



Canadian parents want to do more for the surrogates carrying their babies

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A private member's bill has been tabled, with the goal of decriminalizing the act of paying surrogates in Canada. The legal patchwork surrounding the issue is grey. Abigail Bimman explains how the system works now, and why there's opposition to the change.

With beaming smiles and giddy excitement, Mike Black and Travis Wood show off an ultrasound photo of their nine-week-old, unborn baby.

“I’ve been dreaming every night it’s a baby boy,” Black told Global New earlier this week.

Getting the photo required a 4,000-kilometre trip from Slave Lake, Alta., to Ottawa, where the couple’s surrogate lives and was getting an ultrasound. It’s an experience Black describes as “life-changing.”

Black and Wood have wanted a child for three years, and with the help of fertility consultants, they were matched with a surrogate named Meghan. They pay her pregnancy-related expenses, like food and maternity clothes, but wish they could do more.

“We’d go above and beyond what we think is reasonable, because it’s such an amazing thing she is willing to do for us,” Wood said.



An ultrasound photo of a nine-week-old fetus in its surrogate's womb. The baby's intended parents travelled from Alberta to Ontario to attend the ultrasound with their surrogate.

Travis Wood/Handout

But spending money to go above and beyond could mean up to 10 years in jail or \$500,000 in fines under current Canadian law.

That could all change if a [private member's bill](#) decriminalizing payment for surrogacy, as well as egg and sperm donation, becomes law.

“Criminalization is meant to eradicate a societal evil,” said Liberal MP Anthony Housefather, after tabling the bill this week. “The desire to have a child or help someone have a child is not evil.”

The new bill is welcomed by some surrogates, future parents and the fertility industry, but it wades into contentious ethical territory in which critics warn the implications go far beyond paying for a thank-you gift.

The legal landscape for surrogacy and gamete (sperm and egg) donation is set out by the Assisted Human Reproduction Act, which passed in 2004. It allows intended parents — the people the surrogate carries the baby for — to reimburse receipted pregnancy-related expenditures. But it's currently illegal to pay a surrogate for her services.

Regulations were supposed to be published, outlining what those expenses could be, but that hasn't happened yet. The void has left a legal grey zone about just what qualifies and what doesn't.

Supporters of the bill say the current situation has created a shortage of surrogates and donors, forcing people south of the border.

“The bill today opens many, many doors for patients and will provide for pregnancies that were just not possible with the existing laws,” said Dr. Jeffrey Roberts, past-president of the Canadian Fertility and Andrology Society.

For Housefather and his supporters, the solution is to get rid of the criminal prohibition. The result would be that provinces would be the ones to regulate what is acceptable and what is not.

But not all agree that this is a good idea.

“There will be chaos. There will be confusion,” said Françoise Baylis, who worked on the original act and is now the Canada research chair of bioethics and philosophy at Dalhousie University.

“And there’s no way I can understand how doing that and encouraging women to put their body bits in the marketplace is good for Canadians. It makes no sense.”

Baylis also insists the current law has nothing to do with criminalizing women’s bodies.

“The law was written very carefully to make it illegal for you or anyone else to purchase eggs, but it’s actually not illegal to sell eggs,” she said.

Protecting Canadians from exploitation

Additionally, some critics fear that the intention of the Assisted Human Reproduction Act to protect women and prohibit exploitation would be undermined by this proposed change.

The University of Calgary’s Juliet Guichon said the current law protects women by drawing a line between compensation for a generous act and inducement.

“They are trying to expand the access to women, then what groups of women will they be expanding into? It’s those who would be induced by money,” Guichon said.

Guichon said she worries pregnant surrogates will be in unbalanced power relationships and lose power over some choices if payment is involved.

Housefather’s bill outlines surrogates must be over 21 years-old, able to consent and not be coerced. Egg and sperm donors must be 18 years old, able to consent and not be coerced.

“Government does have a duty to protect the most vulnerable from exploitation,” Housefather said. “What it should not do is create a blanket prohibition stopping everyone from engaging in reasonable behaviour simply because of a fear a small minority might be exploited.”

Surrogacy is 'empowering,' say some women

The surrogates advocating for change on Parliament Hill feel the bill will make a difference and encourage others to join them.

“To me, being able to help someone achieve their dream of becoming a parent is a great honour and it is also an immeasurably empowering experience for me,” an emotional Jennifer Worsdale told a room full of reporters. Worsdale is a surrogate of five children and experienced egg donor, as well as a married mother of three children.



WATCH MORE: [Surrogates explain why they want to carry another person's child](#)

Ontario-based consulting firm Fertility Advisors says the average surrogate in Canada is between 21 and 40 years old, has an average family income of \$46,000, and is usually mother of her own children. Between 2001 and 2014, approximately 1,100 babies were born to gestational surrogates, [according to a study published in the Journal of Obstetrics and Gynaecology Canada last year.](#)

Another surrogate, who has been lobbying MPs for change, says she doesn't want intended parents to be scared of surrogacy.

“If I'm a consenting adult, everyone involved is a consenting adult, it's sad that it could be related to a crime,” said Stephanie Aubry, who was on Parliament Hill last week just 10 days after giving birth to her first baby through surrogacy.

While she wants payment to be decriminalized, Aubry said she wouldn't look for anything more than a simpler process.

“My reimbursements are enough, but I do receipts and they're a monthly hassle,” she said.

She said a basic contract for expense reimbursement is about \$20,000, but she believes the precise costs should be up to the surrogate and intended parents.



Canadian surrogate Stephanie Aubry poses while pregnant with the baby's intended parents.

Stephanie Aubry/Handout

Health Canada promising regulations

Another solution would be for Health Canada to finally publish the long-awaited regulations clarifying what expenses are legal. It's planning to deliver them this fall.

“Health Canada intends to establish within the reimbursement regulations for Section 12 of the ARHA broad categories of expenditures for which donors and surrogates may be reimbursed,” the department said in a statement.

Until then, the private members bill will continue through the parliamentary process. All parties have said they will look at the proposed bill and study whether it is in the interest of Canadians, so there's no guarantee of if or when it could become law.

In the meantime, intended parents like Black and Wood will have to look for creative, non-monetary ways to show their appreciation.

"She does this out of the goodness of her heart and we'd like to show her how much it means for us," Wood said.

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