Consultation for Health Canada  
Sections 10, 12, 6(1), 7(1) and 45-58 of the  
Assisted Human Reproduction Act  
LGBTQ AHRA Working Group  
Sherbourne Health Centre, Toronto, Ontario

Dear Minister Philpott,

This document will give a brief overview of our positions on current provisions in the Assisted Human Reproduction Act (the Act) as they pertain to lesbian, gay, bisexual, trans, and queer (LGBTQ) individuals and communities, as well as others who use assisted human reproduction to conceive.

We will discuss:

- Safe use of reproductive tissues in third party reproduction (section 10)
- Reimbursement of surrogates and gamete donors (Section 12)
- Criminalization of assisted human reproduction
- Limitations on access to assisted human reproduction

This working group has a long history of working on issues related to assisted human reproduction as they affect LGBTQ communities and others in Canada. We are a group of Toronto physicians, nurses, fertility counselors, midwives, community development workers, lawyers, researchers, and former fertility clients who collectively have decades of experience working with and on behalf of LGBTQ individuals and communities. Because LGBTQ people are heavily represented among users of assisted human reproduction, they are key stakeholders in the implementation and enforcement of the Act.

We welcome this opportunity to inform you about the needs, issues, and concerns of LGBTQ communities and others who are accessing assisted human reproduction.
Safe use of reproductive tissues in third party reproduction (Section 10)

We applaud the move to bring the current semen regulations into the Act, since the current semen regulations are outdated, while egg and embryo donation are currently unregulated.

We also note that the Act has not been updated to reflect changes in medical science, assisted reproduction practice, and has never recognized the complexities of LGBTQ families.

For this reason, we believe a more comprehensive updating of the Act is required, however, as an interim measure, it makes sense to update Section 10 by adopting the CSA standards which are currently under development.

In compliance with the CSA consultation process, we will prepare a more thorough evaluation of these standards for January 2017.

At this time, we urge Health Canada to carefully consider the heteronormative assumptions currently embedded in the semen regulations in implementing changes to these provisions. The new Section 10 of the Act must not be based on HIV stigma, an instead be firmly grounded in current, accurate medical science. In the current drafting of the new Section 10, we are concerned that donor sperm, eggs, and embryos are treated similarly, despite presenting different medical risks, both physical and psychological, to recipients and to the embryos, fetuses, and children born through gamete donation.

Broadly, we support:

1. Eliminating the requirement to quarantine sperm in the case of a known or directed donor. We do not support adding restrictions to quarantine eggs or embryos
2. Increased access for people living with HIV, their partners, and people acting as surrogates on behalf of people living with HIV, to pursue assisted human reproduction
3. Eliminating restrictions on men who have sex with men from being sperm donors

Reimbursement of surrogates and gamete donors (Section 12)

We agree with the principle of protecting and promoting the health, safety, and well-being of donors, surrogates, embryos, fetuses, and children and our recommendations are written to support this goal.

The proposed approach in Section 12 is overly restrictive and lacks flexibility. We have provided a list of detailed suggested changes in Appendix A.

The principle that guides reimbursement should be that egg, sperm, embryo donors, and people acting as surrogates, should not incur any expense or cost in the process of surrogacy or gamete donation.

Intended parents, someone acting on behalf of intended parents or gamete recipients, or a gamete bank, should be able to reimburse or pay for any cost or expense that the donor or surrogate incurs as a result of the donation or surrogacy that would not have otherwise been incurred.

We recommend that the regulations provide appropriate guidance to each situation, and flexibility, particularly in the case of egg donors and surrogates.
Particularly in surrogacy and egg donation, the definition of reimbursable expenses should be sufficiently broad to allow reimbursement for loss of work-related income for any absence directly connected to the surrogacy or the donation. People acting as surrogates and gamete donors should not be subsidizing the costs of the surrogacy or gamete donation. The Act seeks to promote and support the altruistic surrogacy, egg, sperm and embryo donation, but to not reimburse lost income would penalize the people involved.

**Criminalization of assisted human reproduction**

Although comment on Sections 6 and 7 of the Act (prohibition of the payment of compensation for surrogates and the purchase of gametes, respectively) was not requested in this public consultation, we have concerns about the prohibitions and how they impact assisted human reproduction in Canada.

Violation of the present AHR laws currently results in charges under the criminal code with significant prison sentences and fines. Because of the steep penalties, and for other reasons, many people pursuing egg donation and surrogacy struggle to find a doctor to work with in Canada. Many Canadian clinicians make referrals to medical centres in the United States and other places where commercial surrogacy and egg donation are legal. These referrals may themselves result in situations where Canadian clinicians and parents are in violation of the Act.

The prohibition on paying donors has resulted in a situation where nearly all donor gametes in Canada are imported, typically from the United States. Importing sperm from four US banks has exacerbated this issue as only some of their donors are compliant with Health Canada regulations. Since the Act came into force, there is only one sperm bank that continues to recruit donors in Canada. Earlier this year, the sperm bank advised us that they currently have only twenty active sperm donors.

This is a source of concern for two reasons:

All Canadians wishing to access sperm from Canadian donors are effectively choosing from the same very limited selection of donors. This means that unintentionally, their children often share genetic connections. This is a source of concern for some members of LGBTQ communities, since children in LGBTQ communities often know many other donor-conceived people. LGBTQ parenting communities thus have some concerns about the social and psychological impact of romantic attractions and relationships between young adults who may be conceived with sperm from the same donor.

As a consequence of these limited donor panels, racialized members of LGBTQ communities cannot access a selection of sperm and egg donors of varying racial backgrounds. Canada is a very multicultural and multiracial society. Our sperm donor selection should reflect this diversity.

We believe that allowing compensation of sperm donors in Canada would help recruit larger numbers of Canadian donors who would more accurately reflect the complex racial identities of the intended parents who are recipients of these donations.

Relying on importing eggs from the United States replicates the issues with sperm donation, but also adds considerable expense, and criminal implications for Canadians who travel to the US to obtain
We are also concerned that this reliance on imported eggs greatly restricts Canadians’ ability to access eggs that have not been frozen.

While Canadians can turn to frozen eggs from US egg banks, this adds complications and costs, and is not suitable for families who are seeking to conceive more than one child in subsequent pregnancies and would prefer to have the same donor. Many families would prefer to receive eggs from a Canadian donor in a designated donation through an agency, which is currently not easily feasible under the Act without compensation.

Our recommendation is to allow a flat fee for compensation of sperm donors and reimbursement of expenses. Since egg donation is an invasive process that can result in health complications for the donor, a flat fee for compensation of egg donors in addition to reimbursement of expenses should be allowed. Since surrogacy is an invasive process over a long period, and that can result in health complications for the person acting as a surrogate, a fee for compensation for people acting as surrogates, in addition to reimbursement of expenses should be allowed. Since embryo donors typically do not set out to be donors, compensation is not appropriate, but reimbursement of expenses should be allowed.

We also support legalization and regulation of surrogacy agencies. The current system of having completely unregulated agencies operating in a model based on fear and secrecy does not adequately support the reproductive rights of LGBTQ people and others engaging in surrogacy, as surrogates or intended parents.

Even if Canada chooses not to permit compensated surrogacy, compensated and regulated surrogacy agencies should be permissible. While surrogacy and adoption are not analogous processes, adoption agencies are currently legal, and highly regulated. This is an appropriate model to follow in licensing and regulating surrogacy agencies.

**Limitations on access to assisted human reproduction**

It is important to recognize that Canada has become a destination for many LGBTQ people from around the world to pursue their goal of having children through the use of assisted human reproduction services. This can take many forms, from newcomers to Canada, or people who are here temporarily while pursuing their education or employment and decide to have children, to people from other countries who pursue a surrogacy relationship with a Canadian surrogate or gestational carrier.

Surrogacy births represent a very small number of births in Canada where the parents are not Canadian residents. It is not the right approach to reduce these births by limiting surrogacy by parents from abroad. To limit surrogacy in this way would have unintended, undesirable consequences.

We are concerned that limiting surrogacy based on Canadian residency would:

- Stop international LGBTQ intended parents from pursuing assisted reproduction in Canada, leaving them without other options to become parents. At present, intended fathers from Spain, France and Italy are estimated by industry professionals to represent approximately 50-75% of surrogacies by non-residents in Canada. These fathers are pursuing surrogacy in Canada.
because they do not have other parenting options at home and they think highly of Canada and its residents.

- Stop visitors on academic, artistic, professional visas from accessing assisted reproduction in the country where they live, even temporarily. This would impact many LGBTQ people and others who live in Canada during the time in their life course when they would like to start a family and might have planned on pursuing surrogacy or assisted reproduction, without realizing they would not have access. For those who are experiencing infertility, restricting surrogacy would add insult to injury.

- Ignore the human relationships involved in surrogacy. Many surrogacies are arranged between family members or close friends, such as one sister carrying for another, or two gay men with a sister or a cousin who carries their baby. Friends often carry babies for their friends who are impacted by infertility or who are LGBTQ. It is in the interest of all involved to allow these arrangements when family ties transcend international borders.

- Limit the reproductive freedom of Canadian residents acting as surrogates. Of paramount importance in surrogacy is the right of the person acting as a surrogate to their own reproductive freedom and bodily autonomy. For various reasons, Canadians may be drawn to working with families who are not Canadian, and to do so is any prospective surrogate’s right.

Healthcare Costs
Children born through surrogacy in Canada are Canadian citizens. If the parents are not eligible for Canadian health coverage, newborns are not eligible for Canadian provincial health care coverage. Intended parents who are visiting Canada to pursue surrogacy are thus usually liable for their children’s health care costs.

We agree that Canada’s healthcare funds should support Canadian residents and their children. The health care of a Canadian who is pregnant assures their future health and well-being, regardless of who is intended to parent the child. The health care of a Canadian surrogate also assures the health and well-being of the child born through surrogacy, who is also a Canadian citizen upon birth.

International intended parents already pay for costs associated with the care of newborns who are born in Canada through surrogacy. If each province deems it necessary, it is possible to require a fee to offset the costs of prenatal care or to require non-Canadian intended parents to purchase an insurance policy to cover the care of the surrogate during the perinatal period. However, this is a provincial matter that should be settled within the province, not legislated by the Government of Canada.

Rather than prevent intended parents from around the world from coming to Canada to build their families, we should embrace this diversity and welcome them while assuring the health, safety and well-being of the donors, surrogates, embryos, fetuses and children.

Availability of Surrogates
As Canada is currently taking great strides to clarify our laws and regulations around surrogacy, the number of people who are considering surrogacy, either as intended parents or surrogates is likely to increase.
Much of the fear and trepidation of prospective surrogates and intended parents currently is not based on a lack of people willing to pursue surrogacy, but rather on a system that leaves surrogates with few sources of knowledgeable support and provides no support to intended parents in attempting to navigate surrogacy.

For this reason, we advocate further legal steps and decriminalization to further legitimate surrogacy and better support intended parents, surrogates and their families in order to further support the health and well-being of all involved in surrogacy.

Canada is a very attractive destination for LGBTQ people pursuing surrogacy from abroad for two reasons:

First, Ontario and British Columbia are two of only a few jurisdictions where same-sex couples and LGBTQ-identified people can be assured of recognition as a family. Ontario has recently taken steps to simplify that process. Canadians are generally very accepting of LGBTQ people, and Canadian people who seek to act as surrogates tend to be interested in carrying a baby for LGBTQ people.

Second, for all intended parents, Canada is an attractive country to pursue surrogacy because surrogacy is not stigmatized or illegal, our health care standards are very high, and there is a high level of skill and professionalism among the lawyers, medical providers, social workers, counsellors and other professionals involved in surrogacy.

Using our borders to prevent people from collaborating to bring a child into the world is not in keeping with Canadian values. We urge Canada to not limit surrogacy or any other form of assisted human reproduction to Canadian citizens and permanent residents.

**Conclusion**

Canada is a global leader in LGBTQ family recognition and in access to legal, safe, and socially accepted assisted human reproductive technologies.

We must bring our practices around donor gametes in line with current medical knowledge, and bring surrogacy into regulation in order to better protect and promote the health, safety, and well-being of donors, surrogates, embryos, fetuses, and children.

The best way to do this is to clarify regulations on reimbursement to sperm, egg and embryo donors and surrogates. We must decriminalize intended parents and allow for the regulation of experts and the development of expertise within assisted human reproduction here in Canada. We must not limit the reproductive freedom of our Canadian residents.

Yours respectfully,

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Appendix A
Reimbursement of surrogates and gamete donors (Section 12)

We agree with the principle of protecting and promoting the health, safety, and well-being of donors, surrogates, embryos, fetuses, and children. This protection must occur within the context of an interpersonal relationship in many cases, and always in surrogacy.

The proposed approach is overly restrictive and lacks flexibility. Reimbursement, particularly for people acting as surrogates, must recognize that the situation of each and the needs of each are inherently different. The principle that guides reimbursement should be that egg, sperm, embryo donors, and people acting as surrogates should not incur any expense or cost in the process of surrogacy or gamete donation.

Intended parents or someone acting on their behalf, or a gamete bank, should be able to reimburse or pay for any cost or expense that the donor or surrogate incurs as a result of the donation or surrogacy, and would not have otherwise been incurred. In the case of surrogacy, this can take place over a significant amount of time and must react to changing circumstances in the life of the person acting as a surrogate to ensure the well-being of the surrogate.

We recommend that the regulations provide appropriate guidance to each situation, and also include flexibility, particularly in the case of egg donors and surrogates.

In preparing these recommendations, we consulted “Reimbursement of Expenditures under the Assisted Human Reproduction Act” which was prepared in 2007 by the Canadian Bar Association. We support these recommendations in principle.

Specific Recommendations

A.2 Reimbursements

A.2.1.2

An ova donor or surrogate shall only be reimbursed for a loss of work-related income if a qualified medical practitioner certifies, in writing, that continuing to work might pose a risk to the donor or surrogate’s health and safety or that of the embryo or fetus. Such reimbursements shall be made in accordance with Clauses A.2.2 and A.3.

Addition:

Any donor or surrogate can be reimbursed for a loss of work-related income to attend any appointments, including medical, legal, and counselling that are related to the donation or surrogacy.

Rationale:

In order to donate sperm, eggs, or in vitro embryos, or to pursue a surrogacy, many appointments and often some travel are required. It is not reasonable to deny donors and surrogates reimbursement.
A.3 Expenditures and loss of work-related income eligible for reimbursement

A.3.2 Donation of Ova

Addition:

(j) Food consumed on any day during which the donor attends an appointment, or is travelling to or from an appointment. Food consumed by the travel companion of a donor who is travelling for the retrieval.

Rationale:

Reimbursement of food on a similar basis as most work-related or other instances of reimbursable travel.

Date of Eligible Expenditures

“An eligible expenditure shall be incurred on or after the date on which the process of donating has commenced and incurred in the course of donating.”

Addition:

“An eligible expenditure shall be incurred on or after the date on which the process of considering or preparing donating has commenced and incurred in the course of donating or considering or preparing to donate.”

Rationale:

The donation or surrogacy process is typically preceded by a period of exploration and information-seeking. Prospective donors and surrogates should be able to seek reimbursement for expenses incurred during that process, such as travel to workshops or information sessions with counsellors or professionals.

The “process of donating” can start any time prior to a donation.

The “process of surrogacy” can start any time prior to the pregnancy, and concludes after post-partum recovery, a more detailed addition is below.

A.3.2.2

A donor may be reimbursed for net loss of work-related income due to being unable to work as a result of her participation in the donation process if a qualified medical practitioner certifies, in writing, that work might pose a risk to her health and safety.

Note: The intent of this Clause is to protect and promote the health and safety of the donor by reducing the risk that a donor will return to work at the expense of her health and safety because she cannot afford to lose work-related income as a result of the donation process.

Addition:

A donor may be reimbursed for net loss of work-related income due to being unable to work as a result of participation in the donation process to attend and travel to appointments, including medical, legal, and counselling that are related to the donation.
**Rationale:**

The intent of this Clause is to protect and promote the health and safety of the donor by reducing the risk that a donor will forego appointments at the expense of her well-being, health and safety because she cannot afford to lose work-related income as a result of the donation process.

This addition recognizes that many areas of Canada do not have fertility clinics and that travel to and from the clinic to donate ova may require a considerable amount of time away from work.

In many cases, it would best insure the donor’s safety and health care to take two to three weeks away to stay in a major city to donate and recover before returning home. Travel to required appointments for cycle monitoring, often very early in the morning on snowy roads in rural areas poses a significant safety risk to donors.

Cycle monitoring by ultrasound for IVF requires sonographers to have familiarity with IVF and with hyperstimulation of the ovaries. Sonographers who can do cycle monitoring in community clinics or remote monitoring sites, such as an OB/GYN’s office, are not as familiar with IVF as those who are working in fertility clinics. While it is possible to monitor donors at a distance, it is not optimal.

**A.3.3 Donation of sperm**

**Addition:**

(e) Food consumed on any day during which the donor attends an appointment, or is travelling to or from an appointment.

**Rationale:**

Reimbursement of food on a similar basis as most work-related travel.

**Addition:**

(g) Shipping costs, including courier fees and packaging for sperm that is mailed or shipped in the process of donating.

**Rationale:**

Sperm donors who are at a distance from a clinic may wish to use programs that allow provision of a specimen at home, and shipping to a sperm bank or clinic for processing and use.

**Addition:**

(h) Costs of medical testing

**Rationale:**

This seems like an omission, perhaps based on an assumption that any medical testing would be covered by provincial health insurance. This is not always the case, some advanced semen analysis techniques are not covered by provincial health insurance.

**Date of Eligible Expenditures**

“An eligible expenditure shall be incurred on or after the date on which the process of donating has commenced and incurred in the course of donating.”

**Addition**
“An eligible expenditure shall be incurred on or after the date on which the process of considering or preparing donating has commenced and incurred in the course of donating or considering or preparing to donate.”

Rationale:

The donation or surrogacy process is typically preceded by a period of exploration and information-seeking. Prospective donors and surrogates should be able to seek reimbursement for expenses incurred during that process, such as travel to workshops or information sessions with counsellors or professionals.

The “process of donating” can start any time prior to a donation.

A.3.4 Donation of in vitro embryos

Addition:

(g) travel costs

Rationale:

Embryo donors may have some travel costs associated with the donation or in travelling to seek counselling or information about the donation. While counselling is available by phone and through video chat, prospective donors should be able to seek reimbursement for expenses incurred to travel to workshops or information sessions, or to in-person counselling sessions if needed.

Date of Eligible Expenditures

“An eligible expenditure shall be incurred on or after the date on which the process of donating has commenced and incurred in the course of donating.”

Addition:

“An eligible expenditure shall be incurred on or after the date on which the process of considering or preparing donating has commenced and incurred in the course of donating or considering or preparing to donate.”

Rationale:

The embryo donation process is typically preceded by a period of exploration and information-seeking. Prospective donors and surrogates should be able to seek reimbursement for expenses incurred during that process, such as travel to workshops or information sessions with counsellors or professionals.

The “process of donating” can start any time prior to a donation.

A.3.5 Surrogacy

We urge for as much flexibility as the CSA standards can allow in reimbursement to donors and surrogates.
There are very important human relationships that are central to the donation and surrogacy process between surrogates, donors, intended parents, and the embryo, fetus and children conceived through egg, sperm, embryo donation and surrogacy. Donors and surrogates will have largely similar categories of reimbursable expenses. Particularly in surrogacy, differences in the social location of the people involved may change the details.

It is particularly important in surrogacy to note that reimbursement occurs over the span of a minimum of approximately one year, from transfer through a healthy pregnancy, and including the post-partum period. In cases where there is an early miscarriage or loss, or multiple attempts to transfer the embryo, the reimbursement period can easily be much longer. It is also quite common for parents and surrogates to pursue more than one pregnancy together. Over time, situations can arise that complicate the types of expenses that might be incurred and it is important that intended parents and surrogates are able to work together to find an appropriate solution.

Factors that can affect total reimbursement to surrogates include:

- whether the surrogate is married or in a relationship with a supportive partner,
- whether the surrogate has a support network of family or friends who can help out,
- the surrogate’s socioeconomic status and eligibility for employment benefits,
- the surrogate’s geographical location, whether rural or urban,
- the number and ages of children in the surrogate’s home,
- any other care relationships, such as caregiving for parents or elders.

Surrogacy is to be treated with great respect. Canada must recognize the importance of the dignity of the person who donates eggs, sperm or embryos or acts as a surrogate.

A.3.5.1

The following expenses categories have been modified in consultation with lawyers based on their professional guidance on surrogacy agreements which are often filed with and approved by judges across the country in applications for parental orders or declarations:

(a) vitamins, supplements, medication, medical supplies, and medical services;

(b) alternative or complementary health care services;

Addition:

personal hygiene items and services, additional dental care;

Rationale:

Surrogates frequently require specific personal hygiene items during pregnancy, or services such as additional dental cleanings, services related to chiropody (foot care).

(c) legal advice;
Addition:
and legal services

Rationale:
Surrogates frequently require the creation of or amendment to a Will and/or Power of Attorney for Personal Care with health directives;

(d) counselling;

Addition:
Counselling for the surrogate and if necessary for any partner and children or other extended family members.

Rationale:
Additional mental health and information counselling needs may arise for the surrogate or for her family. People acting as surrogates and their families should be supported in seeking that care for their ongoing health and well-being.

(e) supplemental insurance;

(f) travel and accommodation;

Addition:
travel, accommodation, meals, and other related expenses when traveling to related appointments, or during the recovery period after birth, for the surrogate and a support person;

Rationale:
Many surrogates will have a support person, whether a partner, friend or family member whom they may wish to accompany them to appointments or during the birth. In some cases this is medically necessary, in others, it relates to the surrogate’s well-being.

This should include mileage or travel expenses at annual CRA rates for local health care appointments.

This should also include vehicle maintenance specifically related to surrogacy, for example snow tires might be required for surrogate's vehicles if they live in areas with extreme winter driving conditions and they do not already have them; if a surrogate is required to drive great distances to medical appointments putting more than usual wear and tear on her vehicles, she may need an additional maintenance check or tune up.

(g) dependent care for time spent travelling to and attending related appointments, or during the recovery period after birth;

Addition:
and dependent and household care at any time when a registered health professional certifies that a work reduction or recuperation period is required for the health of the surrogate, the embryo or the fetus;

**Rationale:**
Surrogates often have duties at home that require another person to be paid to take on those tasks following an embryo transfer, during pregnancy, or in the post-partum period.

(h) communication (e.g., long distance charges, internet, and phone use) directly related to the surrogacy;

(i) food on any day on which the surrogate attends an appointment;

**Change:**
Documented increased costs in food for the surrogate and those dependents for whom the surrogate typically prepares meals (e.g., costs associated with aversions or nausea during pregnancy, costs to accommodate requests by an intended parent that the surrogate eat a specific diet in keeping with the intended parent’s religion or creed, such as Halal, Kosher, vegetarian or vegan or preferences, such as abstaining from refined sugars or eating only organic foods);

**Rationale:**
Pregnancy-related food requirements and food aversions are not limited to the days of an appointment.

Surrogates are typically responsible for preparing food for themselves and other people, and during pregnancy it is common for food aversions to make this difficult, and for surrogates to rely more on purchasing ready to eat foods such as delivered meals or restaurants.

In addition to these factors, pregnancy may require increased intake or better quality of food for the surrogate. In addition, a surrogate’s healthcare provider may recommend specific foods that will increase costs, for example in cases where the surrogate experiences hyperemesis or gestational diabetes.

(l) obtaining or confirming relevant medical and other records;

(j) clothing required during the pregnancy and post-birth recovery;

(k) documented increased costs in exercise-related expenses (e.g., gym or fitness facility membership fees);

(l) obtaining or confirming relevant medical and other records;

(m) demonstrably new or increased costs incurred as needed to protect the health or safety of the
surrogate or her children, or the embryo or fetus in connection with or related to the surrogacy (e.g., full or partial bed rest) and with a certificate from a regulated health care professional for

(i) dependent care not included in Item (g);

(ii) household maintenance;

(iii) home care;

(iv) remediation of compromises to academic progress (e.g., tutors, lost tuition); and

(v) other exceptional expenditures; and

Change:

Documented increased costs in household help and dependent care. During pregnancy, someone acting as a surrogate may need assistance in her last trimester, even in the absence of complications or health conditions related to the pregnancy.

Childcare and dependent care should be reimbursable whenever the person acting as a surrogate needs help, and not only when she needs to attend a scheduled appointment or upon advice of a medical professional.

(n) the cost of the medical certificate referred to above.

Additional areas for reimbursement:

We have added these additional points which are not considered above, though it may make sense conceptually to include these provisions in existing areas of reimbursement.

Addition:

(o) loss of net wages of surrogate’s partner or companion for time spent attending to related appointments and for time away from work while attending to the surrogate during any hospitalization or time when a registered health professional documents that the surrogate should not be alone;

Rationale:

Many surrogates will have a support person, whether a partner, friend or family member whom they may wish to accompany them to appointments or during the birth or in the post-partum recovery period. In some cases this is medically necessary, in others, it relates to the surrogate’s well-being. This may require the support person to miss work and incur a net loss of wages.

(p) Costs associated with obtaining or confirming relevant medical, legal, or other records and documentation;

Rationale:

Surrogates may be required to provide police checks, documentation of personal relationships, financial information, and health information. Some of these records may have costs associated with obtaining them.
(q) other exceptional expenditures, any other expense which are reasonably related to the surrogacy process.

**Rationale:**

There are occasionally exceptional circumstances to consider over the course of a surrogacy.

Situations that have arisen in practice include:

- a surrogate who was asked to purchase a second dish washer and separate dishes by the Orthodox Jewish Intended Parents;
- a surrogate who lost access to her vehicle and the Intended Parents paid a down payment for a lease of a used vehicle to be used by the surrogate to attend medical appointments for the duration of the surrogacy;
- a surrogate who faced unexpected hardship and was evicted from her home – the Intended Parents paid the surrogate’s rent during the pregnancy;

Flexibility in making these reasonable reimbursements is necessary in order to protect the dignity of people acting as surrogates and the relationship between the intended parents and the surrogate. This flexibility supports the principle of protecting and promoting the health, safety, and well-being of donors, surrogates, embryos, fetuses, and children.

**Date of Eligible Expenditures**

An eligible expenditure shall be incurred on or after the date on which the surrogacy process has commenced and incurred in connection with the surrogacy.

**Change:**

An eligible expenditure shall be incurred on or after the date on which the process of considering or preparing for the process of surrogacy has commenced and incurred in connection with the surrogacy or considering or preparing for the surrogacy and continuing for up to 17 weeks following the birth, unless a registered health professional certifies in writing that a longer post birth recovery time is required for the health of the surrogate.

**Rationale:**

The surrogacy process is typically preceded by a period of exploration and information-seeking. Prospective surrogates should be able to seek reimbursement for expenses incurred during that process, such as travel to workshops or information sessions with counsellors or professionals.

The “process of surrogacy” can start any time prior to the pregnancy and continues through the birth, and post-partum recovery period.

**A. 3.5.2**

A surrogate may be reimbursed for net loss of work-related income, in anticipation of or after birth for up to 17 weeks, due to being unable to work as a result of her participation in the surrogacy process, if a
qualified medical practitioner certifies in writing that continuing to work might pose a risk to her health and safety or that of the embryo or fetus.

Note: In Canada, employment insurance for those on a maternity leave is regulated under the Employment Insurance Act and Maternity and Paternity Benefits Regulations. Allowable reimbursement for up to 17 weeks is related to concerns for the health and safety of the surrogate.

Change:

A surrogate may be reimbursed for net loss of work-related income throughout the surrogacy process, due to being unable to work as a result of her participation in the surrogacy process to attend appointments, or if a registered health professional certifies in writing that continuing to work might pose a risk to her health and safety or that of the embryo or fetus.

Rationale:

We agree with the point raised in the note. Existing Canadian regulations through the Employment Insurance Act and Maternity and Paternity Benefits Regulations support the recovery period as being 17 weeks following a birth. In current medical practice, post-partum care typically continues for a minimum of six weeks following an uncomplicated low-risk birth, and a minimum of 10-12 weeks following a caesarian section with no additional complications. This time should be understood as being the recovery from pregnancy and birth, and thus should be available to people acting as surrogates.

Since surrogacy is a variable process, these reimbursement provisions should allow this time period to extend under the supervision of a medical professional beyond 17 weeks.

The regulations should contemplate a situation where bed rest is required for much of the pregnancy, and the full 17 weeks of allowable leave is required following the birth.

Further, the regulations should include provisions for loss of wages to attend the many appointments and often travel required in surrogacy. It is not reasonable to deny surrogates reimbursement.