

PRELIMINARY RESEARCH ON LEGAL RESTRICTIONS AND THE CURRENT STATE OF SURROGACY IN MULTIETHNIC SINGAPORE

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ABSTRACT. *The provision of surrogacy service for foreigners as well as the Singaporean people is prohibited by the 2006 Ministry of Health in Singapore. In spite of that, there are surrogacy service centres such as Asian Surrogates and Fox Family Service Centre in Singapore. Prior to making ethical investigations based on a three-layer structural analysis into Singaporean reproductive medicine, particularly with regards to surrogacy, this paper presents preparatory research on the legal regulations surrounding surrogacy in multiethnic Singapore.*

KEYWORDS : *Singapore, commercial surrogacy, medical tourism, ART, ethics, Biocosmology*

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Introduction

The current Lee Hsien Loong administration of Singapore banned surrogacy in the Ministry of Health's Directives for Private Healthcare Institutions Providing Assisted Reproduction Services (4.11.2(ii)) in 2006, and the Ministry of Health's Licensing Terms and Conditions on Assisted Reproduction Services (5.48.b) in 2011. Accordingly, in Singapore, not only becoming a surrogate mother, but also seeking a surrogate mother as well as surrogacy treatment by doctors also constitutes illegal acts.

This paper presents preliminary research into the current state of illegal surrogacy in multiethnic Singapore in anticipation of an investigation into the ethics of Singaporean reproductive medicine, especially with regard to commercial surrogacy, based on a three-layer structural analysis.

1. PRELIMINARY RESEARCH ON LEGAL RESTRICTIONS AND THE CURRENT STATE OF SURROGACY IN MULTIETHNIC SINGAPORE

1.1. The Current State of Medical Tourism

As of 2011,² there are 15 public and 15 private hospitals under the jurisdiction of the Ministry of Health in Singapore. Government funds are allotted to the 15 public hospitals, examples of which include Singapore General Hospital and the National University Hospital (NUH). On the other hand, the three big health care groups of Parkway Pantai Group, Raffles Medical Group, and Pacific Holdings dominate the private hospitals. Parkway Pantai Group is a new group that restarted on 21 March 2011 after a 2010 merger between Parkway Holdings Ltd. of the Parkway Health Care Group and the Pantai Group of Malaysia. In addition to owning four large hospitals domestically (Mount Elizabeth Hospital, Gleneagles Hospital, Parkway East Hospital, and Parkway Novena Hospital), Parkway Pantai also concentrates efforts on hospital management overseas and attracting medical tourists to Singapore³. In addition to owning many domestic hospitals, Raffles Medical Group also stations medical staff from Terminal 1 to Terminal 3 of Changi International Airport, and provides 24-hour medical service to airport staff and travelers. Furthermore, in line with the policy of the Government of Singapore, which set forth the goals of receiving 100,000 medical tourists from overseas and realizing a GDP ratio of 1% for the medical industry by 2012, Raffles Medical Group is expanding clinics overseas,⁴ as well as concentrating on domestic attraction of medical tourists by establishing overseas liaison offices.

² As of 2011, Singapore's score according to Joint Commission International (JCI), a verification institution for international hospital quality, is 19, second only in Asia to South Korea's 25. The JCI scores for India and Thailand, which are also developed countries with state-of-the-art reproductive medicine that attract overseas medical tourists as national policy, are 17 and 16, respectively.

³ Malaysia, Vietnam, Indonesia, Myanmar, Bangladesh.

⁴ Starting with the establishment of Raffles Medical-Shanghai within the Innov Tower in Shanghai, Raffles Medical Group will establish clinics in various regions in China, and also plans to establish a clinic in Osaka, Japan, together with Hanshin Electrical Railway Co., Ltd.

1.2. Legal Restrictions on Surrogacy

The ethnic composition of Singapore⁵ is: 74.1% Chinese descent, making up the largest proportion, then 13.4% Malaysian descent, followed by 9.2% Indian descent, and 3.3% Eurasian (mixed descent from local Asian populations and European visitors during the colonial period), Peranakan (descendants of Chinese trading merchants who had settled in Malaysia and Singapore from before the colonial period; in Malaysia the men are called ‘Baba’, and women are called ‘Nyonya’), and others. Accordingly, four official languages (English, Mandarin, Malay, and Tamil) are established in the Constitution of multiethnic Singapore. The religious situation⁶ is also complex, with Chinese followers of Buddhism (33.3%) and Taoism (10.9%), Malaysian followers of Islam (14.7%), Indian followers of Hindu (5.1%), and Christians (18.3%) all coexisting.

Confucianism (social ethics), which is fused inseparably with the Buddhism and Taoism followed by the Chinese descendants, regards patriarchy and the principle of the male bloodline as being extremely important. Accordingly, cases are observed of healthy Singaporeans of Chinese descent who do not require infertility treatment going to Thailand for medical tourism to escape Singapore, which bans gender selection through preimplantation genetic diagnosis (PGD), because they strongly desire a male successor. Once the parents have chosen the gender of the embryo through PGD at a Thai infertility clinic⁷, they return to their home country, where the child is delivered. That is to say nothing of Singaporeans of Chinese descent who require assisted reproductive medicine: given their relatively few chances to reproduce, they are even more preoccupied with the traditional Chinese patriarchy and the principle of the male bloodline than their healthy, fertile counterparts. When receiving *in vitro* fertilization and embryo transfer (IVF-ET) by way of donated gametes or embryos of a third party, a practice approved in 2006 by the Ministry of Health’s *Directives for Private Healthcare Institutions Providing Assisted Reproduction Services*, there is a strong tendency to closely examine the sperm provided by a third party so as to prevent genetically incestuous reproduction. Furthermore, because many of Chinese descent are followers of Buddhism and value the continuous cycle of life and karma in this world in the same way as the Indian and Thai people, they are generally tolerant of assisted reproductive medicine that uses donated gametes or donated embryos.

On the other hand, the attitudes of Muslims of Malaysian descent and Eurasian

⁵ Census of Population 2010 Advance Census Release/The Public Website of the Singaporean Government Tourist Organization
(<http://www.yoursingapore.com/content/travellar/ja/experience.html>).

⁶ Ibid.

⁷ The treatment fee at Marvel IVF Solutions for one cycle of IVF-ET, including PGD, is 280,000 baht, at Safe Fertility it is 260,000 baht, and at Fertility Institutes it is US\$18,000 (More S’poreans going abroad for IVF to choose baby’s gender [*AsiaOne*: Aug. 22, 2011]).

Catholics⁸ to assisted reproductive medicine offer a counterpoint to those of Chinese. Singaporeans of Malaysian descent believe in Islam, which holds that the genes of offspring should come from the father and mother alone, and thus cannot accept IVF-ET by way of third-party gamete or embryo donors for religious reasons, let alone surrogacy. Surrogacy was banned by a fatwā (an ethical advisory based on shari'a, or Islamic law) announced in 1980 by mufti (Muslim legal scholars) of Sunni Islam (which makes up the large majority of the Islamic community (umma) in Islamic orthodoxy). Shīa Islam, centered in Iran, also officially recognizes this fatwā. Other than these religious reasons, the background behind why infertile Muslim patients of Malaysian descent do not show active interest in assisted reproductive medicine, unlike Chinese Singaporeans, is that shari'a, which sets the norms for day-to-day life for Singaporean Muslims, conditionally allows Muslims of Malaysian descent up to four wives at present. For patients of Malaysian descent, there is no sense of real urgency to depend on assisted reproductive medicine as with patients of Chinese descent. In addition, Eurasian Catholics regard life as existing from the moment of fertilization, and thus cannot accept high-level assisted reproductive technologies (ARTs) or surrogacy, in which IVF-ET involving the disposal of fertilized eggs is performed.

The current circumstances described above related to assisted reproductive medicine in multiethnic Singapore mean that not only becoming a surrogate mother, but also seeking a surrogate mother and surrogacy treatment by doctors are all illegal acts. The Ministry of Health ordinances that ban domestic surrogacy are the *Directives for Private Healthcare Institutions Providing Assisted Reproduction Services* (4.11.2(ii)) of 2006 and the *Licensing Terms and Conditions on Assisted Reproduction Services* (5.48.b) of 2011.

1.3. The Current State of Infertility Treatment

An outline of assisted reproductive medicine centered on ARTs in Singapore and the Ministry of Health ordinances that prohibit surrogacy is arranged in chronological order below.

- 1983 First child in Asia born by IVF-ET (KK Women's and Children's Hospital)
- 1986 First child in Asia born by gamete intra-Fallopian transfer (GIFT), where the ovum and sperm are placed in the Fallopian tube together
- 1987 First child in Asia born from a frozen embryo
- 1988 Government of Singapore announces preparations to establish the world's first egg bank

⁸ The head of the Catholic Church in Singapore, Archbishop Nicholas Chia, stated that “the Catholic Church is opposed to surrogacy” (Surrogacy: to legalise it or not in Singapore? [*The Straits Times*: Jan. 4, 2011/Jan. 14, 2013]).

- 1989 Second child in Asia born by tubal embryo transfer (TET), where a fertilized egg is transplanted into the Fallopian tube
- First child in the world born by sub-zonal insemination (SUZI)
- 1991 First child in the world born by co-cultivation
- 1993 First child in Singapore born by intracytoplasmic sperm injection (ICSI), a male fertility treatment
- 1997 Singapore Ministry of Health publishes the *Report of the Sub-Committee on the Status of Children Born Through Artificial Conception*, which prohibits surrogacy without distinction between IVF-ET between and not between spouses
- 2000 First twins in the world born by using frozen egg and sperm (at the private hospital Thomson Medical Centre)
- 2001 Singapore Ministry for Health issues *Guidelines for Assisted Reproductive Services*, which prohibit surrogacy without distinction between IVF-ET between and not between spouses
- 2003 Government of Singapore formulates the Singapore Medicine Initiative
- 2004 Singapore Ministry of Health publishes *In-Vitro Fertilization in Singapore: Charges and Success Rates*, a report on assisted reproductive medicine
- 2006 Singapore Ministry of Health issues *Directives for Private Healthcare Institutions Providing Assisted Reproduction Services*, which recognize IVF-ET between spouses and extend to IVF-ET using a third party's donated gamete or embryo, but prohibit surrogacy
- 2008 Commencement of a system of national funding for infertility treatment
- Government of Singapore starts to compensate ART (IVF, IVF+ICSI, GIFT) costs
- 2010 Commencement of legislative investigation into assisted reproductive medicine and the legal relationship between parent and child. The treatment mix-up case, in which \$20,000 SGD was awarded for a sperm mix-up when a women hoping for between-spouse IVF-ET at the Thomson Fertility Centre (affiliated with the Thomson Medical Centre) was fertilized with the sperm of a third party, provided an opportunity for the Singapore Ministry of Health to examine legislation for assisted reproductive medicine and the legal

relationship between parent and child⁹

- 2011 Singapore Ministry of Health issues *Licensing Terms and Conditions on Assisted Reproduction Services*, which prohibits surrogacy
- 2013 Establishment of *The Status of Children (Assisted Reproduction Technology) Bill* (12 August 2013)

1.4. The Current State of Surrogacy

However, surrogacy companies are actually expanding commercial activities in Singapore. In 2006, Michael Ho,¹⁰ who founded the organization Asian Surrogates, arranged for a Filipino woman to be the surrogate mother for a Dutch and Malaysian same-sex couple. The amount paid to the surrogate company by the same-sex couple making the request was an estimated \$45,000 SGD, and the compensation to the Filipino woman who provided her egg and uterus was roughly \$22,000 SGD. In 2009 the same company registered 8 Filipino women as surrogate mother candidates, and had organized a system in Manila for IUI surrogacy (in which an egg and uterus is donated; genetic surrogacy, i.e., tradition surrogacy) and IVF surrogacy (in which the egg is donated by a third party; gestational surrogacy).

However, as of 2013, Ho¹¹ is conducting a surrogacy business, with 10 Malaysian surrogates (aged 20–22) registered at his surrogacy agency business center. Clients of this center,¹² which is linked with a Thai IVF-ET medical specialist, are from Singapore, Malaysia, Indonesia, the Philippines, Hong Kong, and many European countries. Once the \$45,000 SGD surrogacy contract has come into effect, the Malaysian surrogate mother has an operation for the transfer of the fertilized embryo in Thailand before returning to Malaysia where she will give birth. In marked contrast to Singapore, where domestic surrogacy is completely banned, in multiethnic Malaysia there are no laws prohibiting non-Muslim Malaysians from surrogacy, despite the issuance of a fatwā that prohibits Muslims from surrogacy. (Malaysia has a public fatwā management system: only a fatwā constituting “a legal opinion of a new interpretation of shari'a” that has been issued by a public organization is valid, and it is prohibited by law for ulamā (scholars who belong to the private sector and not a public organization) to declare a fatwā as an “ethical recommendation based on shari'a” of their own accord.) As a result, an infertile couple with Singaporean citizenship making the request can legally bring their child back to Singapore, even though the surname of the Malaysian surrogate is listed in the mother column of their child’s birth certificate, marking the child as the genetic offspring of the surrogate mother. The infertile couple can do so based on the Singaporean inter-country

⁹ Singapore Doctors. <<http://doctors.com.sg/medical/healthcare-news/singapore-mother-sues-thomson-fertility-centre-over-ivf-mix-up>>.

¹⁰ Womb for Hire-Part1 [*ABS-CBNnews.com*: Jun.16, 2009].

¹¹ Childless S'pore couples seek surrogate mothers from Malaysia [*AsiaOne*: Oct. 28, 2013]

¹² <http://asiansurrogates.com/About-us.php> Registered Office: 111 North Bridge Road Peninsula Plaza, #27-01 Singapore.

adoption system and with the cooperation of adoption business operators in Singapore. For instance, as owner of the Fox Family Services Adoption Centre,¹³ adoption mediation agent Irene Low Ai Lian mediates adoption services¹⁴ alongside offering surrogacy services.

Under such circumstances, there have been calls from Singaporean obstetrics and gynecology specialists, who have advanced knowledge and skills of high-tech reproductive medicine, for a review of the government's surrogacy prohibition measures. For instance, Dr. Jothi Kumar, senior obstetrician and gynecologist of the Gleneagles Hospital O&G Partners Clinic for Women and Fertility Centre, argued that given the Government of Singapore's 2003 announcement of the Singapore Medicine Initiative to receive 100,000 medical tourists from overseas, the "current complete prohibition of surrogacy is 'unfair' for childless couples who have exhausted all other methods".¹⁵ Dr. Kumar goes on to call for authorities to approve "limited surrogacy" for patients who require modern-day Singaporean surrogacy technologies. Furthermore, Dr. P.C. Wong, Senior Consultant & Division Head of the NUH Women's Centre, has urged the government to reconsider, noting that "in medically necessary cases, such as women without a uterus, women who have repeated miscarriages, women who are easily affected by heart disease when pregnant, and others, surrogacy should be approved".¹⁶

1.5. Conclusion

In reality, the level of reproductive medicine in Singapore compares favorably to that in Japan. In Singapore, which has developed standards of perinatal care, the infant mortality rate and maternal mortality rate are extremely low. The present situation in Singapore, where patients with reproductive impairment cannot receive surrogacy treatment, grieves not only the two medical practitioners above.

Going forward, what kind of political measures the government of the elite, developmentalist nation of Singapore will devise in relation to not only medical practitioners who insist on the necessity of non-commercial surrogacy but also domestic surrogacy business operators will be watched closely.

Significantly, in the rational development of the issue of "non-commercial surrogacy", as well as cooperation of specialists and public figures who are engaged into multiethnic dialogue, once again – the author draws attention to possibilities of

¹³ <http://poundpuplegacy.org/node/33987>.

¹⁴ The number of adoption requests received by the Ministry of Community Development, Youth and Sports (MCYS) has fallen in the past 10 years from 703 requests in 2001, to 556 requests in 2005, and 325 requests in 2010 (Adoptions in Singapore fall by half over last decade: gov't figures [*English.news.cn*: Aug. 22, 2011]).

¹⁵ Surrogacy: to legalize it or not in Singapore? [*The Straits Times*: Jan. 4, 2011/Jan. 14, 2013].

¹⁶ *Ibid.* However, although it goes without saying, both medical practitioners give prominent consideration to the various problems predicted to arise from surrogacy. For instance, Dr. Jothi Kumar considers "situations in which the surrogate mother refuses to hand over the child after birth" and "situations in which career women, and women who hate losing their figure, use surrogacy to bypass their own pregnancy" as grounds for concern, while Dr. P.C. Wong worries about the "legal certification of the mother of the surrogate child".

the Biocosmological approach (held by the BCA-Biocosmological Association¹⁷), especially its focusing on the Integralist studies which rationally bring together different (including opposite) scholarly standpoints and dispositions. Partially, this subject matter was touched upon by the author in the previous paper for the journal of “Biocosmology – neo-Aristotelism”¹⁸.

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¹⁷ The website of the BCA – <http://en.biocosmology.ru/>

¹⁸ Kodama, Masayuki (2013). “Preliminary research into the spiritual backbone of Vietnam for an investigation of Vietnamese reproductive medical (surrogacy) ethics.” *Biocosmology – neo-Aristotelism*. Vol. 3, No 4 (Autumn 2013), pp. 642–651.