

It's illegal to pay a surrogate mother in Canada. So what would motivate a woman do it?

DENISE BALKISSOON

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Gillian Harnum, seen at a playground near her home in Halifax, has been a surrogate mother to two children. (PAUL DARROW For The Globe and Mail)

For 2 1/2 years, Sara Karklins tried very, very hard to get pregnant. In the fall of 2010, she began the process of in-vitro fertilization – an embryo was formed in a fertility clinic, then implanted into her uterus. The process required megadosing with six times the amount of estrogen given to menopausal women, in order to build up her uterine lining. For three days before each embryo transfer, she also received progesterone injections, which left her buttock muscles swollen, itchy and bruised. Her mood swings were sharp and unpredictable.

Again and again, the embryos failed to attach to Karklins's uterus. Her fertility doctors injected a blood thinner into her stomach every day to increase blood flow to the uterus. Twice, she took an immunosuppressant to try and stop her body's rejection of the embryos. The result was a serious respiratory infection, as well as another pregnancy failure.

Karklins, now 32, wasn't trying to have a baby for herself – she and her then-husband already had two children. The never-ending schedule of pills, needles and doctor's appointments was for a male couple for whom she had agreed to be a surrogate mother. And, in keeping with Canadian law, she was doing it all for free.

“My mother said more than once, ‘You tried, and did your best, maybe it’s time to move on,’” says Karklins, an administrative manager at a greenhouse in Beamsville, Ont. “But I’m stubborn.”

After 15 lost embryos in five failed attempts, Karklins felt like giving up: Not because of personal discomfort, she says, but because she felt she was letting down the would-be fathers. “We had tried three different egg donors – the only thing left to take out of the equation was me,” she says.

The men asked her to try one last time. On Easter Sunday, 2013, she was implanted with three embryos, two of which she finally carried to term as a set of twins. “The intended parents were there when they were born,” says Karklins. “They were the first ones to hold them, as it should be.”

Intended parents – or IPs – is surrogacy lingo for people using reproductive technology to try for a biological child, and there are far more of them than there are women willing to carry someone else's baby for no compensation. In 2004, the federal government passed the Assisted Human Reproduction Act, making it illegal to pay for eggs, sperm or pregnancy. The payment ban has mostly allowed Canada to avoid the distasteful situations common in other countries, such as agencies promising genetically idealized gametes or babies abandoned for supposed imperfections. It's also resulted in an incredibly small pool of surrogates.

Those who remain show a curious mix of altruism and omnipotence: These are women who give up their very bodies for complete strangers, but only after choosing a lucky few from the desperate hordes.

For surrogates and IPs, the process of finding one another is as indescribable and chemical as romance. Repeatedly, both sides use the phrase “you just know.”

“For most of them, it just didn't feel right, but when I met my IPs, I just didn't want to hang up the phone,” says Kate Firth, of finding her second set of parents. The first time Firth was planning a surrogate pregnancy, in 2011, she got two or three e-mails from hopeful IPs a day.

After a month of considering candidates, the Victoria mother of two chose a straight couple from Saskatoon: a 29-year-old man and a 31-year-old woman who had become infertile after treatment for cervical cancer. Eventually, she bore them twin boys.

The second time Firth, now 35, had someone else's baby was in January, 2014 (that time, it was twin girls). “I probably entertained five couples,” says Firth, who works at a non-profit health-care centre. She decided on another straight couple, who had been trying for four years to have a baby.

Firth was inspired to become a surrogate after her twin sister, Gillian Harnum, signed up in late 2010. “I wanted to show my children you can do something special,” says Harnum, who lives in Halifax with her husband and two daughters.

“I didn’t just make babies, I made a family. I made aunts, uncles and grandparents.” Both sisters say they were deeply touched by their brother’s inability to have a second child.

Firth met both sets of IPs through Surrogacy in Canada Online, a 14-year-old consultancy run by former surrogate Sally Rhoads-Heinrich, who charges IPs \$3,000 for two years of services. The most essential is access to online forums where they can meet potential surrogates, though SCO also refers clients to lawyers, and links them with psychologists and counsellors.

Rhoads-Heinrich’s consultancy exists in the grey area of Canadian surrogacy law. She believes that simply facilitating meetings, rather than matching individual women with specific IPs, keeps her on the right side of the legal prohibition that no one make a profit from surrogacy. She doesn’t pay her surrogates, but does send baskets of vitamins and pregnancy tests, as well as flowers and other gifts.

Rhoads-Heinrich says 95 per cent of SCO’s clients are heterosexual couples facing infertility issues. The surrogates she works with must have had at least one child.

“People are spending \$20,000 on each IVF cycle,” she explains. “It’s considered ‘unproven’ to put an embryo in a woman who hasn’t been pregnant before.” The women who work with her must be between 21 and 45, and preferably in a supportive romantic relationship.

Unsurprisingly, one common trait among surrogates is a tendency toward easy pregnancies. Tara Robertson of Kingston gave birth to her first surrogate baby in mid-January after having nine of her own children.

“I just love being pregnant, I guess,” says Robertson, a stay-at-home mom married to a heavy-duty-equipment mechanic.

“Creating life, you can feel that.” At 31, Robertson has never had gestational diabetes or high blood pressure, and all of her babies had relatively quick vaginal births. Her doctor once suggested she become a surrogate, and in November, 2013, three weeks after her youngest son was born, she got in touch with Surrogacy in Canada Online.

“We are so blessed, why not do it for somebody else?” says Robertson. Her first visit to the SCO forums was an eye-opener. “It was a little shocking and upsetting, so many IPs and not many surrogates.”

A week after starting to hang out on Skype with a male couple she met through SCO, Robertson decided to have their baby.

“It’s like meeting the man you’re going to marry,” she says. “I like their personalities, they were bubbly and outgoing and it was easy to talk about the hard stuff, like abortion.” She got pregnant with two embryos on her first try.

Unreserved and quick to laugh, Robertson can’t imagine life without children. Her latest pregnancy brought some soreness and back pain, but she didn’t get a massage: Although Health Canada does allow surrogates to be reimbursed for undefined “pregnancy-related expenses,” she doesn’t want to burden her IPs.

The average cost of egg and sperm retrieval, embryo production, hormones and embryo transfers is about \$60,000, which doesn't include pricey extras like genetic tests to screen for debilitating or fatal conditions.

"I have issues with using someone else's money," says Robertson, who worked out a budget with her IPs for pregnancy-related travel, groceries and clothes with a limit of about \$2,000 a month.

Setting out acceptable expenses in a contract written by a lawyer is common – Firth learned after her first surrogate pregnancy required a cesarean section to add in extra compensation for recovery time taken off work. SCO advises all of its IPs and surrogates to sign a formal agreement before becoming pregnant, even though the legal status of such contracts is debatable.

Quebec has expressly refused to recognize them, while Alberta has determined that surrogacy agreements are valid as evidence in legal disputes, but are not directly enforceable. In Nova Scotia, Newfoundland and British Columbia, provincial law accounts for the possibility a contract might exist, but whether it's enforceable is unclear. Everywhere else, including Ontario, there's no law, or precedent.

Even so, many of those involved believe there is value in having everyone discuss their expectations, and put them down in writing. A standard clause is that IPs will be named as parents on the baby's birth certificate. Contracts also outline restrictions on foods or activities. Robertson smoked cigarettes through her own pregnancies, but has agreed not to as a surrogate.

While she found that request reasonable, Robertson turned down other IPs she found too demanding. Surrogates and IPs often clash when discussing potential genetic abnormalities or – as is often the case with IVF – whether to keep all of the babies if more than one embryo develops.

"They wanted to abort up to 24 weeks if there were issues but I'm not willing to abort that late," says Robertson. "I can't work with someone who wants to terminate for every single reason. I get that you want a healthy baby, but to what degree are you asking me to play God?"

One classic assumption about surrogacy is that women will have trouble giving up the baby. It's part of why the industry has moved away from traditional surrogates, who use their own eggs to become pregnant, to gestational surrogates, who are implanted with embryos made from donor eggs.

Rhoads-Heinrich only works with gestational surrogates, though she says that's mainly because it makes things easier to automatically list IPs on birth certificates. The consultant says that in 14 years, SCO has never had a surrogate have trouble with attachment issues in regards to the baby.

Harnum, in Nova Scotia, says she did experience postpartum depression after having her most recent surrogate baby last July. Her own children and her first surrogate baby were girls, and this was the first time she had carried a boy. "Three days after the delivery, I had a day all by

myself to cuddle him on my own,” she says. She began to cry at the thought of him moving to Toronto until one of the IPs told her gently that she’d definitely see the baby again.

The parents are a gay couple with four children, and keep in regular touch with their three surrogates as well as one of their egg donors. “I’m not giving him up, I’m giving him back,” says Harnum.

Not all IPs agree to stay in touch, and the emotional effect of losing contact with them is often a surprise for surrogates. After months checking in daily with their surrogate and perhaps sending her little gifts in the mail, the parents’ attention shifts to the baby they’ve waited so long for. Contact with the surrogate becomes less frequent, and sometimes stops for good.

“It’s incredible seeing two people become parents, but it becomes a realization, when everybody’s gone and you’re left alone,” says Robertson, who was sadder than she expected after her surrogate baby’s birth. She’d like to stay in touch with the family, but knows that it’s impossible to predict the future. “Something could happen down the road and I’d never see them again.”

The first couple that Karklins worked with, in 2010, always kept her at arm’s length, perhaps because they were from a small religious community and didn’t even tell their own parents that they were using a surrogate. After giving birth to a baby girl, Karklins offered to pump colostrum, the nutrient-rich first breast milk. This made the mother noticeably uncomfortable. The IPs asked about her health for a few weeks after the birth, but then communication tapered off.

Karklins now gets brief updates around Christmas and at their daughter’s birthday. “It took me a year to really let go of the hurt feelings,” she says. “Sometimes I do wish I took more time to speak with them before offering to make a match.”

Karklins went into her second surrogate pregnancy determined to find IPs who wanted an ongoing relationship. She’s called Aunt Sara by the twins she bore in 2013, who know exactly who she is. She and her children have visits with the family every month or so, and the twins’ dads have told their extended family and friends who she is as well.

“They have never acted as though our journey was a secret or something to move on from once their children were born,” says Karklins of her second set of IPs. “We really have become friends, and that extends outside of and past the surrogacy.”

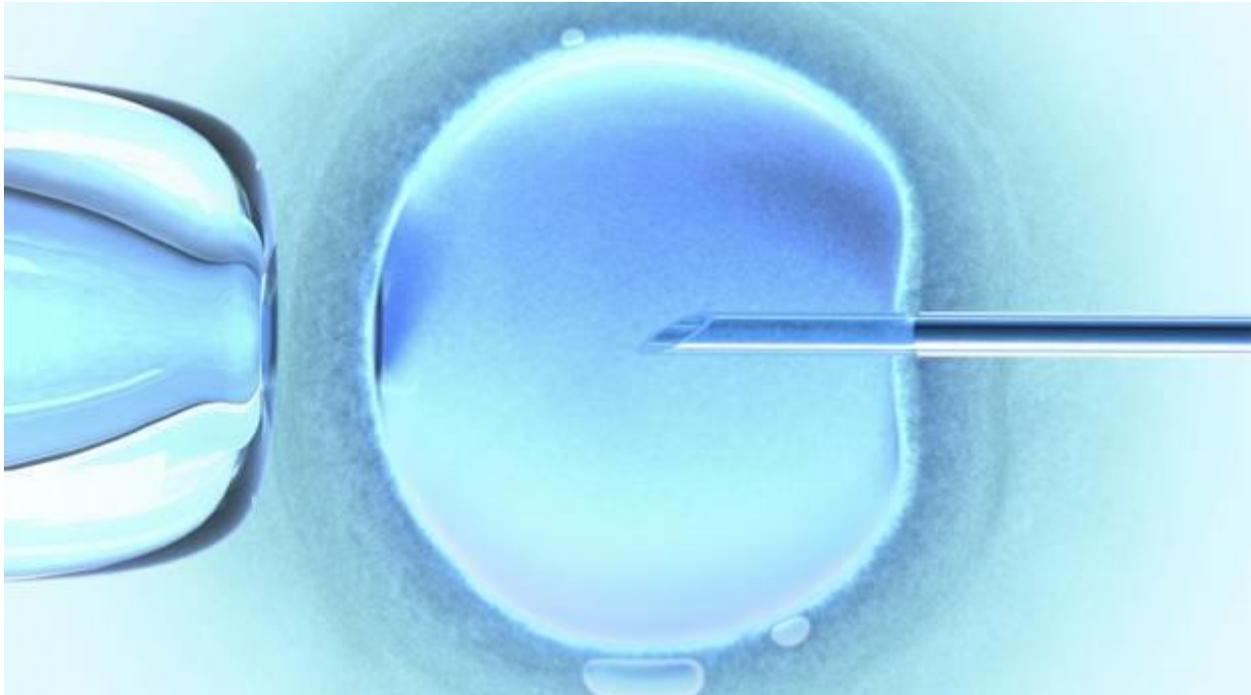
Despite how gruelling the pregnancy process was, the joy she feels at having helped build a family takes precedence. If the dads want another baby some time, Karklins would consider being their surrogate again.

Weak fertility laws put potential parents on shaky ground

JACQUELINE NELSON

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Wanting a baby isn't a crime, but Canada's murky legal landscape leaves many prospective parents vulnerable and leery of venturing into illegal territory, law professionals say. (KIYOSHI TAKAHASE SEGUNDO/iSTOCKPHOTO)

Wanting a baby isn't a crime, but Canada's murky legal landscape leaves many prospective parents vulnerable and leery of venturing into illegal territory, law professionals say. Since third-party reproduction is here to stay, and scientific advances are offering once inconceivable options to create children (Britain is on track to allow babies made of three people's DNA, for example), the need to address the gaping holes in this country's fertility laws is more urgent than ever.

To explore the key issues, The Globe spoke with two experts: Karen Busby, a professor in the University of Manitoba's faculty of law who researches the discriminatory impacts of laws regulating sex, gender, sexuality and violence; and Toronto-based lawyer Sara Cohen, founder of D2Law and Fertility Law Canada, who helps clients with agreements for surrogacy, and donations of eggs, sperm and embryos.

What legal disputes do you see most often in fertility law?

Cohen: There's significant negotiation over the entire surrogacy process – it's better to resolve things before we get someone pregnant with someone else's baby. The thing I've seen is that known sperm donors come back and want access to a child far more often than anyone

else in third-party reproduction. That's not the Assisted Human Reproduction Act issue, that's a family-law issue and we need Ontario to address it the way Alberta and B.C. did: They made it clear in their legislation that a donor isn't a legal parent just by virtue of the donation. In Ontario, the genetic connection by a man is enough to potentially make him a legal parent.

Busby: The thing that we've seen a couple of times in Canada is where intended parents did not want to take the child because the child has some disability. But we don't know how many surrogate births there are in Canada, because it operates in such a grey area and there are no reporting requirements. Having said that, my research shows that almost never are there disputes between surrogate mothers and intended parents.

Is it legal to pay for someone's expenses for participating in surrogacy and egg and sperm donation?

Busby: You can reimburse someone for expenses, but you cannot pay them for their contributions. You can pay them for the taxi to get to the clinic. You can pay for days off work while they recover after extraction of eggs, or a babysitter for their own children. You can't pay them \$20,000 for services rendered. But there's no case law, regulation or guidelines on what's acceptable or unacceptable.

Cohen: What I think you can reimburse and what someone else thinks you can reimburse might be two different things. But the problem is that the potential consequence of getting it wrong is 10 years in jail and/or \$500,000. It's craziness.

Is it legal for Canadians to purchase sperm or eggs or engage a surrogate outside the country?

Busby: I think payment for sperm and ova is permitted and, as well, you can engage surrogates in different countries and pay them.

Cohen: It's not-in-my-backyard legislation. At the end of the day, is it ethically any better? Because now we're paying donors that we haven't ensured have proper health insurance, or the psychological hand-holding they need and other resources available. Better to pay [a donor] in Canada and at least make sure she has access to health care, resources and that we can track the ova and sperm.

How often do Canadians look abroad for what they need?

Busby: In Canada we use foreign gametes [mature egg and sperm cells] all the time. Most eggs and sperm used in Canada today come from the United States and essentially you're buying it. And I'm sure that the egg donors and the sperm donors are being compensated not only for expenses, but also for giving a product, if you will, in foreign countries. It's not a black market. You can find these things online.

What about the other way around – is it legal for foreigners to engage a Canadian surrogate?

Busby: The Canadian medicare system pays for all the expenses of the birth. And if there's a problem with the child they pay for all the expenses post-birth. So Canada is actually a destination internationally for people that want to engage surrogates. Ontario was considering

passing regulations for international surrogacy to ensure that the costs of a birth were passed on to the intended parents, but it's a really tricky situation.

On a more personal level, if a couple who has frozen eggs gets divorced, could the eggs be divided like property?

Cohen: Eggs are considered property. And sperm is considered property. But, I think if they were your eggs, we would need your consent to create an embryo using them. If you didn't consent, I don't think we could use them. People treat [eggs] very differently than embryos.

Why? Is that considered a human life?

Cohen: I wouldn't say that, because I consider myself a feminist and that has major implications on abortion. But I think it's different. And just because we have case law on gametes, we aren't at the same place with embryos. Whether or not it's ethical, moral or religious, people are more worried when it comes to the destruction of embryos.

What if a person stops paying a clinic for freezing services?

Cohen: That's governed by contract. We did have a case where sperm was cryo-preserved and the sperm bank was closing and they made best efforts to find a few of the people and they couldn't find them. Eventually the court gave permission for the sperm to be destroyed. Clinics aren't quick to destroy gametes because they're worried about the liability. If you have a cancer survivor, or something, you can't get them back. How do you figure out those damages?

These interviews have been condensed and edited.