09 March 2018

RE: Review of the Human Reproductive Technology Act 1991 and the Surrogacy Act 2008 - Posthumous use of sperm and eggs

Dear Professor Allan,

I am writing this submission in the hopes that when the Human Reproductive Technology Act 1991 (HRTA) is reviewed, that the Artificial Conception Act 1985 (ACA) is also reviewed, and that there is consideration taken for women in the same situation as myself, so that the HRTA/ACA includes the provision for deceased fathers to be listed on a birth certificate even if the child is conceived through artificial reproduction methods after the father has died.

My daughter Frankie was born just over two years after my husband Ben passed away from Metastatic Ewing's Sarcoma. He was diagnosed in late October 2014 and passed away 01 May 2015. The cancer was very aggressive and unfortunately didn't respond well to the treatment. Ben had previously been treated for cancer as a teenager. At the time, the specialists recommended he store semen in case of sterility due to the radiation therapy.

We had already begun IVF while Ben was having cancer treatment and were due for our next cycle 3 days after Ben died. I called the clinic to let them know that he had died and that I wanted to continue with the IVF. They informed me that under Western Australian law, I was unable to continue with IVF, that I should not attend the clinic and that someone would call me later in the day to discuss the situation.

Hillary from the fertility clinic told me that the law in WA did not allow for the posthumous use of frozen gametes and that I may be able to continue IVF in Qld, but that I would need to contact the Reproductive Technology Council for confirmation.

The lady at The RTC that I spoke to initially said that I could not use the frozen gametes or take them out of the state to use elsewhere. I said that I thought it was inappropriate for them to deny my moving them to a place where it was allowed, and that if they belonged to me, they shouldn't be able to stop me taking them. She said that they were looking into changing the law, but I didn't have the luxury of waiting. I was asked to supply any documentation stating that I was the legal owner of the frozen gametes, so that my case could be discussed when the council next sat.

The only documents I had, were the consent forms from the fertility clinic and the Power of Attorney form from the storage facility the gametes were stored in prior to use. Ben's Will did not mention anything about the frozen gametes, as it was completed in the days before he passed away and was still in first draft format, and

we had only included the bare necessities, so that we had something in writing. We had hoped to include more information after the draft was lodged, but he passed into unconsciousness before that could happen. I was listed in Ben's will as the primary beneficiary.

After reviewing all of the information I supplied, the council confirmed that I was able to move the gametes to another state, but could not use them in WA, nor could I give them to anyone else to use.

I found a clinic in Qld and started the process to confirm the legality of transporting and using the frozen gametes there, and then begin treatment. I had extra costs in registering with the new clinic, legal costs, transport costs (close to $2500), and on top of all that, flights, accommodation and treatment fees.

I contacted the Department of Health to ask if I was eligible for assistance with flights and accommodation, the same as country residents can access, to be told that because the fertility treatment was available in my area, I was not eligible. I explained that by Western Australian law, fertility treatment was not available to me, that I had to travel out of state, and I would like my case to be considered, but that didn't seem to matter, as the treatment (*under normal circumstances*) was available in my area. This along with everything else, caused undue emotional and financial stress on me.

After the birth of my daughter Frankie, I registered her birth with the department of BDM. When I completed the registration, I included her father's name and details, and explained why he was not signing the registration.

I received a letter from the Department to inform me that my baby's birth could not be registered with her father's name because the current law in Western Australia does not allow the Registrar to record him as a parent to my daughter. Because she was conceived through fertility treatment, the legal parentage is determined by the Artificial Conception Act 1985 (ACA), and not the Births, Deaths and Marriages Registration Act.

On reading the ACA, it states –

6. Rule relating to paternity

(1) Where a married woman undergoes, with the consent of her husband, an artificial fertilisation procedure in consequence of which she becomes pregnant, then for the purposes of the law of the State, the husband –

(a) Shall be conclusively presumed to have caused the pregnancy; and

(b) Is the father of any child born as a result of the pregnancy.

Nowhere in the act does it mention that my husband is not the parent of my child because he is deceased, yet the Department of BDM quoted the ACA as the determining factor in not stating his name on my daughter's birth certificate.

On reading the Human Reproductive Technology Act 1991 (HRTA), I could find no information that prohibits the use of my late husband's name on my daughter's birth certificate.

In the letter received, it was recommended that I contact the Executive Officer of the Reproductive Technology Council of WA, who could explain the issue relating to the conception and paternity as it relates to the ACA. Yet, the information I received from Maureen from the RTC, was that the RTC does not control birth registration, and that my only course of action was to write a letter to the Minister of Health in the hopes that a review of the ACA and the HRTA would take place in the near future.

I can't understand why I can't have my husband's name on my daughter's birth certificate, even though he is the biological father, yet others can refuse to name a father at all for a variety of reasons including that they don't actually know who the father is, and in the case of a same sex female couple, the de-facto of the pregnant woman is considered the parent of the unborn baby.

Please contact me should you require any extra information.

Thank you for your time and for reviewing the HRTA.

Regards,

Annette Gelok
[redacted]