

Support grows for paying surrogates

■ Cite as: *CMAJ* 2017 July 31;189:E1004-5. doi: 10.1503/cmaj.1095444

Posted on cmajnews.com on July 13, 2017.

A prominent medical society and some academics are reconsidering their stand on Canada's ban on compensation for surrogacy.

A [new position statement](#) from the Canadian Fertility & Andrology Society calls for amendments to the [Assisted Human Reproduction Act](#) to permit “reasonable compensation” for surrogates, as well as gamete donors.

“If conducted under clear, evidence-based Canadian standards of care with the health and safety of the donors, surrogates, and intended parents in mind, a viable system of compensation for third-party reproduction can be developed in Canada,” the society stated. “Canadians

have waited far too long for the government to act while thousands of Canadians suffer the consequences of a law that limits their ability to create a family.”

In October 2016, federal Health Minister Jane Philpott [reopened discussion](#) of the Act. Although mention of reimbursement of expenses incurred by surrogates is included in the Act, regulations were never created. Health Canada commissioned the Canadian Standards Association to write draft [regulations](#) and asked for comments.

Many respondents, including the Canadian Fertility and Andrology Society, objected to those draft regulations — released in October 2016 — as being a

potential administrative nightmare, because they lacked clarity on what expenses were reimbursable, as well as the required receipts and physician approval.

In a Nov. 25, 2016 [letter to Philpott](#), the society asked for clarity on “rules pertaining to the financial reimbursement of gamete donors and surrogates.” It cited a 2016 poll, which indicated that 76% of 200 society members favoured payment of surrogates while 9% were undecided. (The balance, presumably, were opposed, although the letter did not state this explicitly.)

While the society did not indicate how those numbers compared with previous member surveys, a Canadian law professor whose research focuses on surrogacy says she has seen a shift in opinion among legal scholars and ethicists.

Karen Busby, director of the Centre for Human Rights Research at the University of Manitoba, remarked on the change at a [workshop on surrogacy](#) convened by the University of Ottawa in mid-May. “Ten years ago, you would have been hard-pressed to find a feminist in Canada who supported commercial surrogacy,” but she estimated that nearly half of the 25–30 participants — all leaders in the field, some of whom had previously opposed compensation — now support it.

In 2010, Busby [reviewed the experience of surrogates](#) in England and the United States, and found that the objections cited in banning compensation in Canada were groundless. Women became surrogates for altruistic reasons and were not exploited so long as there were adequate guidelines governing the transaction. They were also able to give meaningful consent to surrendering the baby or babies. Since her paper was published, the research has been repeated with similar findings, said Busby.



The Canadian Fertility & Andrology Society calls for “reasonable compensation” for surrogates.

“The women became surrogates because they wanted to do it and loved doing it — but clearly it’s work and should be compensable,” she said.

The Canadian government bans compensation, yet tacitly approves Canadians seeking and paying foreign surrogates through its [procedure](#) for ensuring that the returning child has Canadian citizenship.

And the government appears to look the other way when foreigners come to

Canada for a surrogate pregnancy, Busby said. Those numbers may escalate now that India, which has been a major surrogacy destination, appears to be [closing its borders](#) to foreigners. Canadian surrogates can circumvent the payment ban here by being implanted — and paid — in the US, and returning to Canada where the pregnancy, birth and post-natal care are covered by provincial health insurance plans.

Before paid surrogacy is approved

here, Canada needs a national, consistently enforced regulatory process to ensure that women are well protected, said Busby.

“The federal government has the big-stick power of prohibiting but they can’t regulate an activity unless there’s a specific federal power that gives the ability to do that,” cautioned Busby.

Terry Murray, Toronto, Ont.