Assisted Human Reproduction (AHR) Act
Introduced into the House of Commons Oct/02
Received Royal Assent Mar 29/04.
Prohibitions came into effect Apr 22/04
(www.hc-sc.gc.ca/english/lifestyles/reproduction/index.htm)

“Commercial surrogacy is prohibited to ensure that children are not viewed as commodities, and that the reproductive capacity of a woman is not viewed as an economic endeavour. ... surrogacy for altruistic purposes [is] permitted and regulated...The reimbursement of an altruistic surrogate’s reasonable expenses related to the pregnancy [will be allowed and regulated].”

The following activities are prohibited:
• paying, or advertising to pay, a surrogate
• accepting payment for arranging the services of a surrogate, or advertising to arrange such services
• paying, or advertising to pay, another person to arrange for the services of a surrogate
• counselling, inducing or medically assisting a woman to become a surrogate if one knows, or has reason to believe, that she is under the age of 18

A person convicted of contravening the prohibitions is liable to a fine of up to $500,000 and/or 10 years in prison.

The following activities are controlled under the AHR Act:
• Reimbursement of expenses to an altruistic surrogate: these will be allowed for legal, medical, psychological counselling services according to regulations.
• Licensing those who pay the expenses of an altruistic surrogate in relation to her pregnancy.

A person convicted of contravening the controlled activities will be liable to a fine of up to $250,000 and/or 5 years in prison.

The prohibitions concerning payment to surrogates came into force on April 22, 2004. As a result, payment can no longer be given to a woman providing surrogacy services.

It is not the intention of the Government of Canada to hinder Canadians from receiving AHR treatment. For that reason, these prohibitions are not retroactive and as such, payments made in relation to surrogacy before April 22, 2004 are not subject to the criminal penalties under the AHR Act.

In addition, recognizing that current practices regarding surrogacy involve the payment of a flat fee, and that there is a need for a transition period in moving towards an altruistic system, the section that would permit the reimbursement of receipted expenditures for surrogates, in accordance with the regulations and a licence, is not expected to come into force until late in 2005. Until this section is in force, AHR clinics will be able to reimburse a surrogate mother for any actual expenditures associated with her surrogacy. The Government will be working with the clinics during this period to ensure an appropriate transition.

Fees & Taxes: According to Revenue Canada:
• Fees received by surrogates are considered “business revenue” and will be taxed accordingly. Should someone fail to report such income, they would be subject to the usual penalties for tax evasion.
• Fees paid by the commissioning couple cannot be considered as a deduction (as medical expenses, childcare, or a gift).

Informed Consent
Please take the necessary steps to inform yourself about the issues before embarking on surrogacy, especially those involving disclosure, the present and future relationship, and that of the child, with the surrogate; the needs/rights of the child, etc. This is a decision which will affect the lives of everyone involved, especially the child’s. This is far more than a “medical treatment;” it is imperative that all parties to the surrogacy arrangement meet with an experienced professional counsellor who can help them examine as many of the issues as possible in advance, with the understanding that needs, feelings, laws and social conventions may change with time. A list of counsellors is attached.

Breastfeeding
It is possible for a woman to breastfeed a child even if she has not been pregnant (e.g. a baby born to a surrogate). For information re medication to induce lactation, breast-pumps to increase milk supply, help with breastfeeding, contact:
• Dr. Jack Newman, Hospital for Sick Children Breastfeeding Clinic: 416-813-5757
• La Leche League (worldwide breastfeeding support organization, local groups, books, info): 613-448-1842, www.lalechelocuscanada.ca

The Infertility Network can put you in touch with non-birthing mothers who have breastfed their babies and are willing to talk to others about it.

Ethical Issues:
It is not clear whether surrogacy is acceptable to Canadian society, and if so, under what circumstances. At the very
least, safeguards must be put in place to protect the interests of all parties, particularly those of the “child” who is not in a position to give consent to a procedure that will affect his life the most. Where there is a real or possible conflict of interest, it is essential that the adult interests are not allowed to take precedence over the rights of the child.

Critics have argued that surrogacy, whether altruistic or commercial, violates a child’s fundamental human rights because it involves the deliberate conception of a child with the intention that he will be separated from the woman who gave birth to him (who may also be his genetic mother) and possibly half siblings (where the surrogate has used her own egg). This contrasts with the adoption of a child which is a compassionate response to an existing social tragedy (a child without parents to care for him). Surrogacy can therefore be seen to fragment parenthood into its component parts which, as a rule, are safeguarded for the well-being of the child, including his sense of identity.

Some people support a ban on “traditional” surrogacy (using the surrogate’s own egg) but would allow “gestational” surrogacy (with an embryo from the commissioning couple). But, should the existence of a genetic connection affect the ethical problems involved in what – when all other trappings of the contract are stripped away – amounts to the exchange of children for money? Many would argue that there ought not to be any place for transacting children on the market, regardless of whether there are genetic ties involved.

In many countries, procuring a surrogate in a for-profit situation by a third party (broker) is illegal, while a surrogacy contract directly between a surrogate and would-be parents is not unlawful, but is unenforceable by law and requires a case-by-case evaluation by professional counsellors to determine the well-being of the mother and the child she will carry.

Revised: 10/25/07

Canadian Royal Commission on New Reproductive Technologies (1993 report)
Extensive research and consultation led the Royal Commission on New Reproductive Technologies (RCNRT) to conclude that "...preconception [i.e. surrogacy] arrangements are unacceptable and do not warrant state support in any form that would signal acceptance or encouragement of them....While we recognize the vulnerability of couples who are infertile and their emotional needs, we believe that making payment for such arrangements should be prohibited....The Commission's conclusions with respect to non-commercial preconception arrangements between family members or close friends are similar. We do not believe such arrangements should be undertaken, sanctioned, or encouraged. The motivation might be sincere and generous, but the arrangement still results in the commodification of a child and the reproductive process. Even if no money is involved, no one should have the right to make a ‘gift’ of another human being; this is offensive to the human dignity of the child." (RCNRT, p. 689)

Recommendation #199 of the RCNRT urged that "The federal government legislate to prohibit advertising for, or acting as an intermediary to bring about, a preconception arrangement; and to prohibit receiving payment or any financial or commercial benefit for acting as an intermediary, under the threat of criminal sanction. It should also legislate to prohibit making payment for a preconception arrangement, under threat of criminal sanction." (Ibid., p. 690).

House of Commons Standing Committee on Health (Dec./01 report)
“Commercial surrogacy treats children as objects and treats the reproductive capacity of women as an economic activity. Non-commercial (altruistic) surrogacy arrangements can also be socially harmful for the resulting child and place the health of women at risk. The Committee agrees with the prohibition on surrogacy for commercial gain and also feels that surrogacy for non-commercial reasons should be discouraged but not criminalized. There should be a prohibition against any form of consideration, incentive or compensation, financial or otherwise, being offered or provided to any party involved, directly or indirectly, in any surrogacy arrangement. This must include those parties who provide professional medical, legal, and psychological services.”

Therefore, to minimize the commodification of the surrogate mother and resulting child, the Committee recommended that there be no payment allowed for legal, medical and psychological services, or for reimbursement of expenses to a surrogate mother.

Further, “if non-commercial surrogacy is to occur, the well-being of the resulting child and the fully informed choice of the participating surrogate mother should be ensured through several mechanisms:
• Counselling for all parties must be provided with respect to non-commercial surrogacy.
• Physicians donating services to facilitate non-commercial surrogacy must take responsibility to ensure that all parties have access to social as well as medical counselling.
• Individuals who aspire to add a child to their family through surrogacy must be subject to the same scrutiny as individuals who seek to adopt a child.”

Thus, the Committee recommended that: “The provinces and territories be encouraged to provide mandatory counselling to the commissioning couple, surrogate mother and partner through existing publicly funded services available for adoption and to amend relevant family law to recognize the birth mother as the legal mother.