

# Chapter 10

## The Surrogacy Trail

M. Hieda  
St Luke Clinic, Japan

### ABSTRACT

*Surrogacy is the carrying of a child for its intended parents by another person where they cannot do this themselves. There are two main types; gestational surrogacy and traditional surrogacy. The first relies on the transfer of an embryo created by in-vitro fertilization (IVF); the resulting child is not genetically related to the surrogate mother. In the traditional form, the surrogate mother is impregnated naturally or artificially, and the child is genetically related to the surrogate. In either case the intended parent(s) may seek such arrangements when pregnancy may be difficult, or because they are male. If the surrogate mother is paid (other than out-of-pocket expenses), the arrangement is commercial surrogacy; otherwise it is 'altruistic' surrogacy. Legal situations and costs vary, and if possible at all, usually requires specific arrangements between countries. Problems, such those in the recent Australia-Thailand (Gammy) case, can arise even with agreements.*

### INTRODUCTION

A surrogacy agreement is the arrangement made between intended parents who are not able to achieve or support a pregnancy themselves, and a surrogate mother; the woman who carries the baby (Merino, 2010). After birth the baby is given back to the intended parents. There are two main types; gestational surrogacy and traditional surrogacy. In the first, pregnancy results from the transfer of an embryo created by *in-vitro* fertilization (IVF), and the resulting child is not genetically related to the surrogate mother. In the traditional form, the surrogate mother is impregnated naturally or artificially, and therefore the child is genetically related to the surrogate. In either case the intended parent(s) may seek such an arrangement when medical issues make their pregnancy not possible, or risky, or otherwise undesirable, or because they are male.

Payment may also be involved in these arrangements (Milliez, 2008). If the surrogate mother is paid more than her medical and other reasonable expenses, it is known as commercial surrogacy; otherwise it is 'altruistic' surrogacy (Milliez, 2008). Intended parents and surrogates usually decide which type of surrogacy arrangement best suits them:

DOI: 10.4018/978-1-4666-8574-1.ch010

- **Commercial Surrogacy:** Is where a birth mother is paid for carrying a child. Commercial surrogacy is not legal in Australia or New Zealand, for example, but was until recently in Thailand. These differences can lead to problems as seen in the recent *Gammy Case* (see below for the outcomes of this in relation to a surrogate baby's status in Thailand and Australia). Nevertheless, many couples around the world are entering into international surrogacy agreements to create a family despite possible jurisdictional problems;
- **Altruistic Surrogacy:** Is when a birth mother receives no financial reward for the pregnancy. In these cases only her expenses are covered by the intended parents (medical costs, travel costs if any, time away from work, and so on). Altruistic surrogacy can involve either type of surrogate, and is permitted in many jurisdictions (in both Australia and New Zealand for example).

### **What Is Involved in Surrogacy?**

In the most basic sense, surrogacy is used for the purpose of giving birth to a child for another person or couple who are unable to conceive and/or carry a child of their own (Teman, 2010). There are medical and legal issues associated with this practice (Milliez, 2008). These tend to be complex, with one key issue being the legality of the surrogacy process itself. In addition to the need for the surrogacy process to be carried out in a safe and legal manner, there are certain ethical issues that are – or should be – considered by the biological parent or parents, and the intended surrogate mother prior to the pregnancy.

### **GENERAL ISSUES RELATING TO SURROGACY**

The fact that there are many religious and social organizations that are not comfortable with surrogacy is the first of these issues, but this has to be offset by the knowledge that this procedure may be the only way to start a family for some people. It is for this reason that the following, sometimes highly controversial, issues need to be considered:

- **Experience as the Gestational Carrier:** In any situation this is obviously the woman who carries the baby to term. While pregnancy can be a very exhausting process both physically and emotionally for any woman, compounding this experience in the surrogacy case is the fact that, after physically carrying the baby through the pregnancy, the birth mother has also to physically and emotionally detach herself from the baby when it is born (Ragone, 1994; Jadv, Murray, Lycett, MacCallum, & Golombok, 2003; Teman, 2010);
- **Pre-Transfer Involvement:** Because the birth mother is not likely to be the child's caregiver in the future, legal questions concerning what involvement she should have with the child during the period between birth and transfer to the intended parents may be raised (Ragone, 1994; Teman, 2003; Merino, 2010);
- **Identity of the Child:** There are also ethical considerations in terms of informing the child about his or her birth mother at a later date. It is known that this may have an effect on the child's self-identity either way, and this is of concern (Ciccarelli & Beckman, 2005; Imrie, Vasanti, & Golombok, 2012); and
- **The Surrogate Mother and Compensation:** In addition, there is also the question of payment for the use of the surrogate mother's body during the gestation period. It is generally expected that the

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