Cross-border surrogacy in Asia – the view from New Zealand

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Since 2002, 18 of 700 reported adoptions (4%) involve surrogacy.

In 2012-2013, Child Youth & Family reported 154 adoptions; (8%) were surrogate-born.

Ethics Committee on Assisted Reproductive Technology (ECART) reported 8-25 applications for clinic-assisted surrogacy per year between 2005-2012.

Māori are less likely to engage in surrogacy than others (L Anderson et al, ‘The practice of surrogacy in New Zealand’ (2012) 52(3) ANZJOG 253)
Surrogacy regulation in Aotearoa New Zealand

- Status of Children Act 1969
  - s17: woman who gives birth is mother of the child

- Adoption Act 1955/Adoption (Intercountry) Act 1997
  - Adoption processes through Family Court
  - Payment or reward in consideration of adoption prohibited (s25 1955 Act)

- Human Assisted Reproductive Technology Act 2004
  - Prohibits commercial surrogacy and related advertising (ss14-15)
  - Requires ECART approval for IVF of a surrogate (s16)

- No regulation of surrogacy not involving a fertility clinic

- No dedicated immigration laws
• Intended parents (Mr and Mrs W) from NZ
• Donor egg from niece
• Child born in Thailand to Thai surrogate
• Thai birth certificate: Mr W is father and surrogate is mother
• Mr and Mrs W apply for visa to bring child to NZ
• Immigration NZ required DNA test – no genetic link
• Identity of genetic parents unknown
• Mr and Mrs W apply to adopt child, with consent of surrogate
• Issue = habitual residence of child
• Determined that child not habitually resident in NZ
• Adoption needs to take place in Thailand
Issues arising

• Delays if something goes wrong
• Interactivity of immigration law and family law
• Genetic identity of child
• Control of embryos
• “Intentional parenthood”
• Biological connection
Thank you

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