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To the Honourable Members of the Joint Committee on International Surrogacy:

My name is Sara Cohen, and my practice is Fertility Law Canada. For the past twelve years, I have practiced exclusively in the area of fertility law, and am recognized as one of the leading fertility lawyers in Canada. I have provided independent legal advice to about 2000 participants of gestational surrogacy arrangements, including Canadian and international intended parents, and Canadian gestational surrogates. I am grateful and honoured to be invited to share my experience with surrogacy in Canada with you, and it is my hope that the Committee finds my evidence helpful.

The Committee asked me to discuss how to best prevent the exploitation or coercion of gestational surrogates. During this opening statement, I will focus on my personal experience. In my briefing document, I have provided several academic articles and other resources, which the Committee may also find helpful.

Perhaps the reason I am most proud of my role in gestational surrogacy in Canada, is my belief that the process is ethical and protects the well-being of all parties involved as well as those of the resulting child. I imagine we all agree that surrogacy cannot be ethical where surrogates are exploited or coerced to participate. This is antithetical to my experience of surrogacy in Canada. In fact, I find the opposite to be true: almost without exception, surrogates tend to find the experience rewarding and empowering. They frequently have long relationships with the intended parents and the resulting child long after the birth. Many gestational surrogates have such positive experiences that they choose to participate in subsequent surrogacy journeys.

Surrogacy is recognized and regulated in Canada both federally and provincially. Surrogacy in Canada is altruistic, and commercialized surrogacy is prohibited by federal law. However, the Canadian concept of altruism allows surrogates to be reimbursed for their reasonable expenses, where such expense is incurred as a result of the surrogacy. Each province handles legal parentage of a child born through surrogacy a little bit differently, and with the exception of Quebec, all are surrogacy-friendly. In all provinces, however, the surrogate must provide her consent not to be a parent to the child born through surrogacy following its birth.

Part of the reason I believe surrogacy in Canada is not coercive or exploitative is simply because of the socio-economic realities of Canadian women, which are dissimilar to those of women in Kenya, India, Mexico or other such surrogacy destinations, but far more similar to American and British women. Canadian women have agency over their bodies, access to social services, and free health care. In my experience, surrogates tend to be Caucasian, educated, financially secure, have emotional and other support available to them, and are English-speaking. Often, they are employed in "helping" professions, such as nurses, midwives, teachers, or early childhood educators. They do not need to do this, but want to do this.

Canadian gestational surrogates are required to undergo psychological counselling, obtain independent legal advice, undergo medical screening, and enter into a written legal agreement

with the intended parents, all prior to the transfer of an embryo to her body. Gestational surrogates retain decision making over their bodies throughout the process. I find that they are well-informed about surrogacy, including the medical, legal and psychological procedures, risks and expectations. Perhaps it is for these reasons that there are no cases where a gestational surrogate in Canada has ever tried to keep a baby.

Surrogacy in Canada is really about relationships. In practice, it is the gestational surrogate who chooses the intended parents for whom she will carry. Because the women are not coerced or exploited, they do this because they want to, and tend to desire and experience meaningful, collaborative and caring relationships with the intended parents throughout the pregnancy and long after the birth.

I understand from my Irish colleagues that it is unlikely that the need for gestational surrogates will be met by domestic surrogacy. Canada continues to provide Irish intended parents with a safe, ethical and legal jurisdiction in which to engage in gestational surrogacy. Working collaboratively, Canadian lawyers and Irish lawyers are and ought to be engaged to ensure that the legalities of both jurisdictions are met. I hope that the checks and balances to ensure free and informed consent of the gestational surrogates, the federal and provincial recognition and regulation of surrogacy, the positive experiences of the gestational surrogates, and the socio-economic realities of Canadian women, satisfies the Committee that surrogacy in Canada is neither coercive or exploitative of gestational surrogates, but is in fact empowering and rewarding. I believe that this Committee, Irish intended parents, law makers and courts can find comfort and confidence in Canadian surrogacy to provide a safe and ethical surrogacy system for Irish intended parents engaging in surrogacy abroad.

Sincerely yours,

Sara R. Cohen, LL.B.
Fertility Law Canada at D2Law LLP

A handwritten signature in cursive script, appearing to read "Sara Cohen", written in dark ink.