Law proposals spark 'designer baby' fears

Changes to act will enable couples to 'shop around' for eggs and sperm

PREGA GOVENDER



FOR LOVE AND CHARITY: Pretoria couple Rautie and Ronel Nel with surrogate mother Corlien Steenkamp, middle, who is carrying their baby Picture: RAYMOND PRESTON

SOUTH Africa's surrogacy legislation is under review and proposed changes could allow infertile couples seeking babies with specific features to "shop around" for egg and sperm donors of their choice.

A call for the scrapping of the legal requirement that the gametes — sperm or egg — of at least one of the commissioning parents is used is among proposed changes to the Children's Act.

The University of Pretoria's business enterprises division and the Centre for Child Law were commissioned by the Department of Social Development to draw up the new provisions.

The department said it had not yet approved amendments and a consultation process was continuing.

At present, barren couples are barred from using a surrogate mother to carry their baby because the law stipulates that the gametes of at least one of the partners is required.

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The requirement is viewed as discriminatory by some reproductive specialists.

But Pretoria surrogacy lawyer Adele van der Walt said scrapping the requirement for one gamete could open the floodgates to people trying to create designer babies.

"The person can shop around, import sperm from the US for about R15 000 and you have enough sperm for about 30 IVFs," said Van der Walt.

She said couples could go on the internet and decide that they wanted a specific sperm donor who was tall, athletic, slender and blond.

None of this would be in the interest of the minor child.

Dr Merwyn Jacobson, a fertility expert at Vitalab in Johannesburg, said that "if you are borrowing eggs and sperm from someone else, that means nothing is yours genetically".

"It's not yours. You might as well adopt a baby. There are all use surrogacy as a source of income;

- Scrapping the requirement that a surrogate must have had at least one pregnancy and a viable delivery because it discriminates against potential surrogates who have never been pregnant; and
- Introducing an age limit for commissioning parents because there may be those who are "elderly and likely not to outlive the surrogate child's childhood".

Tanya Rubin, a social worker at Vitalab, said the clinic recently refused to accept a woman who offered to become a surrogate in return for payment of R500 000.

She said that until 2010 surrogates were allowed to charge a fee for their services, but as that was no longer allowed, the number of women willing to act as surrogates had dwindled.

She said the clinic generally considered surrogates up to the age of 45 and commissioning parents up to the age of 50.

Professor Thinus Kruger of the Aevitas Clinic at the Life Vincent Pallotti Hospital in Cape Town said that he would not handle a surrogate pregnancy involving a woman older than 50.

"The other day we had someone who was 61. She said she's healthy, but she's 61. She wanted to be a surrogate, but we just declined."

Pretoria couple Ronel Nel, 32, and her husband, Rautie, 37, a chartered accountant, were lucky to find a surrogate whom they knew.

Corlien Steenkamp, 40, a mother of two who had taught their daughter, Anke, at nursery school, offered to carry their baby after she heard Nel telling a friend at school that she was looking for a surrogate.

Nel said: "I actually said to her [Corlien] the other day she's doing something for me that I never in my life will do for somebody else."

Nel was advised not to fall pregnant again after her first pregnancy resulted in her falling seriously ill and spending five months in hospital.

Her surrogate baby is expected to be born on October 31 by Caesarean section.

She said the cost of having the baby was expected to be about R200 000. "We are paying Corlien's expenses, including medical expenses, life insurance, maternity wear and vitamins.

"After the birth, I am not going to tell her 'You are not going to see this baby'. I mean she's been carrying the baby. He'll know where he comes from and who Aunty Corlien is."

Steenkamp, who is 27 weeks pregnant and jokingly referred to herself as an incubator, said she offered to be a surrogate because of "love and charity".

"Every time he moves I'm excited. The big moment will be handing over the baby to Ronel when he's born. But it's not like I don't feel anything, because I love the little guy."

She said a woman asked her whether she would want to hold the baby first after it was born. "I said no. That's the mother's place to do that."

Social Development Department spokesman Lumka Oliphant said the proposed changes were at a discussion

How surrogacy works

UPON qualifying, commissioning parents must obtain a high court order outlining the terms of agreement with the surrogate mother. Artificial insemination can be carried out only once they have this order.

The order includes details of the payment to be made to the surrogate for out-of-pocket expenses, including medical cover, life insurance and loss of income for the duration of the pregnancy. In rare cases, surrogates have claimed for tummy tucks, particularly as a result of having carried twins.

The court order requirement protects the commissioning parents, who previously had to adopt their baby after the birth because the law regarded the baby as being the surrogate mother's. The adoption requirement fell away in April 2010.

Pretoria-based surrogacy lawyer Adele van der Walt said a surrogacy pregnancy may only be terminated in consultation with all parties and in case of medical emergency or in the case of an unviable pregnancy, prior to 20 weeks.

When it goes wrong

A PREGNANT woman in KwaZulu-Natal reportedly demanded cash and items on a wish list from a couple before agreeing to hand over their child in 2011.

The couple launched an urgent high court bid to force the woman to give them the child after she demanded more money than originally agreed by the husband's sperm took place after the introduction of new legislation that made it compulsory for commissioning parents to seek a high court order to legitimise the surrogacy agreement.

The couple in this case did not have a court order, but claimed that none of the birth mother's genetic material was used in the