

# The Province

## Canadian rules around surrogate mothers-for-hire driving demand from overseas

By GLEN SCHAEFER, The Province January 6, 2016



*Demand is swelling for Canadian surrogates. The latest statistics from the Canadian Fertility and Andrology Society are that Canadian fertility clinics carried out 440 in vitro fertilization cycles on “gestational carriers” or surrogates in 2014, double the number just six years earlier.*

A 12-year-old ban on commercial surrogacy in Canada — paying a woman to bear a child from someone else’s fertilized embryo — has left a grey area around surrogacy here, and has

helped foster an overseas market among would-be parents to hire surrogates in countries ranging from Mexico, Thailand and India to parts of the United States.

Advances in in-vitro fertilization common since the 1990s allow for fertilized donor embryos to be implanted in a surrogate mother, giving women unable to bear their own children a chance at parenthood. The technique has also helped gay couples and others have their own children.

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Among their number was Tsawwassen’s Keely Hogan, who bore two babies in the past three years, for two couples she had never met before. The 38-year-old Hogan is herself a single mom to two teenaged children.

“I had very easy pregnancies,” Hogan said. She heard about surrogacy through friends. “There’s so many people out there who want to have children and aren’t able to,” said Hogan, who works for the Richmond school district helping special needs children.

She had a surrogate baby in September 2013 for a first couple, and has stayed in contact with them. She had a baby for a second couple last December. Both couples were from the Lower Mainland, and both were at the hospital for their babies’ births.

“When they baby is just born and you can see the look of pure happiness on the parents’ faces, it just brings myself that feeling of joy too,” she said. In both cases, Hogan met up with the “intended parents” through the website [surrogacy.ca](http://surrogacy.ca), which allows surrogates to choose from a roster of intended parents who have paid a fee to be on the site.

The site’s Ontario-based owner, Sally Rhoads-Heinrich, said she has to be careful not to step over Canada’s 2004 law criminalizing the commercialization of the surrogacy relationship. Buying a surrogate’s services is illegal. Also illegal is paying someone to procure a surrogate.

“The consulting that we do is considered a grey zone,” said Rhoads-Heinrich, a former mental health counsellor, who was herself a surrogate mother in 2000 to twins, a boy and girl.

Rhoads-Heinrich started a blog about her experiences, which grew into the website. She quit her day job in 2010 to work full-time on the website. She said websites like hers give intended parents an alternate to searching the classifieds.

On Tuesday, 48 unmatched couples, and 11 available surrogates were on Rhoads-Heinrich’s site. Surrogates usually match within 10 days, would-be parents wait longer. Rhoads-Heinrich said between 150 and 200 matches are made on the site every year.

“I spend all day just doing phone consults with potential surrogates and I reject over 80 per cent of them,” she said. “Intended parents are so desperate. They don’t always know what to look for.”

Surrogates such as Hogan get to choose matches from the intended parents on the site, after which the parties look for a lawyer and a clinic to facilitate the surrogacy.

“No matter who you are, even if it’s your sister (acting as a surrogate), we mandate legal counsel,” said Dr. Heather Shapiro, Toronto-based president of the Canadian Fertility and Andrology Society, which represents fertility clinics across the country.

Vancouver lawyer Larry Kahn is a 30-year veteran of such contracts, having pioneered the practice. For more than a decade, he was one of only two lawyers in the country doing such work.

“There’s no case law, there’s no decisions of any significance or depth that have tackled the problems in Canada,” Kahn said. “By and large, the intention of the contract is the governing principle.”

A section of the 2004 federal Assisted Reproduction Act that would govern compensation for surrogates was never proclaimed in force, he said, so such issues as expenses and wages lost due to pregnancy are technically “live issues. Generally speaking, that’s the grey area, and that’s resolved in favour of the surrogate.”

Kahn draws up 40 to 60 such contracts a year for intended parents and surrogates who find each other “through various consulting services or good old Craigslist.”

Contracts between surrogates and intended parents generally allow for expenses of between \$18,000 and \$25,000 in the course of a year that would include pre- and post-pregnancy, he said.

“You don’t see contracts where there’s \$100 grand involved; that would patently be a fee,” he said. “By and large, they make good arrangements, they form good relationships.”

But both Hogan and Rhoads-Heinrich said paid surrogacy should be allowed.

“Pregnancy puts you in a position often where you’re unable to go to work or properly care for your family,” said Rhoads-Heinrich.

For her part, Hogan said paying surrogates might give Canadian parents an alternative to heading out of the country to find surrogate mothers.

She said she has done her part with two surrogate births. “There’s way more couples looking to have somebody to have their baby. there’s not enough of us to help.”

University of Manitoba law professor Karen Busby criticized the 2004 federal law for the never-enacted section that specified what expenses surrogates could be compensated for.

“My reading of that is you can’t even pay a surrogate for expenses,” Busby said. “The (ban) criminalizes anybody who engages in the activities — the buyer, the seller the broker, the advertiser and so on. But nobody has ever been charged.”

Busby made another argument for legalizing payment for surrogacy services — Canadian parents are paying for those services overseas, often in countries where women don't have the legal protection they have in Canada.

Vancouver filmmaker Nick Orchard is a year into production of a documentary on the issue of “reproductive tourism,” in which Canadian couples are paying women overseas to bear their children, to get around Canadian laws against paying surrogate mothers.

Orchard's documentary, *Reproductive Tourism and the Surrogacy Boom*, is to air on CBC's documentary channel next fall. He said clinics have sprung up in countries where it is legal for would-be parents to pay surrogate mothers. Some Mexican states allow the practice, as do some American states. India and Thailand have allowed the practice.

“There are some very good hospitals, clinics and agencies in these countries,” Orchard said. “There are also some bad ones who are exploiting the women. You already have the ethical dilemma — is it alright for a wealthy couple to pay money to a poor woman in a foreign country to have their child?”

He said India has curbed the trade by denying surrogacy opportunities to gay couples or single people. “At the same time, it's such a big industry in India.”

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