

# TORONTO LIFE

## The Baby-Making Business: on the front lines of Toronto's booming, semi-legal surrogacy market

Toronto's surrogacy industry is booming and lucrative and at least partly illegal. Prospective parents, desperate to start a family, are willing to take the risk

By Alison Motluk | Photograph by Joanne Ratajczak



Cindy Wasser and Chris Blake hired surrogates to carry their children, Jennelle and Etta

**Cindy Wasser's first date** with Chris Blake, the man who would become her husband, was a disaster. He tripped on the restaurant carpet when coming over to greet her, was tongue-tied the entire meal, then topped things off by letting her split the bill. Wasser was a criminal lawyer and Blake an equity analyst at Royal Mutual Funds. Wasser's stockbroker had set them up, claiming they had common interests and would be "soulmates." After that initial meeting, Wasser wasn't so sure. But there was something about the voice mail he left a week later that made her listen over and over. And when he tied a packet of tea and gourmet honey to her door late one night when she was sick, she melted. Less than six months after they first met, he stood with her in the bathroom looking at a pee stick that said she was pregnant, cupped her face in his hands and proposed.

Until then, she'd been married to her career, working 120-hour weeks. At age 43, the odds of conceiving were slim. But she was happy about it. They wanted the baby. Then a few weeks later, she had a miscarriage. The two kept trying, but when she didn't get pregnant again, even after eight intrauterine inseminations, their doctor told them her eggs just weren't viable. They turned to an egg donor and tried IVF four times, but it didn't work either. They looked into adoption, but the prospect of a birth mother changing her mind was too frightening for Blake. So, after three and a half years of trying and failing to become parents, they began to consider surrogacy.

They consulted a company called Canadian Surrogacy Options. CSO introduced them to a woman named Leia Picard, who offered to carry their baby for them. They liked her, but Picard was living in British Columbia, and Wasser wanted to be able to attend medical appointments with her surrogate. The couple then approached an American agency, Reproductive Possibilities. The upfront fee was steep, and it looked like the surrogacy might end up costing \$150,000. "I got huge sticker shock," admits Blake. "Your children are going to cost you your entire retirement, never mind the fact that we'd have no money left to get them through university."

Wasser and Blake decided to try finding a surrogate without the help of an agency and placed an ad on Craigslist. "It happened in 24 hours. Bang—there was a response," recalls Blake. The surrogate was a married mother of four in her late 20s, living just east of Toronto. Their first meeting was in a food court at Scarborough Town Centre. The woman and her husband had jobs but were far from well off. Later, when Wasser and Blake visited their house, it was sparkling clean, and the children, who ranged in age from 18 months to eight years, were beautifully dressed, polite, sweet. "So I thought, okay, this might help them," says Wasser.

With the guidance of a lawyer who specialized in fertility issues, they drew up a contract promising to cover all expenses relating to the surrogacy. In March 2008, embryos created from Blake's sperm and donated eggs were transferred into the surrogate's uterus at ReproMed, a fertility clinic at Islington and Bloor. The surrogate became pregnant on the first try.

Immediately after the positive pregnancy test, Wasser says, things changed. Until then, the woman had been great about calling and emailing, but then communication became more sporadic. "It was crazy enough that at one point we were uncertain exactly where they were and had to hire a private investigator," says Blake. The surrogate said she'd moved, but the PI

said they were in the same house, facing eviction. Wasser panicked. “I wanted a baby so badly,” she says. “She had my baby, and I didn’t know if she was taking care of it.”

Several times, Wasser and Blake stepped in to help out the surrogate with money. When police confiscated her car, deeming it not roadworthy, Wasser and Blake made the down payment on a used one to replace it. “She’s got four kids and my baby and a vehicle she can’t drive,” says Wasser. “She needed a safe car.” When the surrogate’s rent went unpaid, they gave the landlord cheques postdated until the due date. When her computer conked out toward the end of the pregnancy, Wasser bought her a laptop so they could stay in touch.

“The baby was doing great,” says Wasser, “and that was the thing that kept me going.” But in the final week before the due date, the baby hadn’t grown as much as the doctor expected, so the surrogate was put on bedrest. When Wasser bought groceries for the family and delivered them, she got a shock: the fridge and cupboards were bare, she says, save for a jar of peanut butter and a box of Nutribars. “She was at the end of a pregnancy,” says Wasser, “and there was no food in the house.”

Wasser’s eye then fell upon an ashtray full of cigarette butts, and she smelled smoke coming from upstairs; the surrogacy contract stated there would be no smoking in the house. Wasser snapped. She insisted the surrogate spend the final week of the pregnancy in her guest room in Toronto and threatened her with Children’s Aid if she didn’t come. “Imagine me ripping her away from her children. I couldn’t believe I was doing this to these kids, who were crying, ‘Mommy, Mommy, don’t go!’ and me just thinking, ‘That’s *my* baby, I have to think of *my* baby.’” The surrogate did go to Toronto, but ended up returning home the next day.

The baby was born, healthy and perfect. They called her Etta, after Wasser’s maternal grandmother. Wasser was there for the delivery and, overlooking the stress of the previous months, embraced and thanked the surrogate.

Blake found the experience traumatic. “I had had enough of the situation with our surrogate, and I wanted nothing more to do with her,” he says. He was just glad it was over. “Looking back, in my mind, it all feels like it happened to someone else.”

For Wasser, it was different. “When you hold your baby,” she says, “all of this goes away. It’s amazing what you can forget.”

In 2012, over 17,000 women in Canada used assisted reproductive technology in an attempt to get pregnant. Its use has grown sharply in the past decade. This is partly due to public funding in Quebec for IVF and better reporting overall, but also because people are waiting longer to have kids (and so having trouble conceiving) and more gay couples are choosing to become parents. Most interventions are for couples coaxing their own sperm and eggs to make babies in their own bodies. But over a thousand times in 2012, it involved using someone else’s eggs, and a few hundred times, someone else’s uterus.

Under Canada’s Assisted Human Reproduction Act, it’s legal to use another person’s eggs, sperm or uterus to bring a child into the world. It’s legal to pay a doctor to extract the eggs, to fertilize them with donated sperm and to place them into a uterus not your own. It’s legal to pay a lawyer to draw up a contract between you and the parties with whom you’re making these arrangements, and even to pay a social worker to check on the motivations of those parties. It’s also legal to cover a surrogate’s out-of-pocket expenses directly related to the

pregnancy. What's not legal is to pay someone for those eggs, that sperm or the use of that uterus. It's also not legal to pay or be paid for helping to arrange for the services of a surrogate mother. Contravening the act can lead to 10 years in jail or a \$500,000 fine.

Some countries, like Germany, Italy and France, ban surrogacy outright; others, like Canada, the U.K. and parts of Australia, ban commercialization of the practice. This is mostly out of concern that payments from the intended parents, or IPs, will induce people to do things they will regret, or that paying for reproductive materials and services undermines the sanctity of human life. Both ideas snake through the history of the Canadian act, which came into effect in 2004 after more than two decades of heated national debate.

The writers of the act imagine an ideal scenario in which a friend or a sister or an altruistic stranger steps forward, moved by the desire to help someone else be a parent. Such people do exist. David Hoare, a teacher and entrepreneur in Cobourg, donated sperm to lesbian friends, who now have a nine-year-old son. His wife, Heather Jopling, a writer and actor, carried a baby without payment for gay male friends, and they are now dads to an eight-year-old daughter. Jopling used her own eggs, sperm from one of the dads and a syringe. She remembers watching the baby being handed to the fathers in the birthing suite, all of them in tears. "To be able to do that for them," she says, "was one of the best things in my entire life."

But many IPs can't find people like that to help. Most surrogates don't use their own eggs and instead get pregnant through IVF, using genetically unrelated embryos. Such IVF pregnancies require weeks of high-dose hormone injections in order to get established and often result in twins, which means a greater likelihood of discomfort, complications and doctor-prescribed bedrest. If the IPs don't use their own eggs, they have to find an egg donor, who will also need to inject herself with hormones for a couple of weeks, visit a fertility clinic for three or four vaginal ultrasounds and have the eggs surgically removed under sedation. It's a lot to ask someone to do without remuneration.

Sometimes IPs and surrogates ignore the law and arrange payment under the table. One surrogate from just outside Toronto told me how she and a gay couple carried off two successful surrogacy arrangements without even the help of a lawyer. "We did our own agreement," she said, which included a base fee of \$20,000, paid out in installments, plus expenses for her travel to the city and childcare while she was there.

Most people, however, try to work within the letter of the law, if not always the spirit. The Canadian law is written in a way that makes clear that payment to surrogates and egg donors is illegal but suggests certain expenses, with receipts, are okay. As it stands, regulations spelling out what constitutes a permissible expense are still unwritten. As a result, there seems to be a great deal of wiggle room for IPs who want to be generous.

A fertility lawyer will often draw up a contract anticipating the kinds of expenses that might arise—like maternity clothes and travel to fertility clinic appointments—and put a cap on them. If more than one embryo is transferred, a contract can build in the expectation of additional expenses should the surrogate end up carrying twins and be put on bedrest; similarly, if a C-section is likely, extra expenses might be incurred as she recovers from the surgery. Wasser and Blake appended the car down payment along with some of the surrogate's rent to their contract. Some IPs have been known to push the limits, deeming things like gym memberships, telephone services, groceries and car repairs as legitimate surrogacy expenses.

Depending on the surrogate's circumstances, and the temperament of the lawyers involved, a surrogacy can cost IPs anywhere from \$8,000 to \$38,000, though \$20,000 is about average. Most lawyers are reluctant to sanction anything beyond about \$26,000, but I've heard of IPs giving surrogates spa holidays, jewellery or even a prepaid Visa card to top them up. Occasionally, they pay their surrogate a secret five-figure bonus in addition to the agreed expenses. IPs are desperate to ensure that their babies have a healthy gestation, and if money or food or a fancy manicure will make that more likely, many are willing to pay.

Even if everything worked as the law intended, it's a stretch to suggest that Canadian baby making is non-commercial. It's a lucrative business for fertility law specialists. Legal fees for a surrogacy agreement drawn up on behalf of the IPs can cost anywhere from \$2,500 to \$4,000. The surrogate's representation in the negotiation typically costs just over \$1,000. There is another legal fee of \$3,000 to \$6,000 to apply for a declaration of parentage, which ensures that a baby is the legal child of the IPs and not the surrogate.

The medical side isn't cheap either. A single round of in vitro fertilization, which involves removing eggs from a woman's body, mixing them with sperm in a glass dish, then slipping embryos back into a uterus with a catheter, can cost about \$7,000, and drug costs can double that. Injecting a single sperm directly into an egg (a process known as ICSI) is an additional \$1,500. Testing genetics before placing the embryo in the uterus is several thousand more. Testicular sperm extraction, frozen embryo transfer, assisted hatching—it adds up. All told, a single attempt at pregnancy via IVF can total \$20,000. And since there is a less than 25 per cent chance that a child will result, many couples end up trying more than once.

After her daughter's birth, Wasser decided to specialize in fertility law. She had stayed in touch with Leia Picard, the surrogate in B.C., who had since opened her own business in Ontario, Canadian Fertility Consulting. Wasser began to represent some of CFC's clients. And when she and Blake decided to have a second child in 2010, they turned to CFC for guidance. (That second surrogacy went off without a hitch, and they now have another little girl, Jennelle.)

In the Canadian surrogacy world, Picard is controversial. Some lawyers and clinics say they prefer not to work with her. I also heard stories of her offering iPads and money as inducements to women to become surrogates, as well as cash incentives to get friends of donors to donate eggs. Some IPs complain she is overprotective of her surrogates. But others adore her. One gay dad told me she was "amazing" and "an expert," that she could spot potential problems and troubleshoot them in advance. Many of her surrogates have stuck with her year after year, carrying babies for several of her IP clients. She has herself been a gestational surrogate twice, once in 2004 for a Winnipeg couple and again in 2006 for a couple in Toronto. She has also donated her eggs six times, most recently in 2011, and she calculates there may be as many as 15 children born from those donations.

I first met Picard not long after her last donation. I was making a radio documentary on the subject and she invited me to her home in Brighton for the interview. We ended up speaking for almost two hours. She's a warm person and surprisingly candid. She told me how she'd recently separated from her husband of 13 years, explaining that her devotion to her surrogacies and egg donations had been a factor in their split.

Picard's Canadian Fertility Consulting is one of three main Canadian agencies people turn to when they are looking into surrogacy and need help. All three are run by women who have

had personal experience being surrogates, all are in Ontario, and all work in conjunction with fertility clinics in the GTA, the surrogacy hub of the country. The oldest, Canadian Surrogacy Options, is based in Guelph and run by Joanne Wright. (Her daughter, Robyn Price, runs the company's egg donor division, Little Miracles.) The third is Surrogacy in Canada Online, operated by Sally Rhoads-Heinrich, who runs the business out of her farmhouse in Londesborough, near Goderich.

Because Canadian law prohibits anyone from charging for the arrangement of the services of a surrogate mother, for offering to arrange them or for advertising that they will, the three agencies choose their words carefully when describing their services. Canadian Surrogacy Options promises to "guide you through your surrogacy journey." IPs are charged \$6,250 for this guidance and support. CFC, which charges between \$6,400 and \$8,400, is promoted as a "full service consulting firm," offering to work "within the legal and legislative framework to provide expert assistance, and to help you navigate the often confusing and contradictory regulations." Surrogacy in Canada Online's services include information, email support, telephone support, counselling, and a list of reputable clinics, doctors, lawyers and psychologists. It also offers "free matching services," but you can only get the full profiles of the donors and surrogates after you register. "It's very much like online dating," Rhoads-Heinrich told me. "I can put you together, then you have to mingle." Her fee is the lowest, at \$2,950.

Agencies differ in how they help people manage payment of their surrogates' expenses. Rhoads-Heinrich doesn't touch the money. The parents who use her service disburse it themselves. This arrangement means her agency can't disappear with the cash, which has happened more than once at agencies in the U.S. But it also means she can't protect surrogates against people who suddenly decide to stop paying. "I've had three surrogate mothers go bankrupt," she told me. In one of those cases, the IPs just stopped paying. In another, a stay-at-home mom who ran a home daycare had to stop working but had no EI and few receipts. In all three cases, the IPs got their healthy babies.

Several prospective parents and surrogates told me that dealing with money can be one of the most difficult parts of the process, which is why some people prefer that it be handled by an agency. Wright's agency takes care of financial transactions by setting up accounts for the IPs that contain the total amounts anticipated in the contract. Surrogates then submit their receipts to the agency, which pays out their expense money. Every month or so, the IPs get an itemized accounting of the expenses disbursed. "We want people to focus on the relationship," says Wright, "rather than the dollars."

Given that "arranging" is banned, a casual observer can be forgiven for being confused that such agencies exist at all. "Can someone enlighten me on how any kind of service in Canada that matches people with surrogates and gets paid a fee for doing so isn't affected by this part of the 2004 AHR Act?" asks one person on the message board on [ivf.ca](http://ivf.ca). He goes on to cite the relevant section of the law. He's not alone. IPs, doctors, lawyers, even Health Canada—all have trouble figuring out what exactly the act's wording means. Are agencies legal? Are IPs breaking the law? Only the courts, apparently, could provide the answers, and no one had ever been charged.

On the morning of February 22, 2012, RCMP vehicles swarmed the parking lot in front of the tidy orange-brick building where Leia Picard has her Brighton offices. Picard was informed that she and her company were under investigation for criminal offences. Officers began

seizing CFC's computers, client files and records. Picard immediately called Wasser, who referred her to Frank Addario, a prominent criminal lawyer.

What the raid and closure of CFC would mean for Picard's clients was unclear. There were more than a dozen surrogates pregnant with other people's babies. There were IPs who were desperate to know what would happen to their dreams of having a family.

That night, people started posting messages to online surrogacy boards, asking if anyone knew what was happening or what had triggered the raid. The niggling fear at the back of many people's minds was that, after years of turning a blind eye, the government was finally enforcing Canada's law on assisted reproduction.

A few weeks later, Picard quietly reopened. She sent out an email announcing that she was back to work.

"My commitment to family building has never wavered," she wrote. "It may actually have been strengthened." Over the next few months, the RCMP began interviewing some of Picard's clients, suggesting to them that they may have been victimized. On Wasser's advice, many chose to remain silent.

On February 15, 2013, almost a year after the raids, the Crown laid the first charges ever under the Assisted Human Reproduction Act. Picard and her company were charged with purchasing eggs and paying a surrogate. Picard was also charged with taking money to arrange a surrogacy. Innocent until proven otherwise, she continued to operate her business.

Picard's case could finally clarify what the law prohibits and how it was to be enforced. Those against paying surrogates were hoping someone would go to jail for defying the act. Those opposed to the Assisted Human Reproduction Act were hoping its flaws would be laid bare and it would be scrapped.

Last summer, Leia Picard travelled out west to drum up new business with prospective parents, donors and surrogates. She also opened a new intake office in Nanaimo, B.C. In the autumn, she hosted social events for her surrogates. She was confident she was in the right: at one point she even talked about taking her fight all the way to the Supreme Court.

But on Friday, December 13, Picard walked into Old City Hall's courtroom 125 and pleaded guilty to all charges pertaining to the Assisted Human Reproduction Act. She admitted to paying egg donors a flat fee of \$5,000 instead of reimbursing for real expenses backed up by receipts. She also agreed she'd paid surrogates the total capped amounts, each around \$22,000, rather than only reimbursing for real expenses that were specifically related to surrogacy and had receipts. Where receipts were collected at all, they were often for items like car insurance, rent, entertainment and utility bills; didn't tally with the amount disbursed; and were sometimes filed away in unopened envelopes. Interviews the RCMP conducted with Picard's egg donors, surrogates and CFC employees confirmed these were routine practices.

Picard admitted she had taken money for arranging surrogacies. On three occasions, she'd been paid a fee of about \$10,000 to help find Canadian parents for surrogate fetuses she'd been told by a U.S. fertility lawyer had been abandoned by their original IPs. Unbeknownst to her, there had never been any IPs: a trio in the U.S., including two fertility lawyers, had been sending surrogates overseas to be implanted with donor embryos, then offering the children to

unsuspecting parents. (All three were later convicted and served time in jail.) The Canadian couples referred by Picard each paid the U.S. fertility lawyer between \$120,000 and \$149,000. Picard's regular CFC consulting services were never the subject of charges.

In the courtroom, Picard, who had recently remarried and was expecting a child in late January, sat tall and mostly calm. Occasionally, she wiped away a few tears and massaged her swollen belly. Her new husband watched from the gallery.

In the first-ever conviction under the act, it was agreed that Picard and her company would share a \$60,000 fine. The Crown prosecutor reminded the court that the law was designed to prevent people like Picard from taking advantage of vulnerable surrogates and IPs. He highlighted the desperation of prospective parents and said violators of the law had to be held to account. Picard's lawyer pointed out that for the first eight years of the law's existence, it had gone unenforced, and that there are still no regulations on how it should work in practice.

In the end, the case clarified little. It is still unclear where the line should be drawn between acceptable and unacceptable expenses. It is unclear why the government chose to act now, after years of violations—not only by Picard, but by parents and doctors as well. It is unclear whether this is a one-off conviction, intended to send a message, or if it heralds a new era of enforcement. The one thing that is clear is that there is an overwhelming demand for the work Picard does. Even as they gave evidence to the RCMP against her, many clients praised her. And even as the judge convicted her, he told the court how much the people who used Picard's services had appreciated them.

by [Alison Motluk](#)

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