

The background is a collage of four images: top-left shows a stack of papers on a purple background; top-right shows a clock face on a pink background; bottom-left shows a stack of papers on a green background; bottom-right shows a clock face on a yellow background.

# Assisted Human Reproduction

Report to Uniform Law Conference of  
Canada by Joint ULCC/CCSO Family  
August 2009



# Steps to Model Legislation

- ULCC referred the issue to Coordinating Committee on Family Law in 2002
- In 2007 Deputies and Ministers Responsible for Justice approved an approach proposed by CCSO Family and the creation of a joint working group with ULCC to draft model legislation.
- A report was provided to ULCC in 2008.
- In 2009 Deputies approved consultations with medical and legal professionals on the principles and policy approaches.
- In June 2009 Deputy Ministers Responsible for Justice approved the principles and policy approaches outlined in the report provided to ULCC.
- Following ULCC meeting this August, a further report will be made to Ministers Responsible for Justice in fall 2009, and a final report and draft model bill prepared for consideration of ULCC in summer 2010
- As with all model legislation, the Joint Working Group recognizes that each jurisdiction may determine whether and how to implement the model legislation

# Environment of child/parental status legal issues

- Increasing use of AHR to create families - demand likely to increase
- Births from AHR – IVF and FET are approximately 1% of all births in Canada. IVF and FET usually involve use of material from the genetic parents.
- This does not count Artificial Insemination which is the most common method.
- AHR involving same sex couples, single parents, use of cryopreserved material and surrogacy are realities, but do not represent the majority of situations.
- Continuing legal issues, challenges and uncertainties





# Principles – modest change from 2007

- UN Convention – protect child from discrimination; recognize best interests as a primary consideration; ensure parent/child relationship protected from birth;
- Avoid commodification of children/reproductive abilities
- Promote equality of children regardless of form of conception
- Recognize men and women perform distinct roles in reproduction

## Amended:

- While generally a child has a maximum of two legal parents, there are specific situations where it is appropriate to recognize additional legal parents

## New:

- Promote clarity and certainty of parent/child status at the earliest possible time in the child's life

# Model Approach – Equalize natural and assisted conception

- Birth mother is the child's legal mother at time of birth. There are two means to change birth mother status – adoption and surrogacy
- Unless a statutory provision (like a presumption) provides otherwise, the genetic father and the birth mother are the parents of a child
- The parental status of the other parent is presumed from the person's conjugal relationship with the birth mother at the time of conception or birth – except in surrogacy or where a partner rebuts presumptions.
- In cases of natural conception, the current presumptions of parentage continue to be available for fathers

# Model – Court Role

- When necessary courts continue to be able to make declaration of parentage
  - Challenge to presumptions
  - To recognize multiple parent situation
  - To recognize change in legal parentage under surrogacy
  - To deal with mistaken implantation



# Model – Donors

- In all cases, third party donors of genetic material have no parental rights or responsibilities unless there is an express legislative provision otherwise







# Model – Multiple Parents

- While generally a child has a maximum of two parents, in specific circumstances where there is:
  - Consent agreement among the parties prior to conception, a declaration of genetic/biological link and intent for each party to have parental status
  - All parties have received legal advice before entering into the agreement
  - Application for recognition made within a set time period after birth of the child [30 days]
- Courts can recognize the agreement, as long as not contrary to public policy



# Model - Surrogacy

- Surrogacy arrangements are not enforceable
- In all cases the surrogate mother will be recorded as birth mother and her consent needed to relinquish status to intended parent's with a genetic link
- The intended parents must obtain court declaration before being able to register as parents.
- Court application needs to be relatively immediate so no delay in establishing child's status.

# Model – Posthumous Recognition

- Allow posthumous recognition of mother, father or other parent and child relationship where DNA/genetic evidence or presumption exists
- Existing law would apply to determine benefits – dependant's relief, etc.



# Model – Posthumous Birth

- A child conceived through AHR should be recognized as the child of a deceased person if:
  - They consented to the use of reproductive material posthumously before or at time of conception and not withdrawn consent
- And the child can benefit from the estate or benefits of the deceased if the person:
  - They have stated the child is entitled to benefits/estates, and
  - Steps are taken within a set time period of time to allow for distribution of estate, etc. or a portion of the estate can be held for the future potential child.





# Model – Mistaken Implantation

- The rules and presumption of parentage apply, but could be changed on court order either of adoption or based on declaration of parentage where in the best interests of the child
- Application by parties or court on its own





# The End – thank you for your attention

- Questions or comments?