?

We do not have any particular expertise in this area but believe it would be helpful to collect such data when reviewing policies about fertility treatment in the future.

Please give reasons for your views.

Question 9: Comments or suggestions

Do you have any other comments or suggestions about the issues discussed in this proposed advice paper?

We have covered these in our introductory comments.