DÁIL ÉIREANN

AN COMHCHOISTE UM MÁTHAIRIONADAÍOCHT

JOINT COMMITTEE ON INTERNATIONAL SURROGACY

Déardaoin, 9 Meitheamh 2022

Thursday, 9 June 2022

Tháinig an Comhchoiste le chéile ag 1.30 p.m.

The Joint Committee met at 1.30 p.m.

Comhaltaí a bhí i láthair / Members present:

Teachtaí Dála / Deputies	Seanadóirí / Senators
Kathleen Funchion,	Lorraine Clifford-Lee,
Emer Higgins,	Sharon Keogan,
Jennifer Murnane O'Connor.	Erin McGreehan,
	Lynn Ruane,
	Mary Seery Kearney.

Teachta / Deputy Jennifer Whitmore sa Chathaoir / in the Chair.

Surrogacy in Ireland and in Irish and International Law: Discussion (Resumed)

Chairman: We have two sessions today. In our first, we will examine surrogacy regulations in other jurisdictions. On behalf of the committee, I welcome Ms Annette Hickey and Ms Justice Bronagh O'Hanlon. Joining us online are Mr. Richard Vaughn and Ms Cindy Wasser, who are coming in today from Chicago and Canada. I thank them for joining us.

All witnesses are reminded of the long-standing parliamentary practice to the effect that they should not criticise or make charges against any person or entity by name or in such a way as to make him, her or it identifiable or otherwise engage in speech that might be regarded as damaging to the good name of the person or entity. Therefore, if their statements are potentially defamatory in relation to an identifiable person or entity, they will be directed to discontinue their remarks. It is imperative that they comply with any such direction. There are limitations to parliamentary privilege for witnesses attending remotely outside of the Leinster House campus and they may not benefit from the same level of immunity from legal proceedings as a witness who is physically present. Witnesses participating in this committee session from a jurisdiction outside the State are advised that they should also be mindful of their own domestic law and how it might apply to the evidence that they give.

Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the Houses or an official, either by name or in such a way as to make him or her identifiable. I remind members of the constitutional requirement that they must be physically present within the confines of the Leinster House complex in order to participate in public meetings. I will not permit members to participate where they are not adhering to this constitutional requirement. Therefore, any member who attempts to participate from outside the precincts will be asked to leave the meeting. In this regard I ask members participating via Microsoft Teams that prior to making a contribution to the meeting they confirm they are on the grounds of the Leinster House complex.

I call Mr. Vaughn to make his opening statement.

Mr. Richard Vaughn: I sincerely thank the distinguished committee members for the invitation to be here today. It is both an honour and a privilege. The committee is on the verge of doing something quite remarkable, miraculous really. In a world that repeatedly numbs us with news of senseless violence, crime and war, members are exploring whether to acknowledge the love of people who in their hearts so deeply want to build a family that they are willing to go to tremendous expense, time, and effort, working with a team of doctors, lawyers, psychologists and the courts just to have a child. They say it takes a village to raise a child, and in this context, it quite literally does. If Ireland is to allow surrogacy, then sensible regulations and requirements for the safety of all the participants and the resulting children will be very important, of course. However at the very core of the matter, the committee's work is about family, love, and children.

I am here today to offer what I can to support the committee in its comparative examination of surrogacy regulations in other jurisdictions, in this case the United States, where surrogacy in some form has been allowed, increasingly so, since the 1980s. I imagine the members have a lot of interesting questions for me, and to answer them I will draw on my experience. First and foremost, I will draw on my experience as a father through assisted reproduction. I have two children through surrogacy, and without this experience I would not be an assisted reproduction attorney. I will draw on my experience as an attorney as well, licensed for almost 30

years, and having practised exclusively assisted reproductive technology, ART, law, since 2006. My law firm, International Fertility Law Group, based in Los Angeles and with origins back to 1992, has handled more than 30,000 assisted reproduction matters of which I have been directly involved in more than 16,000. I am personally licensed in California, New York, and Illinois, although my law firm handles assisted reproduction matters nationwide. We have had cases in practically every state in the US.

I can attest that the desire to engage in family building through surrogacy has been steadily growing every year since it first became possible. There are many reasons for this, but among them are that technological advances in assisted reproductive medicine have led to increased success rates and safety, while assisted reproduction laws in the US have matured and evolved to better protect all participants in the process.

I will also draw on my experience: as an advocate. In addition to being an attorney, I am the immediate past chair of the American Bar Association, ABA, family law section's assisted reproduction law committee where, during my tenure as chair, I helped pass the ABA-approved Model Act Governing Assisted Reproductive Technologies, the ABA Model Act governing ART providers, ABA-approved recommendations to the US State Department for international surrogacy and parentage, and ABA-approved guidelines for the transmission of US citizenship to children born abroad to US-citizen intended parents. I remain active the family law section and ART committee today and, through the ABA, I have produced continuing legal education and training for assisted reproduction lawyers and family lawyers on a state, national and international level for more than 14 years.

I have served on the national board of the American Fertility Association, and I am active member of the American Academy of Adoption and ART Attorneys, AAAA, the Academy of California Adoption and ART Lawyers, ACAL, the California Bar Association, CBA, and its family law section, and the American Society for Reproductive Medicine, ASRM, legal professionals group, among others. In addition to co-authoring an ABA book on developing an ART law practice for lawyers, I have been published in numerous professional journals. I have also presented at numerous legal and family-building conferences around the US and the world, including the International Academy of Family Law surrogacy symposium in 2015, the Cambridge University international surrogacy forum 2019, Yale University School of Law, the California Bar Association and the New York State Bar Association. I have also served as a fertility law expert in numerous television, radio and print media.

Before I conclude, I would like to provide a brief overview of surrogacy law in the US. In the US, surrogacy is not regulated at the federal level. Family law is a matter for the states to regulate. At present approximately one third of the states have relatively comprehensive legislation addressing surrogacy. We also have the Uniform Parentage Act, UPA, which is promulgated by the Uniform Law Commission and is updated every few years as needed. The most recent version of the UPA addresses surrogacy more comprehensively than ever before and tracks with the American Bar Association Model Act governing ART, passed during my tenure as chair. The individual states are not required, but are allowed, to adopt the UPA and the ABA Model Acts and-or to borrow from them. Different states have adopted different versions of the UPA over the years. There are states with older versions, states with newer versions and states that have never adopted a version of the UPA or borrowed from the ABA Model Act. As a result, there is a bit of a patchwork of surrogacy laws where these states are concerned.

There are some states with only judicial law, or case law, addressing surrogacy, some with only statutory treatment, and some with both case law and statutory law. There are also states

with nothing on the books, where surrogacy is in effect allowed because it is not prohibited. A few states restrict surrogacy to altruistic surrogacy and some allow access to surrogacy only to US citizens or residents but, by and large, most US states allow rather than prohibit surrogacy. Court orders of parentage are required in all but two states. Two states have administrative parentage procedures but also allow court orders where needed, such as for international intended parents. Most states allow parentage orders to be entered pre-birth. Some of these allow or require an additional post-birth order, and a handful of states allow only a post-birth order of parentage.

The states that allow surrogacy, whether by regulation, case law or a combination, tend to follow a pattern of requirements for the participants, establishing basic requirements for surrogacy agreements, and allow the courts to establish the paperwork and procedures required for granting parental orders.

The states that allow surrogacy are increasingly establishing basic and sensible requirements for the intending parents and the surrogate. Examples are that the surrogate be over 21 years; have children of her own; not be on public welfare; pass a criminal background check; obtain psychological counselling and undergo psychological evaluation; obtain medical counselling and medical clearance; and obtain independent legal advice. These are all at the expense of the intended parents. Examples of intended parent eligibility requirements are that the intended parents be over 21 years; be psychologically cleared; obtain medical counselling and evaluation; and receive independent legal advice.

Most of the recent legislative treatment of surrogacy explicitly codifies best practices that have evolved over the years, including, among others, a requirement that the surrogate make all health and welfare decisions that affect her body, life and health, and that she selects her obstetrician and delivery hospital; a requirement that the surrogate have health insurance, which should be reviewed and approved for the surrogacy, life insurance for the duration of the arrangement, and sometimes these requirements set the parameters for how long these coverages should be in place; and a requirement is that escrow accounts be set up for the security of the funds needed for the process, including the payment of any uncovered medical bills, and sometimes these statutes set the parameters for how long these accounts should be in place.

While it may seem that the US has a complicated matrix of surrogacy laws across the states, there is a general pattern to most of it that supports procreative freedom while protecting the integrity of the process, and the safety of the participants, most of whom are also receiving counselling, advice and treatment from licensed professionals. These are doctors, lawyers, psychologists and licensed insurance experts. This is done so that all parties proceed with fully informed consent before embarking on one of the most amazing journeys, which is to help build families through an extraordinary amount of purpose, an extraordinary amount of love, and an extraordinary amount of life affirming teamwork.

Anything that I can personally do to help make this possible, and safe, in Ireland and other places in the world is truly an honour. I conclude my remarks and will humbly attempt to assist the members with their questions.

Chairman: I thank Mr. Vaughn.

Ms Cindy Wasser: It is a privilege for me to give evidence before this honourable committee as surrogacy is not only my area of legal expertise but is the manner by which my two perfect daughters were born. By providing the committee with my knowledge, I am honouring

their existence. I am also humbled to appear before the committee today with my esteemed colleague, Mr. Vaughn, who literally has stolen most of my words from my mouth. I share with him all of the sentiments provided about the importance of family building, the perseverance by which families undergo surrogacy and the great amount of love that we have for our children. I propose to speak about the Canadian regulation of surrogacy in the three ways of regulation, the declaration of parentage, and immigration and citizenship laws.

The debate surrounding legal and ethical issues of ART began more than half a decade ago in Canada. However, we still have much to do and we can learn from the current debate under way in this beautiful country. If not for the fear that provincial governments in Canada may not support all matters involving ART our federal government may not have regulated and included prohibited activities with severe penalties in our legislation. Without those constitutional issues at stake, it is my opinion that there is no need for any government, including the Irish Government, to enact criminal sanctions where they relate to matters of family making.

As Mr. Vaughn pointed out, there is no federal regulation in the United States but we do have it in Canada. The Assisted Human Reproduction Act of Canada also insists that surrogates be the age of 21 years but it has only regulation with respect to payment and it is an altruistic model. There are safety regulations with respect to the creation of gametes and embryos. In addition, there are consent regulations under the legislation with respect to providing informed consent as to what happens with one's gametes and embryos.

The legislation that was established in 2004 established an agency to oversee the process in Canada similar to what I believe the proposed Bill here suggests. However, the agency in Canada was dismantled in 2012 after it came under fire for allegations of reckless spending and idleness. In our experience, if it is not directly accountable to the Minister of Health and is not staffed by those who both understand the process, and issues involved, then the agency in Ireland may also become a huge financial burden for the Irish Government without showing any accomplishment for itself.

Our process of enacting regulation was quite slow in Canada but, at the same time, it was thorough and very inclusive. In my view, it exemplifies how well government can act for the people. The collaborative model achieved a system that works for all. It is clear to us, that Health Canada did not intend for the regulations to be punitive, and will provide flexibility and guidance to all stakeholders, including clinic physicians, lawyers and agency owners.

I believe that collaboration with the Ministry here will ensure that all parties are protected and that transparency is maintained. In turn, the Irish Government will need to spend less knowing that it has confidence in the stakeholders to do what is right. As well we plan, as an organisation of lawyers in Canada, to create a working group that will establish industry standards. I believe that this would be an excellent goal for stakeholders in every country in which fertility law and practice exists. It would shoulder a great deal of responsibility for government and provide guidance as well as assurance to government that it need not over regulate.

I wish to address the issue of embryo donation under Canadian law because I note that the proposed legislation before this committee prohibits the donation of embryos to other families. I raise for contemplation the perhaps unforeseen consequence of not permitting embryo donation, which would result in the destruction of potential life. Here, in Canada, we have tremendous research projects undergone by various clinics where embryo donation can be provided to create wonderful methods to prevent illness and ameliorate the process. For some the idea that those embryos, albeit used for research for the better improvement of process may lead to

destruction, the preference for those who hold the value that they hold potential life is to donate them to other families who suffer and do not have the financial means to create embryos where they need both donor egg and sperm.

I now wish to address the issue of establishing parentage via surrogacy in Canada. Like the US, Canada has different rules based on our provinces and territories in this area . Over time the process for the declaration of parentage was enacted in various family law reform Acts across each province and territory. In general, these statutes provide that any person with an interest in a child could apply to the court to be declared a parent or not a parent. Over time the court application has become simpler and more efficient as we recognise the value of access to justice as a fundamental right for all communities. DNA, for example, is no longer required because our courts are satisfied with a letter from a clinic doctor that outlines the process. It is available where the evidence is not otherwise.

The declaration of parentage process is still, however, costly and time-consuming for the applicants and a burden on judicial resources. Acknowledging that there was little need for judicial oversight in most surrogacy arrangements, several provinces have implemented an administrative process. In Ontario, where I practise, for example, parentage is literally granted at birth providing compliance with the legislation.

I wish to pause to correct some evidence that was provided to the committee last week. I differ with the opinion of my colleague who spoke about the Ontario parentage laws and suggested that because the surrogate needs to wait seven days to sign for consent, during that period both parents and surrogate share parentage. The law states that is the case unless the surrogacy agreement suggests otherwise. Most surrogacy agreements written by lawyers with expertise in the field would, indeed, state otherwise. They would state that parentage is the right of the parents at birth and that the surrogate relinquishes all rights in the contract before birth and will relinquish with the formal consent.

The fact that the law in several provinces suggests that the parents are, in fact, legal at birth negates the need for pre-birth order. One province that provides for a pre-birth order, is Newfoundland, but the birth registration still names the surrogate as the mother and the ensuing declaration of parentage removes her as a parent.

Immigration and citizenship is an important issue to bring to the committee's attention because it exemplifies how strongly the federal government feels about its new Canadian citizens, the newborns. Everyone born under Canadian jurisdiction or air or water space, is automatically a Canadian citizen and entitled to all the rights of all citizens. That includes the right to have parents.

When Covid hit our country, at the same time as all others, and all airports were closed, international parents were unable to come here for the birth of their babies. I brought this to the attention of the Ministries of global affairs and immigration which, in turn, advised the Ministry of transportation. Within nine days, the Prime Minister signed emergency order changing the Immigration Act to declare the parents via surrogacy to be to be legal parents of an unborn child only through surrogacy, thereby giving them greater rights than those who were creating their babies in the so-called natural way. All parents were enabled to get into Canada prior to the birth of their babies and Transport Canada worked hard with many countries to enable those flights to take off and land. This also shows how safe Canada is for international surrogacy. We value human life at all costs and we will protect those newborns.

I hope the Irish Government will examine those laws accordingly and share the values that we do that those newborns are priceless and privileged and deserve to be treated the same under the laws of the country. The federal government acted swiftly in Canada to also provide passports to the children of the families so that they could go home to Ireland and elsewhere. They will always be Canadian citizens and always be welcome here. If they turn 18 years and are living in Canada, they may sponsor their foreign parents to become Canadian.

Why does Canada value that life and immigration so much? Because it is a proven fact that it has been a financial windfall and it can be for Ireland and other countries too. Immigration and baby-making, family making, is a great benefit to a country.

It is my profound wish to see all governments protect their newborn citizens in the manner by which we do in Canada. Honouring these children means honouring their parents. It is an exciting opportunity for the Irish Government and I hope it will also declare that these children should be given every legal right granted to a baby born in Ireland to its natural mother.

I hope that the committee and the Government will consider that private industry oversight should be the goal of all stakeholders around the world so that Government oversight is minimal. The market will ensure that agencies do not take advantage and protect the intended parents and surrogates. Clinics will ensure safe practices to achieve success rates that are well known and lawyers will work collaboratively to ensure their clients' best interests are maintained.

I wish the committee the wisdom and compassion to know what is right; the strength and conviction to do what is right and; the courage and fortitude to see that what is right, is done.

Ms Annette Hickey: I thank you for inviting me to attend today's meeting. I work as a solicitor with Poe Kiely Hogan Lanigan solicitors in Kilkenny. Since 2013, I have specialised in surrogacy law. Over the past decade I have been privileged to support Irish intended parents navigate the complex, challenging journey of pursuing international surrogacy. From my experiences working with these intended parents, the journey to parenthood through surrogacy is a huge emotional, psychological, and financial undertaking that is made all the more challenging by the lack of legal certainty and structure that currently exists. The undeniable reality is that Irish intended parents are continuing and will continue to pursue international surrogacy. In our practice, approximately 2% of intended parents are pursuing domestic surrogacy while 98% are pursuing international surrogacy.

In my briefing document I have included an overview of a surrogacy journey of an Irish intended parent with their surrogacy solicitor. I have also included details of the current procedure, including the court procedure after the birth of the baby.

All of us here want Irish international surrogacy to be of the highest possible ethical standard. My fear is that if we allow the Assisted Human Reproduction, AHR, Bill to go ahead without including a regulated statutory framework for international surrogacy, in the future Irish children may be born into a stateless legal limbo, stranded in the country of birth with no nationality. We cannot run that risk. It would lead to a crisis that would paint Ireland in the worst light internationally. The failure to use this Bill to provide that legal certainty would be regretted as a missed opportunity by future Governments, Ministers, officials and the public.

As a solicitor working in this area, I have the following recommendations. First, the inclusion of a regulated statutory framework for international surrogacy in the AHR Bill. Second,

the inclusion of retrospective recognition of parentage in the Bill for all existing children born through surrogacy, both domestic and international, at the commencement date of this legislation. Third, the inclusion of an obligation on intended parents in an international surrogacy arrangement to apply for pre-approval from the regulatory authority before they start their surrogacy journey, in a similar way provided for in the Bill for intended parents in a domestic surrogacy arrangement. Once the intended parents comply with the list of proofs required by the regulatory authority they receive a pre-approval certificate. This ensures that before any assisted human reproduction treatment commences all parties are complying with the prescribed criteria, all safeguards have been met and the surrogacy arrangement meets ethical standards. If the regulatory authority does not grant a pre-approval certificate the intended parents have the liberty to appeal that decision to the High Court. Fourth, that the Guardianship of Infants Act 1964, as amended, be further amended to provide that where intended parents have received pre-approval of their surrogacy arrangement from the regulatory authority they shall both automatically be guardians of the child upon birth, this guardianship to cease upon the granting of parental orders. Fifth, that upon return to Ireland with their child, once the intended parents comply with the post-birth list of proofs which includes the certificate of pre-approval from the regulatory authority, parental orders for both parents will be granted by the court. This may be a function of the regulatory authority in due course following future reviews and post-enactment scrutiny of the implementation of the legislation. Sixth, I recommend that when an application for the child's Irish PPS number is made by the intended parents the Department of Social Protection shall give notice in writing to the regulatory authority of the identifying information. This would be similar to the notice provision for treatment providers as detailed at section 59(4) of the Assisted Human Reproduction Bill. Seventh, assisted reproduction treatment is a continuing, developing and evolving area and there will continue to be advances in this field. Therefore the Assisted Human Reproduction Bill must include provisions for post-enactment scrutiny of the implementation of the legislation. I support the recommendation of the Joint Committee on Health in 2019 that a review of the operation of the legislation and a related report would be brought to the Houses of the Oireachtas and that an ethics committee be established as part of the oversight and governance by the board of the regulatory authority. As a practising solicitor working in this area I suggest that perhaps 24 months would allow the legislation a period of time in operation to allow those working with the law to identify any gaps before the review commenced. There is precedent for this in how the Gender Recognition Act was reviewed. I also ask that such a review be undertaken by a multidisciplinary review group, as was the case with the Gender Recognition Act, with representatives of the Departments involved, intended parents, surrogate mothers, children's rights advocates and legal practitioners in the area.

Finally, it would be remiss of me today not to acknowledge and thank most sincerely the Minister for Foreign Affairs, Deputy Coveney, officials in his Department and all of the politicians from across the political divide who helped and supported Irish intended-parents whose babies were due to be born in Ukraine at the outbreak of the war. I would like to especially thank Senator Mary Seery Kearney who provided tremendous support, guidance, help and advice to those intended parents. Many people worked incredibly hard behind the scenes to ensure that those Irish babies would be safe and protected. The commitment shown by our Government to protect those Irish babies was an example to the world. Our Government really stood beside and supported our intended parents and their children. All of those children are now safely home in Ireland, but when they arrived home, they entered a legally vulnerable limbo. I am confident, trust and believe that our Government and our elected public representatives will put the best interests and welfare of children first, that the Minister for Health, Deputy

Donnelly will take the opportunity that currently exists to include international surrogacy in the Assisted Human Reproduction Bill and that our Government will stand beside, support and protect Irish children.

Chairman: I thank Ms Hickey. Senator Seery Kearney is unable to be with us today. She may be attending online but if she is not we will pass on Ms Hickey's regards.

Ms Justice Bronagh O'Hanlon: It is real honour and a privilege to address the committee today. In 2012, when I practised as a barrister, a case came my way where a person wanted to have recognition of the birth of a child where the commissioning mother, a married woman, did not have the genetic material to carry a child herself. A family member who had always known this was the case offered, when her own family was complete, to carry a child for her. I became involved in this case which was a purely altruistic surrogacy situation within a family in the State where all were habitually resident. It was a very human story requiring a bit of humanity.

The difficulty arose when the child was born. The registrar of births was not willing to have the commissioning mother named as mother on the birth certificate. These are awfully serious documents. There was an insistence at that level that the person named on the certificate would be the lady who kindly carried the child or children. In the meantime, an application was made on her behalf to the High Court for recognition of the commissioning mother as mother.

Before we brought that case, we looked very carefully at that type of situation internationally and did a comparative analysis. We examined everything we could find. We ran the case on fairly tight constitutional lines because that was where the law was that applied to Ireland and such a situation. We were successful in the High Court. I had the great honour to be appointed to the Bench between that judgment and the appeal, although I hasten to add that is not why we were not successful in the Supreme Court. The then Chief Justice, Ms Justice Susan Denham said that you cannot expect courts to legislate. The old maxim was whoever births the child is the mother. There is a Latin phrase for that. At the time, our present Chief Justice, Mr. Justice Donal O'Donnell, in one of the judgments noted that there would have to be legislation but you cannot expect a court to legislate; it is over to the Oireachtas.

During the awful lockdown, when I was at home wondering how I would earn my keep as a High Court judge, I decided to spend a few weeks working on the basic document that I submitted to the committee, "A Snapshot of Surrogacy in Ireland with a Comparative look at International Practices". I owe thanks to the help of two young judicial assistants, Ms Katie Winder LLB and Ms Chloe O'Reilly LLB, who are acknowledged in the authorship. The younger they come up, the more brilliant they are. I say that very generously to them. I also wish to acknowledge Ms Annette Hickey who has really been a flag bearer for parents in this area who have a fertility difficulty. In the article, I mention the legal definition of infertility as where people have tried to have a child for 12 months, having unprotected sexual intercourse, but cannot. It is seen as a medical problem. Then we look at the treatment.

When I came to the end of the article I was far too timorous to come out and say let us look at commercial surrogacy internationally. However, in preparing for my opening statement I had the great delight of spending the bank holiday weekend examining in detail the very excellent work of Dr. Conor O'Mahony and I came to the conclusion that he is right. He has brought me a further step or two on this journey. If we were just to go with an altruistic model in Ireland, we are a tiny collection of counties so what would we have? We would have very few cases occurring where there would be the use of a surrogate, family member, friend or perhaps even someone one did not know but in a tiny country that is quite difficult and perhaps unrealistic. I

have also my own knowledge of these cases, through living and knowing people who have gone on this journey abroad and have had terrible difficulties. I commend the Department of Foreign Affairs, the Minister, Deputy Coveney and the Government because it is quite clear that from the initiation of this process great care has been taken to protect children born abroad and to try in an *ad hoc* way to come to solutions. However, there are children who are completely unregulated. That is not correct. It should not be the way. Some of them are at least ten years old. They must be regulated and brought into a scheme. They are the children of an international surrogacy arrangement.

This brings me to the work of Professor Conor O'Mahony, who mentions the European Convention on Human Rights and a French case, Mennesson *v*. France, 65192/11. The individual rights of children are paramount, and we had a constitutional referendum when Ms Frances Fitzgerald was the Minister responsible for children. I heralded that as a great development. First and foremost, our children are our future as a country. The European court clarified what is meant by the statement that the interests of the children being paramount. It states the reference is to the interests of the individual child. The United Nations and the European court have set the minimum obligation towards the child and have stressed that a lack of regulation causes a risk to children. Articles 7 and 8 of the European Convention on Human Rights are offended by a risk of statelessness in certain cases. I have come across that type of situation.

Professor O'Mahony recommends amending the Child and Family Relationships Act 2015 to legislate in the best interest of the child as a matter of paramount importance. The legislation may already achieve that. That said, Professor O'Mahony advocates the streamlining of domestic surrogacy arrangements and the encouragement of domestic arrangements where at all possible. He suggests the front-loading of orders prior to the beginning of the conception process. It could be done through a regulatory framework or through preparation in accordance with what an authority would set out as the checklist, and then by going to court, even. That might be preferable in the early years of such a system.

Professor O'Mahony suggests that a preconception order would relieve the surrogate of parental responsibility on the birth of the child. In other words, there would be no tussle at birth, which has happened. I have cited some of the cases where it has. There would be no lack of clarity. Parental responsibility would lie with the commissioning parents from the moment of birth. Professor O'Mahony concludes that the trend internationally is to regulate international surrogacy carefully rather than banning it outright. He says the aim of regulating both domestic and international surrogacy is to give as much protection as possible for the rights of all concerned.

With all the study involved to appear here today, I found there is an aspect on which I have changed my position. To date, we have clung to a genetic link with the child as a protection. Professor O'Mahony says there is no genetic link necessary in California in the United States, Ontario and British Columbia in Canada, and Victoria in Australia. He states that according to a child's rights analysis, this favours allowing for the recognition of surrogacy arrangements in the absence of a genetic link to either intending parent. He says the right to the recognition of a family relationship is not dependent on a genetic link in terms of biological, adoptive, foster or extended family norms. In other words, he looks across the board and says the link is not necessary in all circumstances. It is preferable and ideal if it exists.

On consulting the voice of the child, the Australian model is supported by the Irish Human Rights and Equality Commission, which states 14 years is the correct time to tell a child about a surrogacy if that child is sufficiently mature. Professor O'Mahony suggests 12 as the appropri-

ate age. I believe it should be around those ages, depending on the maturity of the child. It is a matter to be assessed with good professional advice. It may not be necessary to get that advice in every case because children ask a hundred questions an hour, meaning one may be asked much earlier in a child's life.

It is recommended that international surrogacy issues be dealt with in the High Court because nationality, citizenship and parental order rights come into play. It is suggested that the orders be sought before the birth. I suggest that the case be fast-tracked within six weeks after the birth of the child. Professor O'Mahony suggests doing away with the requirement for the child to have a genetic link but recommends keeping it as a condition for the recognition of international surrogacy to protect against trafficking. I would not keep the genetic link because I have seen the reality whereby, through a mix-up in a clinic, it cannot be proven or has no evidence to support its existence. The Department of Foreign Affairs or other bodies may have to tear their hair out to give a right-to-travel document to get a child home but there is a huge issue in this regard. Let us face it: we cannot regulate internationally. What I would say about this area is that we should pick the best aspects from various countries. We should not feel we have to have all aspects from one country. Ukraine, for example, has proven to be a very effective place for Irish people in international surrogacy terms. Sadly, it now has a war on its hands, but it was regarded by me and others as having a highly developed clinic system for surrogacy and a highly qualified group of lawyers specialising in this area. Therefore, the process was fairly seamless and much less expensive than in some other countries. However, Ukraine allows only heterosexual unions. Therefore, that has to be considered.

I did a lot of work on child abduction in my time. In fact, it was a large part of my junior practice. I also did this work as a judge. For that work, we have what we call the Hague convention on international child abduction, to which many countries have signed up. Under the convention, if a child is taken inappropriately from one country, he or she can be got back. There is a seamless, expeditious system for doing so. There is no international convention yet for surrogacy. I suggest it would be ideal to have it come quickly, from whatever body, be it in the Hague or Geneva. The reality, however, is that Ireland can enter bilateral agreements with other countries to start off the process here. There can be an agreed checklist.

Let me refer to the Adoption Act 2010 and the Article 14 or 15 certificate. The country abroad gives a verified piece of paper stating it is appropriate for the child to travel to Ireland to be adopted. There could be something similar in respect of surrogacy. With surrogacy, I would hate to see a slow-moving assessment and system for people who want to have their babies, because time is of the essence. The reason fertility rates have gone down is that, in many cases, people start their families much later. People are more educated. Women are encouraged to go to university and to have a career. Therefore, they may be in their mid-30s before they realise they cannot have a child.

The last thing one wants is a situation where they have to go through a cumbersome process. Whatever system is adopted, please let it be highly efficient. I would say if one has a pre-conception assessment of the intending parents, why would such an authority not employ specifically for its use a couple of social workers, guardians *ad litem*, psychologists or that type of person to assess the intended parents so that it is seamless and quick?

I have a strong view about court delays. My view is, if one comes back with one's baby, one has one's pre-conception order and one kicks one's case off to go into the High Court list. I suggest it should be the High Court. The High Court, in the past three or four years, would have dealt with approximately 300 of these cases. The people there know the territory. They are

experienced and are willing. One would have a system then where within six weeks of the birth one would be back in with one's final orders being sought. It would be seamlessl and efficient.

I wish the committee all the very best. If I can help in any way, I would be delighted. I thank all the members.

Chairman: I thank Ms Justice O'Hanlon. I will now open the floor to questions. Deputy Funchion is first on the rota.

Deputy Kathleen Funchion: I thank the Chair. I was not expecting to be first. That is the danger of not checking the speaking rota.

First, I thank everybody for their contributions, and Mr. Vaughn and Ms Wasser, who are joining us through Teams and who, I am sure, with the time difference, had an early start as well.

I had a number of questions for Ms Hickey and then she answered most of them in her opening statement. I still have a few questions, the first of which is for Ms Hickey.

Ms Hickey gave a helpful list of recommendations which is great for us. Afterwards, when we are drafting our report, it will be good to be able to look through it like that. In terms of the retrospective recognition, one of my questions to Ms Hickey was whether international surrogacy should be included in the Health (Assisted Human Reproduction) Bill 2022. Ms Hickey made that point clearly in her opening statement and there is no need for me to ask that. Is there anything else we should be doing or looking at in relation to retrospection? Should it be included in our recommendations and, hopefully, in the Health (Assisted Human Reproduction) Bill 2022, or is there something else that we should be looking at in the interim? I am conscious of all of the children out there who are currently in limbo. Ms Hickey deals with that on a regular basis.

My other question is to seek her opinion. I might ask Ms Wasser this too. In Canada, they accept the Ukrainian decision on parentage. What are Ms Hickey's views on that in relation to Ireland? Do we need to have our own regulations in place first?

Will I allow Ms Hickey to respond or will I ask all my questions together?

Chairman: Maybe ask them together.

Deputy Kathleen Funchion: Okay. I would ask that question also of Ms Wasser. Can Ms Wasser provide confirmation in relation to Canada - maybe it depends on the province - accepting the Ukrainian decision from an international element on parentage?

I wanted to ask both Ms Wasser and Mr. Vaughn about their personal experiences. Mr.Vaughn is in Illinois. In their situations, I am wondering if Mr. Vaughn and his wife were deemed the parents - given that he had his own children through surrogacy - from the start? That is another serious issue for people when they are in this legal limbo. If a baby - as I always say - is born premature or needs some sort of medical intervention, if there is a grey area over who the legal guardian is that obviously causes not only stress and upset, but serious issues for medical personnel as well. I was wondering if those were Mr. Vaughn's own experiences, if they were the parents from the moment the baby was born because that illustrates one of the serious difficulties that we have here.

My question for Ms Justice O'Hanlon is more to seek her opinion on this. From what Ms

Justice O'Hanlon said, there have been judgments where the court states that it cannot legislate and it is over to the legislators. Does Ms Justice O'Hanlon believe that the Judiciary would welcome this being dealt with through the Health (Assisted Human Reproduction) Bill 2022 because this is the nearest mechanism to deal with it?

Ms Annette Hickey: The Deputy's question with regard to retrospective recognition is an essential question and it is something that I feel strongly about. I am working every day with couples where the second parent has not been recognised and where they have children. Those children are not statistics. They are living, breathing children. Not only should retrospective recognition be included in the Health (Assisted Human Reproduction) Bill 2022 but - I am not a legislator - if there is any way the Legislature can find some means to bring that aspect forward from a child's rights point of view, could it be added as a miscellaneous provision at the end of some legislation? Those children are here now.

I am working with particular couples where, as the Deputy will be aware, the biological parent is very ill. I have worked with and advised other couples where the biological parent was extremely ill and was in hospital and the stress and the anxiety is unbelievable. When one does not have any answers when parents are in that distressed state and are worried about their children, one has to say to them that there is nothing one can do. When they ask if I can bring an application to court for them, I tell them the baby is not two years old yet and there is nothing I can do for them. That is not okay.

It is not okay when one has a distressed mother and wife on the phone where the marriage has broken down. Senator Seery Kearney has in previous sessions mentioned the weaponising. When one sees that happen in reality, that is not okay either. It is very difficult to answer a mother or a parent who asks what their rights are and says they are the *de facto* parent who is at home with this child. I rake my brain and talk to various other people including legal people. I think there must be a way around this but there is not.

Those children are here now. They are Irish citizens. Their parents complied with the best guidance that was available. They complied with the 2012 guidance. They have affidavits of consent from those surrogate mothers and from independent lawyers.

Something will go really badly wrong and nobody wants that. It would be awful. People are anxious.

This is to do with children. Let us bring it back to that. There are three words here we are talking about - children, parents and families. Those families and those children are not secure. They are not safe in this country.

Some of those children, when one thinks about it, left Ukraine when there was a war. Our Government saved them. This country was outstanding. We stood up. I was receiving phone calls from lawyers in various countries whose children are back here in Ireland and not only do they not have a possibility of having a parental relationship with their mother but at present those children in this country do not have any parent because we must bring a court application.

It is very urgent. It is top of my agenda. I hope whatever means are necessary can be found to mark that as a priority. I understand, with the Health (Assisted Human Reproduction) Bill 2022, there will be a regulatory authority. There will be much that has to be put in place. I have the photographs in my office and on my phone of all of those gorgeous Irish children. They are out there and we really need to look after them. It is essential. It is not okay as it is at present.

With regard to Canada recognising Ukraine parentage, my opinion is that we need to front-load this checklist at the regulatory authority stage. There is precedent for an automatic guardianship. In 2015, two new categories of automatic guardianship were created. When this legislation is enacted, we will be able to see how it is working in reality as part of the review process. I hope we will come to a point where parentage from certain jurisdictions will be automatically recognised. We have to bring forward the legislation and the regulatory authority. This area is going to be constantly evolving and we need to progress with it.

Deputy Kathleen Funchion: We are out of time. If the Chair wants us to come back at the end for some of the answers that is okay.

Chairman: It is okay. We will continue. We have time if we keep the questions and answers brief.

Ms Cindy Wasser: In Canada, citizenship and immigration are under federal jurisdiction. As I indicated, the Act for immigration and citizenship in Canada provides that everyone born in Canada will be Canadian. We have implemented emergency rules with respect to the crisis in Ukraine and are issuing emergency visas to all refugees, including babies. With respect to those born via surrogates to Canadian parents, under normal circumstances they would have been able to bring home their baby without having to establish any genetic connection because the federal government did not require it. There is feedback and I am not sure from where.

Chairman: We cannot hear any feedback.

Ms Cindy Wasser: With the emergency being recognised now, those surrogacy arrangements would be acknowledged in Ukraine where birth certificates would have been issued for babies that were being brought back home but because that is not happening now due to the emergency situation of war our government will recognise those children simply by establishing that element of parentage by way of intention.

When I had the privilege of being in Dublin in March, I was on a call with a judge here in Ontario who does our declarations of parentage to ask what she thought the courts might be able to do without legitimate surrogacy agreements established in Canada, perhaps without consents of surrogates who are in danger in Ukraine after giving birth. Her advice was that people will bring the applications to courts - she and the judges in each province will discuss this no doubt – and based on the best evidence available and the best interests of the child, they will make their orders. This means that we may not have paperwork for the babies born in Ukraine and when we bring the surrogates here and they have given birth, we may not have legal surrogacy agreements to establish those relationships but the best evidence by way of affidavit will suggest that those children should belong to their intended parents. Shortly after the government opened the doors to the immigration Act by naming intended parents via surrogacy legal parents of unborn babies only in those circumstances, it did a grand overhaul of the immigration Act to look at other archaic provisions. One was the need to establish the genetic connection of Canadian parents when they went abroad to have a baby. We have seen a number of what I call scandalous situations where intended parents did not realise that and had babies via surrogacy in other countries such as India and Kenya and went through tremendous political hurdles to bring their babies home. Our government thought they should not be punished but that the children needed to be recognised as Canadians and be brought home with their parents and, therefore, it amended the immigration Act a month after the first legislative change to say that parentage in Canada need not be established by genetics but by intention.

I wish to finish answering this by bringing a number of things to attention. Ms Justice O'Hanlon read from a report that spoke to the need for genetics in various provinces of Canada and said that it was only in Ontario and British Columbia that it was not needed. In fact, there are only two provinces, Alberta and Nova Scotia, where it is needed. Every other province has amended legislation to state no genetic connection is required, as has the federal government, which means those provinces, Alberta and Nova Scotia, are ripe for a constitutional challenge. My colleague who will speak to the committee later, and I are actually planning to work on one for Alberta.

As I said, I am a mother through surrogacy. This is a direction, not a ruling or a judgment by the judge who declared me to be the mother of my husband's children. When I was first told that that is what our law required, I literally hit the roof of this room and said after what I persevered to become a parent, I should not be punished by needing to beg a court to make me that; I deserved a medal. For same-sex couples, their struggle may be different but it is not without the same advocacy and perseverance. The political struggle to be recognised as parents in various countries is enormous. They deserve medals not punishment begging courts to declare them as parents. In my goal to change my practice from criminal law after 30 years to become a fertility lawyer and change the law in Canada I created a process with my favourite criminal judge, Justice Trafford, to declare my children as mine. I wish to quote what he said, which I promise will only take 30 seconds:

It is also appropriate to observe on this occasion that the inherent worth and dignity of all persons is of fundamental importance in a free and democratic society like Canada. All lives, whatever the circumstances leading to their conception, are to be respected and recognised as equal before and under the law. Jennelle, like her sister Etta, is to be respected and is respected as much as any other person. Their lives and all of their potential are no different than the lives of any other person. They are as important to the society we live in and treasure as Canadians as any other person. The rule of law in Canada demands such treatment of them and will facilitate the development of their potential as human beings through proceedings like those before the court today. Indeed it has facilitated it through the many contracts entered into for the purpose of protecting the rights of everyone involved in their births.

Those are the principles that exemplify Canadian values in family making. We do not have genetic connections, we do not inquire into sexual orientation, we do not have status of marriage; all you need to be is an intended parent, aged over 18 of course, and you will be recognised as such.

Chairman: I thank Ms Wasser. Deputy Funchion also had a question for Mr. Vaughn.

Mr. Richard Vaughn: I echo the sentiment raised by Ms Wasser in her quote. That is a pervading principle throughout the US when it comes to surrogacy. I will answer the direct question. We were declared the parents in a pre-birth order before the birth and there was no uncertainty as to who the legal parents of our children were from the moment of birth, including financial responsibility and physical custody. Most of the states in the US would take the same approach. However, in the handful of states that require or only allow a post-birth order, the parents are granted a guardianship, which helps to bridge the gap between the time of birth and the issuance of the post-birth order and through that guardianship they are allowed to make decisions, care for the child, take physical custody, etc.

Ms Justice Bronagh O'Hanlon: I am very grateful to my Canadian and US colleagues, and

I thank Ms Wasser for the correction. I am very interested in that because if we dispense with the need for the genetic link, it means that the second parent as it were, with a pre-birth order, can have full rights as parent upon birth. It does away with that distinction which, when I wrote my initial paper, I found extremely hard. The second parent at the time in Ireland could have to wait a good two years, perhaps, and apply to have that status improved. We all know the long journey it is for people to have children. It is a wonderful achievement for most states in the United States and Canada.

I have been asked what would be the view of my colleagues. I have been retired since last November and I dare not speak for my fine colleagues but I can imagine it because they love regulation. If it is on the tin, their job is to implement it. It is over to the legislators now. It would be more than welcome, particularly with the worry that in the background there are unregulated cases that should be encouraged to come forward and not penalised. Where children are involved in our courts, it has never been a question of putting a sanction, where possible, unless there is a criminal offence, of course. These people should be encouraged to come forward and have their position regularised with humanity. I hope that answers the question.

Senator Lynn Ruane: I thank everyone for their presentations. I will get straight into the questions. We are looking internationally for those who have advanced a bit further in the surrogacy area. One thing that stands out, as it did in presentations this week and last, and causes my working-class woman's senses to start bouncing is talk about criteria. Mr. Vaughn mentioned criminal records and not being on public welfare. Does that relate both to intended parents and the potential surrogate mother? It is a big issue for me because I want to be part of a legislative process in Ireland that accounts for international surrogacy in a way that protects people. I do not want to be part of a system, however, that in any way discriminates against the rights to family life for some people. We do not want some sort of utopian, luxury surrogate system and I want to ensure people who may not have had the same privilege in life, whether it is down to class, race or ethnicity, also have the same type of access. Will Mr. Vaughn explore a little more why this is the case? Will Ms Hickey and Ms Justice O'Hanlon speak to how, in Ireland, we can create a system that is not only efficient but is inclusive?

The next questions may be for both Ms Justice O'Hanlon and Ms Wasser. Ms Wasser explained how the genetic link could be constitutionally challenged. Will she explain how that would happen in Canada? Will Ms Justice O'Hanlon, in response, discuss using her constitutional knowledge if there are similar avenues here in Ireland to be able to challenge the idea of a genetic connection through our Constitution?

My next question relates to the pre-conception piece and may be relevant for either Ms Hickey or Ms Justice O'Hanlon. It is interesting, going on what Professor Conor O'Mahony said, being able to front-load the process. Does that pose any problems for us if we are front-loading a process for something that potentially does not yet exist? If it is pre-conception, which means conception has not happened, how do we begin the process and what would that look like? We are talking about what might be hoped to be a future existence. Is there any issue with that or is it still straightforward to begin such a process pre-conception?

In regard to the idea of a pre-conception order, I know Professor O'Mahony speaks very much about domestic surrogacy, but would such a process be easily applied in the case of international surrogacy as well or would there be a two-tier system? We would have to regulate for no genetic connection if we advocate for a pre-conception approach. One would not be able to prove genetic connection in the case of pre-conception. We would need to regulate for the idea of having no genetic connection before agreeing to the pre-conception approach as they are

contingent on each other. Is my understanding of that correct?

On the declaration of parentage, I have a question that is more for my information and I do not even know if it is relevant to legislation or our process. If a person can be declared as not a parent, does it mean anybody can declare himself or herself not a parent, even if the people in question have a genetic connection? Does that only apply with regard to surrogacy or does it apply in general family law? Is it overarching legislation or does it apply specifically to surrogacy?

There is reference to "any person with an interest in a child" in the declaration of parentage. Does that pose any sort of issue for surrogate mothers or husbands? Can anybody declare an interest? Will the witnesses explain the process a little more to me because I am not sure if I understand it correctly?

Chairman: I will allow the witnesses to respond but I ask them to keep the replies brief because other members have questions as well.

Mr. Richard Vaughn: With regard to my comment about a surrogate not being on public welfare, it is really specifically limited to the surrogate. The issue and concern is about not taking advantage of women who might only be doing this for the money. In general and for many years, that was considered a reason to disqualify someone who wishes to be a surrogate, and to do this just for the money is considered not to be an appropriate basis or primary motivator. For those on public welfare, some of the newer statutes in the United States have included that as a requirement for a surrogate to be eligible to produce a baby.

Senator Lynn Ruane: For example, what about a person on public assistance for reasons of disability? Is the idea of informed consent not more important than whether somebody is on public assistance?

Mr. Richard Vaughn: The majority of states do not have this requirement and it is a new requirement. Most of the jurisdictions would allow the type of scenario described by the Senator.

Senator Lynn Ruane: I thank Mr. Vaughn. Ms Wasser could speak about the constitutional challenge to a genetic link.

Ms Cindy Wasser: I can provide a brief but perhaps very boring history for all members on this, although people like me find it very interesting and sexy to speak about constitutional law. It is my favourite interest in life.

The highest powers are given to the federal government in Ottawa, and the provinces, to connect and become one country way back, decided they needed to keep some authority and power themselves. Those were basically over cultural geographical issues because Canada is so vast from east to west. They were granted authority to legislate in areas related to this, such as vital statistics and birth registration. The federal government kept authority to legislate over areas that would have great national importance, such as criminal law, taxation and, in this area, overall health. We have universal healthcare that means everyone living in Canada is entitled to healthcare, but it is the provinces, geographically, that implement that process. We would have insurance based on the province.

These sometimes mesh, and when the areas overlap, everyone fights as children and it ends up in the Canadian Supreme Court with constitutional challenges. It is a lot more complicated than that but we had a number of rulings over the years. Many years ago, when I had the

privilege of graduating from law school, the then Prime Minister Trudeau - the father of the current Prime Minister Trudeau - brought home our constitution from the United Kingdom and implemented a charter of rights, which became our law in 1985. Under the charter of rights, there are sacrosanct provisions stipulating we have certain freedoms. The charter was meant to be written somewhat vaguely in some areas, purposely so it would be considered the tree of life. It was to grow. The charter is a growing thing. Section 7, on the right to life and liberty of all Canadians, begat a course of constitutional challenges. I refer to challenges where anyone discriminated against race, religion or sexual orientation. A government could claim in its defence that its position was justified. A common example concerns freedom of speech, which is challenged so people do not have the right to scream "Fire" in a crowded theatre or aeroplane, for example. The government kept an overreaching power called the power of peace, order and good government, which we call POGG, to allow it to make emergency orders, which it has rightly been using throughout Covid. Under those rules, the federal government has the authority to legislate with immigration and citizenship authorities regarding who is a Canadian.

The original Act stated one had to establish a genetic link as a Canadian to one's child, but because of the conditions that developed regarding surrogacy abroad - this issue was not contemplated when the laws were written - the government thought it was time to do a review, bearing in mind that the charter is a living thing. It is hard for the government to find the time to review old laws but Covid really lit a match under everybody and got it moving. One of our great silver linings was that we updated a number of our archaic laws. Once it was established that a genetic link was no longer required at federal level across countries, the provincial legislation stating it was had less authority. Since the provincial powers have less authority than the federal government, it created a problem of constitutional jurisdiction. The provinces could justify their discrimination only with a good reason. It is not unreasonable to discriminate. If they wish to argue the challenge, they will have to provide solid evidence to maintain the efficacy of discrimination concerning genetic links. That will be difficult to do for a province when the federal government has said it is a matter of parentage intention and not genetics and when every other province has changed its law. How the provincial position will be justified remains to be seen. My guess is that once the documents are filed, those concerned will say they are not mounting a challenge, and thus the two provinces will get around to changing the legislation. I do not think they maintain their position as a value; I think it is about time and the capacity to change it because Covid affected every provincial government as well as the federal government. Sadly, it is taking time for things to come around.

Senator Lynn Ruane: What was the clause that was amended in the past two years to allow the removal of the genetic link in the declaration at federal level?

Chairman: I ask Ms Wasser to be very brief because we are very tight on time.

Ms Cindy Wasser: The citizenship Act. I can send it to the committee. I can send an extract from the immigration Act.

Chairman: That would be great.

Ms Cindy Wasser: I would be happy to send that later to save the committee time. It was done in April 2020.

The other question asked was on the declaration. In my written submission, I went through some of the history and why the changes were made. Initially, provinces with the authority to declare who was a parent, through birth registration, required all birth mothers to declare them-

selves as mothers. Historically, they required them to declare who the father was. Over time, of course, we came to recognise that women were raped and that they conceived as a result of aggression. We realised that forcing them to name fathers who carried out criminal acts that led to the conception of children whom the law at the time did not allow to be terminated was just horrendous and, therefore, the law was changed such that the mother did not have to name a father.

This then created a problem at the other end. There were legitimate fathers who found that, because of an angry family-law dispute, they were not being declared the fathers of their children, although that had been the intent. I am referring to where a child was conceived with intent. Those affected needed to have a way to go to court and say they wanted to be the fathers, so the courts created a process for it. There were also situations where a woman may have named a father who never had an intention of having child and did not even know he had been a father. He needed an opportunity to come before the court and say he did not know about the matter and that there was an agreement, such as a promise by the woman to use birth control. The judge was left to decide based on evidence before the court whether the person had an intention to parent or not and declare in that person's favour or otherwise. We were able to use that process when surrogacy developed to say the surrogate could actually be declared not to be a parent, giving the intended parents the positive right and making a negative declaration regarding who is not a parent. This just adds a little more strength, even though the relationships are beautiful. Frankly, the surrogate is happy not to be declared a parent as well in Canada. That is how the process developed, and then the provinces started developing the administrative processes that set out that if one has the agreement and legal advice, with a statement that the parents will be the parents, one does not even need to go to court. The surrogate will sign off agreeing to it, stating a desire not to be named a parent. Birth recognition would ensue retroactively.

Chairman: I thank Ms Wasser. We will move on because there are three other members to contribute and we have only a few minutes left. If we do not have time to hear the responses, maybe they can be provided in writing.

I call Senator Clifford-Lee. Am I correct that she is on campus?

Senator Lorraine Clifford-Lee: That is correct. I am in my office in Leinster House. I have a nasty Covid hangover cough. I have been listening with great interest to all the contributions from my office. Ms Wasser and Mr. Vaughn offered a professional point of view and the point of view of having gone through surrogacy. I thank all the witnesses very much for sharing their knowledge and insight.

I have a few questions, which I will try to get through as quickly as possible because I realise time is tight. My first is for Ms Hickey. From constituents and others right across the country who have contacted us, we have all heard about the difficulties faced by parents of children living in Ireland and the hurdles they have to overcome to obtain guardianship. The process can kick off only after two years, as she outlined. What can we do in the meantime? Is she suggesting we should amend the Guardianship of Infants Act immediately to facilitate those who are already here while we continue with our deliberations and allow for the enactment of any consequent legislation?

Ms Annette Hickey: I thank the Deputy. My suggestion is that, in the future, families starting their international surrogacy journey who comply with the pre-approval requirement of the regulatory authority should automatically become guardians. That is something I had not

considered with respect to the children who are here at the moment. If there is a way to amend the Guardianship of Infants Act to provide for automatic guardianship, it could be considered. Ultimately, however, it is not the answer for the children in question. I am working on cases in which the second parent has received guardianship, but that would not deal with the death of the biological father. Ultimately, from a child's point of view, it is about having a relationship with both parents. It is over to the members to introduce or expedite some type of parental-order arrangement now. There has to be a way. During Covid-19, the Government was able to bring forward emergency legislation quickly. Those children are here now. Surely there are some means by which to bring forward some kind of interim parental order situation or declaration of parentage. The affidavit that will have been filed when the first parent or biological parent has been granted their declaration of parentage, those documents that are sworn and signed by the surrogate mother, all of which have been apostilled in the country of birth, and the affidavits from the independent lawyer all confirm the consent for the second parent to have parentage. Those documents are there. The Chief State Solicitor's office will be provided with all of the various proofs. The judge at the first court hearing will have accepted all of those affidavits. The standards are in the checklists. The missing piece is some form of a special or miscellaneous provision. It is up to the legislator to come up with interim legislation to cover this period of time now until the assisted human reproduction, AHR, Bill, which it is hoped will include international surrogacy going forward, is commenced. I cannot overstress, and members have also pointed out, the anxiety, the genuine worry and the fear that is out there for those children. None of us can overstress that. It is in every county and in every town throughout the country.

Senator Lorraine Clifford-Lee: I had been wondering what Ms Hickey would suggest. I am conscious that while we are doing our work families are sitting at home with their children who are in a very difficult legal space at the moment. I was wondering what Ms Hickey's suggestion would be, given the experience she has gained over a long number years, for what we could do in the meantime for these people who are here with their children, hanging on our every word and waiting for a solution. We need to act, particularly for that group of people. I thank Ms Hickey.

I have a question for Mr. Vaughn. He outlined in his opening statement that he is registered to practise in a number of states, but that his legal practice operates right across the United States. Is there a particular regime or state he finds to be the best and in which he would recommend to couples who come to him to undertake their process? If so, will he tell us why he thinks that state is or group of states are the best?

Mr. Richard Vaughn: I will try to answer that quickly. The answer is, "No". There is not one state I would recommend. There are some states, like California, where any parent can become a parent, whether they are married, gay, straight, genetically connected or not. My analysis begins with intending parents in terms of what states are legally suitable for them. Then the challenge is to find an appropriate and good surrogate match. The basic bottom line is that there are different hoops to jump through in different states, but the end result is the same, where surrogacies allow these parents to become the legal parents.

Senator Lorraine Clifford-Lee: On the flip side of that, is there any state Mr. Vaughn generally does not advise people to go towards?

Mr. Richard Vaughn: At the moment, surrogacy is illegal and not allowed in Michigan. It is also considered very restricted in a number of other states, such as Louisiana, Wyoming and Nebraska. There are some risks in Arizona and in Indiana, but those can be overcome.

Senator Lorraine Clifford-Lee: I thank Mr. Vaughn. That will be very useful information for our own research processes and the pitfalls to avoid as we are designing our service here.

Chairman: Senator, we need to move on because we are hitting the time now. Is there any question on which you could ask for a written response?

Senator Lorraine Clifford-Lee: I think many members of the committee have been given leeway. I just have one further question.

Chairman: Yes, but I am conscious that people are waiting to come in for the next session. We have another session that was meant to start at 3 p.m., so they are waiting. Is there is a question you could submit?

Senator Lorraine Clifford-Lee: I had hoped to ask the question in the committee, but if we need to move on, that is fine. However, I regret I have not been given the time other members have been given.

Chairman: Thank you.

Senator Sharon Keogan: I also want to make the point that it seems that the committee is rushed.

I will start off with questions to Ms Justice O'Hanlon. She quoted Professor Conor O'Mahony quite a bit in her statement. He basically has said the Government should slow down this process, given the immense importance of the proposed once-in-a-generation legislation on assisted human reproduction. Does Ms Justice O'Hanlon believe the committee has been given enough time to focus on this legislation? I believe we have not. I do not believe this legislation should be rushed through before the summer. I would like Ms Justice O'Hanlon's comment on that.

We have heard Professor O'Mahony's view on the age at which a child should be told. What are Ms Justice O'Hanlon's views?

The next question is to all witnesses. When a couple use commercial surrogacy, what do the witnesses believe should appear on the birth certificate? If the egg comes from a donor, what should appear on the birth certificate?

I have questions for Ms Hickey, Mr. Vaughn and Ms Wasser. This is a business for all three of those witnesses. I recognise that this is part of their business. Senator Ruane spoke earlier about the barriers to people who may be marginalised. As a matter of interest, could the witnesses give the approximate cost of their services? They will have dealt with many contracts over the years. When it comes to international commercial surrogacy, what are the approximate costs involved for the intending parents?

Chairman: Who was the question on the birth certificates for?

Senator Sharon Keogan: That can be for all of the witnesses.

Ms Justice Bronagh O'Hanlon: I can start.

Chairman: Please be brief.

Ms Justice Bronagh O'Hanlon: If I am to read Professor O'Mahony correctly, it would be intended that the commissioning parents would be on the birth certificate in both situations,

with a separate register kept by the State, probably along with the registry of births, deaths and marriages. It would be that type of situation. This is so that there can be genetic tracing, if necessary.

On the issue of the age of the child, I do not have a personal view, save to say that good advice should be sought. You can have a very precocious eight- or nine-year-old where you might be seeking advice because the child is asking so much and needs to know. You get the appropriate advice, be it a psychologist or counsellor in that area.

Do I think it is rushed? I am invited here as a guest of the committee. It is not for me to tell the committee how long it needs to take. However, I would view the legislation as quite urgent. My advice would be to take the best you can get internationally from best practice and amalgamate this into a very progressive Act where Ireland would be a leader. It is important to have bilateral agreements in place. I do not think it will be too rushed in that context.

Ms Annette Hickey: On the questions relating to the birth certificate, if the child is born in Ireland, it will have an Irish birth certificate, so we will have some control over that birth certificate. If a child is born in Ukraine or the US, however, then it will have a Ukrainian or US birth certificate. We cannot impact or make any changes to birth certificates issued by another country.

Regarding the comment that this is a business, I am a surrogacy solicitor and I am very proud that I am. I am providing an essential service for intending parents trying to navigate this journey in the absence of legislation. The recommendations that I have put forward would, in essence, reduce my role and possibly eliminate it. Therefore, if legislation and a regulatory framework are brought forward, the necessity for surrogacy solicitors and barristers will reduce. Hopefully, this answers the question.

Senator Sharon Keogan: No, it actually does not answer the question. I asked this question because of the economic barriers that might exist for certain economically-marginalised individuals. How much does Ms Hickey charge for her services in respect of international commercial surrogacy agreements?

Chairman: On that point, we are not going to ask-----

Senator Sharon Keogan: No, I just mean-----

Chairman: No. Ms Hickey is not here representing her business. She is here to talk about the issues. Therefore, we are not going to be asking about individual costs paid in respect of particular services. Ms Hickey has answered the question and we can move on. I call Ms Wasser.

Ms Cindy Wasser: I am happy to address the issue. When I first went to law school, on my first day there, my intention was to become a wealthy international lawyer. I was invited by the International Monetary Fund, IMF, and the World Bank to act as counsel for those organisations when I graduated because of previous work I had done. I was smitten, however, by the concept of civil law and criminal law. My parents, as Jews, were about sugar farming. I was going to defend the underdog and do countless hours *pro bono* to make Canada a better place and to help those who were not privileged and who did not ask to be in court.

I became a criminal defence lawyer and a very well-known one, with more than 1,000 hours *pro bono* contributed each year to my practice. I was the founding director of the Association

of Defence of the Wrongly Convicted. I did work in Ireland with the Government in respect of wrongful convictions hearings, guns amnesties and with other issues in the Republic. When I became a fertility services lawyer as a result of my experience, one of the things that everyone who knew me, including the judges and prosecutors in Canada, asked was what would happen with my work. I never thought that those skills and that desire to change the law and make Canada better would apply. This was a personal journey for me to make my children's lives more normal and to make everyone accept them. It has turned out, however, that there have been countless opportunities in the 13 years I have been practising to continue working *pro bono* and to help Canada become better. This is an opportunity to help another country by sharing Canada's experience and reputation.

I charge $3,700 plus tax for a Canadian surrogacy services agreement and $4,000 to international people, where no tax is included. Whenever I know a client has financial issues, however, then I am entitled to decide my own fee, which might be nothing. I have certainly done that on numerous occasions, as well as in my major national work and research. I am about to write a book on Canadian fertility law, which I do not think will pay me more than the cost of the coffee I will need to drink while I am writing it. I have spoken with Mr. Vaughn at countless seminars for organisations that provide discounted fees to those who have legitimate financial needs. I have had clients who have suffered the most horrendous tragedies with late term losses and who then went back at it to have a baby. I have said there was no charge for them. I have always had a policy that if people come back to my firm for the third baby, then they need the money more than me and I do not charge for that type of case. I have not had too many takers, but the possibility is there. That is what I charge.

Regarding the whole process in Canada, generally we would say that if there is also a need for an egg donor, then people will be looking at about $150,000. Without the need for an egg donor, it might be $120,000, but that includes the costs of the clinic. Frequently, those clinics also waive costs. They also have free drugs from many drug companies that they will give to those disadvantaged financially. This includes agency costs as well, which are, on average, generally about C$20,000. Those fees are often waived for those in need as well, as are those of my colleagues.

Senator Sharon Keogan: Regarding the people that Ms Wasser said were allowed into Canada to get their babies through surrogacy, what happens with the residents?

Chairman: We are tight on time. Mr. Vaughn has not had an opportunity to answer the Senator's question yet.

Senator Sharon Keogan: No problem.

Chairman: My preference is for Mr. Vaughn to answer this question quickly, because Deputy Higgins still has to ask her questions and we also have people in the waiting room who are waiting to enter the room for the next session.

Senator Sharon Keogan: Okay.

Ms Cindy Wasser: I am available to any committee member at any time to answer questions.

Chairman: I thank Ms Wasser. I call Mr Vaughn, if he may wish to briefly answer this question.

Mr. Richard Vaughn: I echo Ms Wasser said. We do a tremendous amount of discounted and *pro bono* work, where applicable, and we also have many tragic cases. On average, in the US, if we include egg donation and surrogacy, the costs then can range from $140,000 to $200,000. The legal fees are less than 5% of those costs, which could be anywhere in the range of $5,000 to $10,000, depending on the state. Procedures do vary from state to state.

To address one other question asked, regarding at what age it is appropriate to tell the child, in talking with many mental health professionals, I have found that they will say that the children can handle what the parents can handle. The earlier it is possible to tell children, the better. We told our children very early and they are very clear on this story. We tell them in small bits and as they grow older this story increases. It is never this big mystery revealed when children are aged 12, 14 or some other magic number. Therefore, I encourage early disclosure.

Senator Sharon Keogan: I thank Mr. Vaughn.

Chairman: I call Deputy Higgins for the last questions.

Deputy Emer Higgins: I thank our witnesses for being here. Their legal opinions, expertise and international experience are key pieces of the puzzle for us, because this committee has been tasked with making recommendations in a particularly complex area in a tight timeframe, as has been said. As we have heard, this is urgently-needed legislation and we are all here to prioritise this.

Regarding Ukraine, I thank Ms Hickey for all her work and collaboration with the Government. I thank Senator Seery Kearney, who cannot be with us today. I refer to, as it was put here today, rescuing babies and surrogates from Ukraine at the start of the war. I was proud to hear Ireland being spoken of as a world leader at that time. This is something we can all take some comfort in. It was fascinating to hear how Canada dealt with this same situation at the start of the war. "By way of intention" is a key phrase that I heard Ms Wasser use again and again. It is fascinating to try to get my head round the establishment of intention rather than genetics. This is something that is foreign to us here in Ireland. I could listen to Ms Justice O'Hanlon all day long. My gosh, she has so much knowledge, insight and so many practical things to say on this subject.

I was involved with two legalities she spoke about in a previous career in the context of the children's referendum and bilateral adoption agreements. These are things I spoke about in this committee before. I have asked most witnesses if they would favour the possibility of us getting to a situation where we have bilateral agreements. My question then concerns whether we may need to have an additional international surrogacy authority or if we have such an international surrogacy section within the assisted human reproduction authority that might have the kind of staff that were referred to, such as social workers and guardians *ad litem*. I refer to that helping to progress these legal bilateral agreements. I say this because we all appreciate that international surrogacy needs to be regulated for, because leaving it unregulated, as Mr. Vaughn spoke about in the context of places in the US, leaves this process completely open. Therefore, we need regulations of some description. The question is how we do that in a way that best protects the interests of children and also protects surrogates and all the parents. While this is a major endeavour, if this is the right way to do it, then perhaps we need to examine this aspect.

My second question for Ms Justice O'Hanlon concerns what she has said regarding us taking the best aspects from best practices abroad in this regard. I am a big believer in that. I come from the corporate world myself, so I strongly believe there is no need to reinvent the wheel. If

an *à la carte* menu were to be created for us to take bits from, what would Ms Justice O'Hanlon recommend this committee to look at? There is no need to reinvent the wheel. If the witnesses were to create an *à la carte* menu for us to choose from, what would they recommend? Are there other areas the committee should be looking at? I am very cognisant of the fact that we cannot regulate beyond Ireland. The witnesses were quite eloquent when they said it is not up to the courts to legislate. It is also not up to this committee or this Oireachtas to legislate internationally but I am flabbergasted by the systems in Canada and the United States of America, where there are different regulations and laws between states, never mind between countries or continents. I ask our international legal experts who have gone through surrogacy to comment on how we navigate that because it seems to me to be a huge challenge.

Ms Justice Bronagh O'Hanlon: What I would do is keep it simple and have just one authority. As an interim measure, the High Court could be used to regularise surrogacy. If the Act includes a checklist, the High Court could deal with the pre-conception orders. Senator Ruane asked about how to envisage something which does not yet exist. I suggest we think of it like a contract. We have the surrogate mother and the intending parents and surrogacy is an invitation to treat the situation under contract law. The parents are interested in doing a deal with the surrogate mother and that is how it gets realised. We have a pre-conception suite of orders and then we have the post-birth suite of orders. It should be seamless and the High Court could be used to do that because it is international. I would keep the two together and would take out the word altruistic. I have looked at Canadian websites that refer to altruistic surrogacy that would cost about $120,000. Canada is a wonderful country. My sister has been living there for all of her adult life so I am biased. It is a wonderful country with a fantastic constitution. It is also bilingual, interestingly, like Ireland. Reference is made to altruistic surrogacy but there are costs involved. If the regulation is robust enough I would take out the word "altruistic" and just use the terms "international" and "domestic".

My worry about an authority is that most require a lot of money and an awful lot of time to set up. An authority is slow. The courts already have a simple mechanism in place, as is, and that could be expanded. The process should be clean, simple and straight.

I would be very opposed to any system that takes ages to assess the parents. That is the big problem. To get around that, a small number of designated social workers or their equivalent, who could be guardians *ad litem* or psychologists, dedicated to that work would be needed. Then the situation would be smooth under the chosen Department. Perhaps the Department of Children, Equality, Disability, Integration and Youth is the most appropriate.

If the authority route is chosen, it will be a slow process but the committee can take lots of guidance from the work done by the Adoption Authority of Ireland on international adoption.

Chairman: I will now invite Ms Wasser and Mr. Vaughn to give a brief response.

Deputy Emer Higgins: I know I am out of time but if it is possible, could we get a written reply with guidance on best practice in other jurisdictions?

Ms Justice Bronagh O'Hanlon: I am slow to name different countries. If I was to compare Ukraine with other countries, it was excellent in that it was not unreasonable financially. Let us face it, most of the people in this country who want surrogate babies are ordinary people. To answer Senator Ruane's question, I do not see why a person on social welfare could not be a surrogate or have a baby like everyone else. I would not worry too much about lawyers dreaming up constitutional challenges. The Oireachtas must legislate and let them come back with

their challenges.

Chairman: Thank you very much. Ms Wasser is next but I am sorry to say that we are really tight on time.

Ms Cindy Wasser: I will try to be brief although I am not known for that. The process requires judicial scrutiny where there is a court order in the sense that the court will look at the evidence before it by way of affidavit to ensure the intention was there. With respect to those provinces that have changed their legislation to make it administrative, it says that there must be legal advice as well. It was easy to navigate in the sense that I was a criminal defence lawyer for 30 years. For me, although I knew nothing about baby-making in this brave new world, as my mother called it, I had help. I could read the legislation. I read my legislation and I was horrified because I thought it was pretty messy, mainly because the Department of Justice had very little to do with it.

My own experience of having a very challenging surrogacy journey, independently and without an agency, led me to change my career. I navigated because I had experience with the law but throughout my very challenging first journey, I thought about what people who were not Cindy Wasser would do. I had the respect of judges and prosecutors all over, to help me deal with my situation. After Etta was born in the hospital I changed career so I could help others to navigate this and to lobby our government to change the laws and make it easier. That is how we do it. Lawyers help clients to understand birth registration. I agree that this is generally simple so when Ontario was changing it several years ago I spoke to our legislative assembly and said it should be designed so that lawyers are not required. Many of my colleagues were upset with me but I speak for the people. This is a hard process to navigate and just because your body failed you or your sexual orientation made it impossible to procreate does not mean you should have to jump hurdles. Any legislation should make surrogacy accessible.

When we talk about the altruistic process in Canada, that is for the surrogate. Everyone is making money, for sure, except the surrogate and the donor. They have nothing. They get what they pay. If they have to fly across the country, they get reimbursed. They get a portion of groceries and they get legal fees but they do not make a profit. They want to do it here because it is a matter of the heart. I personally think they deserve the sun, moon and stars but I have to change the laws the right way and cannot break them, obviously.

Chairman: Thank you. Mr. Vaughn is next.

Mr. Richard Vaughn: I am known for brevity so I will address the question on how we navigate the different laws in the US. It is simply a matter of knowing the law and writing it down. It is literally a matrix. One considers the best practices and the requirements in each state and advises the clients appropriately.

Chairman: Thank you very much. I thank everyone for their time today. We could have gone on for much longer with this session. I propose that we suspend for a few minutes to allow the next group of witnesses to join us.

Sitting suspended at 3.28 p.m. and resumed at 3.35 p.m.

Chairman: On behalf of the committee I welcome Ms Jennifer Armstrong and Ms Ivana Holub, and joining us online are Ms Megan Schiewe and Ms Ellen Embury. I thank them very much for joining us.

Before we begin, I am required to repeat the note on privilege. All witnesses are reminded of the long-standing parliamentary practice to the effect that they should not criticise or make charges against any person or entity by name or in such a way as to make him, her or it identifiable or otherwise engage in speech that might be regarded as damaging to the good name of the person or entity. Therefore, if their statements are potentially defamatory in relation to an identifiable person or entity, they will be directed to discontinue their remarks. It is imperative that they comply with any such direction.

For witnesses attending remotely from outside the Leinster House campus, there are some limitations to parliamentary privilege and, as such, they may not benefit from the same level of immunity from legal proceedings as a witness who is physically present does. Witnesses participating in this committee session from a jurisdiction outside the State are advised that they should be mindful of domestic law and how it may apply to the evidence they give.

Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the Houses or an official, either by name or in such a way as to make him or her identifiable. I remind members of the constitutional requirement that they must be physically present within the confines of the Leinster House complex in order to participate in public meetings. I will not permit members to participate where they are not adhering to this constitutional requirement. Therefore, any member who attempts to participate from outside the precincts will be asked to leave the meeting. In this regard, I ask members participating via Microsoft Teams, prior to making a contribution to the meeting that they confirm they are on the grounds of the Leinster House complex. I also remind any member who is participating through Microsoft Teams that the translation will not be available, so if they need to look at a translation I ask them to make their way to the Chamber. They would be very welcome.

I call Ms Embury to make her opening statement.

Ms Ellen Embury: I thank members so much for the very kind invitation to speak to the committee today. I have been asked to speak on the possibility of exploitation in surrogacy arrangements. The background with respect to my professional qualifications is set out in the opening statement, which I have submitted. I am conscious of time. My partner, Rachel West, and I have a very large surrogacy practice in Canada. We open more than 400 files a year. Many of them involve babies being born to foreign nationals coming to Canada because surrogacy is either difficult or impossible in their home jurisdiction. In the past three or four months, I have had many contacts with potential Irish clients, both same-sex and heterosexual, who are exploring the opportunity to come to Canada to have their much wanted baby via surrogacy. While I am very proud of the fact that Canada is a jurisdiction that welcomes internationals, in particular from the same-sex community, with open arms, I tell every one of the Irish couples or singles who talk to me that I would like nothing better than for them to be able to undergo the process in their home country, Ireland, without having to spend the enormous amount of money it will cost them to go overseas to achieve their dream of having a family. I hope that the good work the committee does will move Ireland closer to that goal.

Exploitation is a loaded word. It is a negative and shameful word. Respectfully, my strong belief based on many years of practice is that starting from a presumption of exploitation is the wrong approach. The committee will be talking to surrogates as part of this process and members will hear from surrogates about what they are doing. I believe members heard from Ms Cohen who testified last week and presented the committee with the empirical evidence of Professor Busby. Modern empirical research shows that properly managed surrogacy is not ex-

ploitative. Surrogacy is empowering. It is incredibly empowering for the women who choose to give this gift. In Canada, the statistic is that one in seven heterosexual couples experiences infertility. There are also singles who do not have a partner, and the extensive same-sex community, which deserves to be treated with respect and dignity in their difficult and, unfortunately, very costly journey to become parents.

I do not mean to suggest that exploitation cannot happen. Of course it can and I will share some thoughts on how to manage it. There are three suggestions I focus on when I talk about how to prevent exploitation. First, one of the best sources of protection for surrogates is to have comprehensive psychosocial evaluations performed by competent and ethical clinicians and physicians, remembering that those physicians and psychosocial evaluators are already self-regulated and there are consequences if they fail to perform a proper psychosocial evaluation. Second, there is a very valuable role for agencies. Under the Canadian model, we have reimbursable expenses. In my experience, taking away the dialogue about money between intended parents and surrogates takes away 90% of the stress in the relationship. The third point I talk about is the role of independent legal advice for both surrogates and intended parents. I am an officer of the court and part of a regulated profession. I have an ethical duty to ensure the women who are my clients are truly doing this voluntarily, without force or coercion, and that the intended parents understand they are not in a position to ask the woman to do anything she is not comfortable doing.

Understanding the time limitations we are under, I will set out what I consider to be the possible sources of exploitation. The first one arises when surrogates are seeking financial gain. In Canada, we have a receipt-based model, which reduces the risk of exploitation. However, it is important to recognise that altruism does not mean austerity or that the surrogate is meant to have the cheapest of everything. This issue came up at the previous meeting of the committee. In Canada, most surrogacy arrangements will see a surrogate receiving between $25,000 and $30,000 to meet surrogacy-related expenses. She is expected to provide receipts for those expenses. On top of that, she will receive compensation for wage loss if she is unable to continue working and compensation for post-birth wage loss, usually for approximately six weeks but possibly up to 15 weeks. I appreciate that the Canadian dollar may not be a currency that is well known to the committee. We are talking about reimbursement of between €15,000 and €25,000. My view is that the combination of a receipt-based practice, psychosocial evaluation and giving surrogates a voice by asking why they are choosing to be a surrogate is a way to avoid exploitation of women who are in it solely for financial reasons, perhaps because they are in a state of desperation. An individual in such circumstances is not necessarily one who should be a surrogate.

Another possible source of exploitation arises when surrogates come from a background of socioeconomic or psychological risk profile. Again, the way to manage that is to ensure clinics are carrying out psychosocial assessments and giving surrogates a voice. We must make sure the reason they are choosing to do this is heard very early on in the process.

I believe there is a possibility of exploitation by a surrogate's domestic partner. The way to manage this is to ensure the partner is part of the process. In Canada, the husband or common law partner of a surrogate does not have any presumptive rights, but our practice is to include that individual to ensure the surrogate will be supported throughout the journey and there will not be issues at home related either to being forced to participate in the process or being discouraged from participating.

In order to avoid the possibility of exploitation, it is important to ensure surrogates are

healthy and will not be endangered by the pregnancy. Again, that is part of the clinician's role. Ensuring there are competent, empathetic and regulated fertility physicians examining the surrogate's medical condition is the best way to protect her.

In my practice, I have seen pressure from intended parents to reduce or minimise expenses to their benefit. The answer there is to take receipt management or discussions about money out of the interaction between the surrogate and the intended parents. It is important to have a third party such as agency, or an escrow agency under the US model, in the middle in order to reduce the tension and ill feeling that can occur over discussions related to finances. Having lawyers involved at that stage is really important. As the committee heard from my colleague, Ms Wasser, earlier today, the reality is that we spend a lot of our time stepping in and assisting our clients, both surrogates and intended parents, when things go off the rails. We often do that without charge because we want to make sure the journey is successful for both parties.

Loneliness or vulnerability is a factor that may give rise to the exploitation of surrogates. As Ireland builds its process, it will find that communities of surrogates start to pop up. I often refer to this as being like an algae bloom. When one woman has a really good experience with her surrogacy journey, she will tell her friends. Suddenly, we find there are five or six surrogates in a small town in northern Alberta or northern British Columbia. That community and support among surrogates is critical and agencies have a role in trying to build supportive communities. It is not something that can be legislated for but, with agencies in the picture, we typically see a lot of that community-building. I hope the committee will hear more about that today.

Another possibility for exploitation that is really important to consider is where there is pressure on the surrogate to do something she does not wish to do. This might, for instance, be pressure to implant two embryos in order that the intended parents can have twins. There are always discussions around termination or abortion. In Canada, the law is crystal clear: a woman does not have to do anything with her body she does not want to do. One of my jobs is to explain that to a surrogate upfront. If she is feeling pressure from intended parents, I step in and tell her nobody can make her put two embryos in her body and nobody can make her terminate the pregnancy if she is not comfortable terminating. Again, it is about having lawyers, counsellors and physicians in place to ensure surrogates truly understand the process.

My friend and colleague, Ms Sara Cohen, presented the committee last week with Professor Karen Busby's research. Her research papers confirm what those of us practising in the area know through experience, which is that surrogates are empowered and fascinating women. Canadian fertility clinics have used psychosocial assessments for years to ensure surrogates are not entering the relationship from a place of vulnerability. As a result, they are typically educated, financially stable and, in my experience, having worked with thousands of surrogates at this point, they are often in the caring professions, including nursing, childcare and home care. They are incredibly strong. I like to repeat Professor Busby's description of them as "non-conforming extroverts". Over my years of practice, I have worked with hundreds of surrogates and I definitely believe that is an accurate statement. Surrogates are typically the first to stand up for themselves. Under the Canadian model, lawyers, counsellors, doctors and agencies are there to ensure exploitation does not occur. The few practical measures I have suggested today can be used to protect these women. A modern, non-paternalistic approach to surrogacy is not to start from a presumption of weakness or exploitation. Surrogacy is truly empowering, life-changing and valuable. The women who choose to become surrogates should be celebrated. My hope is that the Irish process will follow what we try to do in Canada.

I want to address one issue that came up at the previous meeting, which is the question

around a genetic link. Yesterday, the Supreme Court of Canada released yet another decision indicating that the best interest of the child is paramount and it is not related to a genetic link. In my opinion, any legislation that proposes a genetic link is discriminatory. The classic example is a couple who meet in cancer treatment. As we know, radiation destroys eggs and sperm. The two people in that couple are now physically disabled. A model that says they are not entitled to have children because they cannot produce egg or sperm would be problematic from a human rights perspective.

I thank members for their time. I certainly am conscious of the privilege of being asked to speak to them. I am happy to address any questions.

Chairman: Thank you, Ms Embury. I now call Ms Schiewe to make her opening statement.

Ms Megan Schiewe: I am a 37-year-old married mother of two and I live in a small village in Alberta, Canada. In 2020, during the height of the pandemic, I gave birth to a surrogate baby for an Irish couple. I would love to tell the committee a bit more about myself and what brought me to surrogacy.

There are two events in my life that have deeply impacted my decision to become a surrogate, and both of them stem from trauma. The first event was my adoption. My adoptive mother is a cancer survivor. She had to have a complete hysterectomy and was told she would never have children. I grew up understanding how deeply infertility and loss had affected our family.

The second event happened when I was 21. I was a newly-wed and had just discovered I was pregnant with my first child. I was ecstatic. We began thinking of names and planning where the nursery would go. All of our joy turned to ashes when I suddenly began haemorrhaging. I had an ectopic pregnancy that had to be surgically removed. I lost our baby and nearly lost my own life. I lay in my hospital bed after that operation and wept so much that I had chemical burns on my face from the tears. I could not stop crying. Losing a wanted pregnancy is something I understand. Being told there is nothing that can be done to save your baby is something I understand. The guilt and shame of having to terminate a pregnancy to save your own life is something I understand.

Luckily, I was able to go on to have children. In 2016, I gave birth to our son and completed our family. I felt so blessed to have a boy and a girl. There is nothing more important to me on this earth than my children. One day I was scrolling on Facebook and I saw a post about how Canadian surrogates were needed to help others complete their families. I had never considered surrogacy before but something about that idea resonated with me.

In 2017, I felt ready to begin this adventure. I signed up with a surrogacy agency and started looking at intended parent profiles. The first profile to catch my eye was an Irish couple who had been trying for many years to have a child. The intended mother had been through multiple miscarriages and failed IVF cycles and had also suffered an ectopic pregnancy. The couple had been trying for more than ten years and did not have any children. My husband and I agreed right then and there that this was an amazing couple who had been through enough. I determined that I would do everything in my power to help them. We spoke often, video-chatted and were introduced and became very close within a short time. We discovered that we had a lot in common. They were absolutely lovely. They were very kind and funny and had a huge network of supportive family and friends. I learned many new words for things, like "nappy" instead of "diaper", and "trolley" instead of "shopping cart". I learned that "chips" are called

"crisps" in Ireland, and "craic" does not necessarily refer to narcotics.

The first thing I did for our journey was medical screening. I went through this screening to make sure it was safe for me to have another pregnancy. I went through a psychological screening to ensure that I was mentally well and feeling safe and supported at home. My husband was also screened for things such as sexually transmitted infections, STIs, and spoke to a psychologist to discuss his feelings around surrogacy. After that, we went through legal contracts before we started trying to get pregnant via IVF. It took five embryo transfers and two different batches of embryos before we were successful.

On Christmas Eve in 2019, I got to tell the couple that they were going to be parents. Their joy, their happy tears and the wonderful reaction of their family and friends was so contagious and exciting. We had our first ultrasound and they missed work because they were so nervous. Each and every prenatal appointment I had, they would miss work because they feared we would have bad news or not hear a heartbeat. I constantly reassured them that I could feel their baby kicking. I knew he was alive. They never got tired of me telling them that.

When I got close to my due date, they flew to Canada and we met in person for the first time. We had been on this journey for three years at that point. My husband insisted that they needed to do Albertan things while they were waiting for me to go into labour, which included some hunting and all-terrain vehicle, ATV, riding. As I live in a small village, everyone knew who they were and could not wait to talk with the "lovely Irish couple". They were surrounded by well-wishers everywhere they went. On 4 September, when I was exactly 41 weeks pregnant, we all walked into my local hospital for a scheduled induction. The birth was uncomplicated and joyful. Being able to see their reaction, happiness and love was everything. I did it. I completed a family. I got to watch their faces when I gave birth and they met their child, which is what I had been picturing in my mind's eye for three years. There was not a dry eye in that delivery suite as we all just basked in the glow of their happiness.

After the birth, I was followed by my doctor and our local health unit nurse. I healed quickly, and this was most likely because I was sleeping through the night. No one was crying or waking me up needing to be changed or fed. It was a very different post-partum experience than what I had been used to. I visited my intended parents every day until it was time for them to go home. In 20 days, they had all the documentation they needed to fly back to Ireland. While I never shed a single tear over my surrogate baby, I cried when they left. This couple was more than my intended parents and more than my friends. They had become my family. We still speak nearly everyday and I have been to Ireland to visit them. The pain and the sadness they lived with is gone. They are happy and whole. Surrogacy healed them in a way nothing else could.

My surrogate birth was a full-circle healing moment for me. I entered this world as an unwanted child, and I gave birth to a child that was so very wanted and loved. While my own birth represented trauma and loss, this birth represented healing and love. I have never thought of myself as his birth mother because I am not his mother. That is also a term I associate with adoption. Instead, I like to think of myself as his first extreme babysitter. It has been nearly two years since my journey ended and I have recently started out on my second surrogacy journey.

One of the purposes of my testimony today is to shed light on the question of how we can prevent the exploitation or coercion of surrogate mothers. When it is regulated and supported by a strong legal framework, altruistic surrogacy would be an excellent way to prevent the exploitation or coercion of surrogates. Surrogacy in Canada is regulated under the Assisted

Human Reproduction Act, which is the same Act that regulates egg and sperm donation. This Act regulates surrogacy as a purely altruistic process and determines what type of expenses a surrogate may be reimbursed for.

There are several clinical requirements in Canada that could work in Ireland. Canadian surrogates need to be of legal age, have successfully given birth before, be financially stable and pass a medical and psychological screening in order to be approved. Surrogates go through medical and psychological screening to ensure that another pregnancy is safe for them and that they are mentally well. While it does not matter if a surrogate is single or with a partner, partners should also be screened by a psychologist, just like my husband was. This is done to find out if the surrogate has an appropriate support system at home and whether she is in a healthy relationship.

In Canada, it is also important for surrogates to be financially stable and not on any form of government assistance. I think that goes a long way towards preventing the exploitation of low-income women. Being a surrogate for all the right reasons is very important. I can appreciate the concern surrounding commercial surrogacy, as it may lead women in financial distress to decide to become a surrogate solely for financial gain, rather than to help build a family. That is the danger of commercialised, unregulated surrogacy.

An altruistic surrogacy model, coupled with a strong legal framework, is the best way to prevent exploitative surrogacy and coercion as there are clear guidelines in place to protect and support the women, like me, who choose to become surrogates. As a surrogate in Canada where there are such guidelines, we are empowered, not exploited. We are held to a high standard and receive a high standard of care. We are free to follow our hearts and gift our time and energy to growing and nurturing babies for the mothers and fathers who could not otherwise experience the joys of parenthood. For us, it is an experience of love, joy and completeness. We do not come to surrogacy through a position of lack, but of one of willingness to give.

That concludes my statement. I am more than happy to answer any questions members may have.

Ms Jennifer Armstrong: I thank the committee for inviting me to speak. My name is Jennifer Armstrong and I have a master's degree in education counselling.

I am from Ontario, Canada. I am currently employed as a fertility doula and surrogacy coach. I previously worked as a family therapist for seven years. I am also a two-time gestational surrogate. I gave birth to a healthy baby boy in August 2021. He now lives with his two dads in Toronto, Ontario. I am currently newly pregnant with my second surrogate pregnancy, for a couple who live in Chilliwack, British Columbia. I am giving evidence to the committee to provide insight on being a gestational surrogate in Canada.

I always believed I was going to be a surrogate for someone. Being a surrogate was a desire I have had my whole life but no one asked me to be a surrogate. As the years went on, I had this desire but did not know what to do with it. In 2020, I came across an advertisement from a fertility agency and realised that I qualified to become a surrogate for someone I did not know. I did not know that was a thing. I spoke to my husband and we signed up the very next day.

Following the application process, I was given a selection of intended parents that I was able to match with. Matching with intended parents is an individualised process in which one is sent profiles. The number of profiles one is sent depends on one's preferences. A person can

ask for one profile. I particularly wanted to have a set of profiles because I did not want to say "No" to each couple; I wanted to be able to say "Yes" to the people I chose. Intended parents are matched on high-level matching viewpoints such as termination, desired relationship, fertility clinics, place of birth or any non-negotiable items one may have. One selects a profile with which one wants to connect, and then moves on to the next phase, to which we typically refer as the "dating phase". It is when one has matched with a couple. One gets to know them, sees whether one enjoys them and whether they fit with one and one's preferences. My husband and I picked a couple and decided to meet them. I was able to meet them in a park with my kids. It was during Covid so we were not able to meet inside. We decided they were great for us. In the following weeks, we spent a lot of time getting to know them through emails, text messages and video calls. We decided to move on with them as our choice. Our agency was great at helping me with any questions I had. It helped me in the getting-to-know-them process. One does not know what the heck one is supposed to ask when meeting somebody for the first time about having his or her baby.

For my second surrogacy journey, I originally matched with a single intended mother. I met her once and realised she was not a good fit for me. I was able to quickly say this did not work for me. I was matched with another set of intended parents. I met them and immediately knew they were the perfect match for us. They are really awesome.

Following officially matching, all parties are required to do medical and psychological screenings. I was required to go through sexually transmitted infections testing as well as a comprehensive medical screening regarding my suitability for pregnancy. That was completed by the fertility clinic. A surrogate is usually required to complete blood tests locally and will usually need to travel to the fertility clinic to get medical testing in respect of one's body's suitability for being a surrogate.

At the same time as the screening, all parties are required to meet with a counsellor to ensure the match is appropriate and all parties understand the surrogacy process and requirements, and have suitable mental health profiles for surrogacy, as well as assessing any other motivations for surrogacy and ensuring the surrogate and the partner understand the risks associated with a surrogacy. They must also understand that the intended parents are to be recognised legal parents under law.

Following medical clearance, the intended parents and surrogate seek independent legal advice and create a mutually beneficial surrogacy contract. What that looks like can be very different, depending on who one is. It is comprehensive. Each lawyer ensures that there are clear guidelines for extraordinary circumstances such as death, divorce, loss of organs, termination, selective reduction, sharing of medical information, termination of the agreement, the process of conception, post transfer, prenatal and genetic screening, birth plans, custodial rights, birth registration, the relationship following birth and clear financial reimbursements. There is a lot in it.

Following the completion of contracts, the surrogate is cleared to transfer at the fertility clinic. Transfers of embryos are completed using IVF. Depending on the individual, the clinic and the protocols, the surrogate is required to take a list of prescribed medications prior to embryo transfer. A surrogate must complete a lining check to determine whether her lining is suitable. If it is, she goes on to transfer. If it is not suitable, medications are adjusted. That is what happened in my case. My lining was not suitable and I had to keep going back to get medications adjusted to get the approval for transfer. Once transfer is approved, the embryo is transferred. If all goes well and the transfer is successful, the surrogate gets a blood test a

few weeks later to determine whether she is pregnant. If she is not, the surrogate and intended parents decide when the next transfer will be. It is individually tailored. It could be months or it could be the next cycle; it depends. We were very lucky; we got pregnant at the first try. The first try worked for me the second time, too, so I did not have to repeatedly go through the process of it being implanted.

The process for matching with my first set of intended parents to birth took approximately 14 months. It sounds like a quick process but it took that long to get from start to end.

I was supported in many ways during my surrogacy journey. For the purpose of clarity, I will only refer to my first surrogacy journey because I have not yet finished my second one. My agency, Canadian Fertility Consulting, supported me through the entire process of journey and post-partum. I was assigned my own surrogacy co-ordinator who walked me through all the facets of my journey. I had free access to counselling services for me and my family, from application to six months post-partum. There were no limits on the number of sessions I could book or attend. I had complete autonomy to choose which care providers I would include, such as lawyers, clinics, birth providers and medical staff. At no time did I feel forced into a timeline or schedule that did not work for me or my family. I was free to make autonomous choices in respect of the tests, requirements, contract obligations to which I was willing to submit. I was completely able to take the time to make informed choices about my care and at no time did I feel as though I was being taken advantage of. It was made clear to me throughout my surrogacy journey that I had complete bodily autonomy and that my personal welfare and well-being were the utmost priority for all the professionals involved in my surrogacy process.

My desire to pursue surrogacy came from a deep desire to help others create a family of their own. There is something so special about being part of the birth of a child. From the beginning of the surrogacy process, surrogates are well prepared and understand that this child is in no way their own, from a genetic and an attachment perspective. The surrogate knows and understands from the conception that the child who is created is not hers. This understanding brings a different connection to the pregnancy. While the surrogate is still nurturing an unborn child, she always know that the child she is carrying is someone else's.

There is often a concern in the surrogacy community based on a false belief that surrogates become too attached to the child they are carrying and have distress giving the child up. The issue with this concern is the understanding that this child only exists because the intended parents were involved in the creation. This baby would not exist if those two parents or single parent decided to have that baby. At no time did I ever feel distress regarding handing the child over to the intended parents. I did not, and do not, feel as though I should have any legal rights to the child to whom I gave birth. He has always been the child of my intended parents. I was simply his long-term babysitter.

We all in the surrogacy community talk about "extreme babysitting". The greatest experience for me is seeing those parents raise their son. That to me is the coolest thing. If I had wanted a child, I would have had my own child. I do not need to go through a surrogacy process in order to have a baby. It is definitely 100% their child and watching them help him grow is the most awesome thing. I have never experienced a greater accomplishment and sense of purpose in any other endeavour in my life than I have with being a surrogate. I have my master's, done all sorts of stuff and travelled the world. I have two beautiful children of my own. Being part of a surrogacy will always be one of my most favourite things that I have ever done. I have never felt more empowered as a woman, a wife and a mother as I did with being a surrogate. Nothing compares to that coolest experience of helping others to become parents. It is so hard

to put into words. It is the greatest experience of my life. I would not be here right now if I did not do that. I would probably be too terrified to come here. Surrogacy has given me an ability to be confident in myself, to be able to advocate for myself in ways I have never been able to do before. I cannot tell the committee exactly how that happened but it happened. I really appreciate the committee letting me be here today. I welcome any questions they may have.

Chairman: I thank Ms Armstrong and we really appreciate having her here today. I now call on Ms Holub to make her opening statement, which she will make in Ukrainian. A translation has been provided to the committee.

Ms Ivana Holub: I am from Ukraine. I was gestational carrier or surrogate for an Irish couple in 2019. I highlight "gestational carrier" as even though I carried the babies they are not genetically linked to me in any way. They are not my children. There has been a lot of talk lately about birth mothers and I feel surrogacy is being likened to adoption. One simply cannot compare the two in my mind as the babies were not mine from the very start; I was only ever minding them for their family. I do not wish to be recognised on the birth certificate as to me it would be a lie because I am not the children's mother. I went into the surrogacy arrangement fully knowing and embracing what my role would be. It truly is a privilege to carry a child and I am proud of my body's ability to do so but equally I feel a woman should not be condemned because her body cannot.

Let me tell the committee about my journey to becoming a surrogate. I had two children. I loved being pregnant. I felt and still do that a baby is God's gift to the world. When I heard about couples who could not receive this gift due to medical reasons I was inspired to help these families feel the joy that I do from my own children. Once I started to research it, the whole process took six months to be accepted as a surrogate. I chose a clinic that I could trust as I had to make sure that I would be okay for my own family's sake. I went into this with my eyes open. I went through medical checks, family history checks, physical and mental assessment. I received legal advice and time to review the contracts before I was eventually signed up as potential surrogate. Yes, I would receive remuneration for being a gestational carrier, and rightly so. I do not see anything wrong with helping my family while also helping an other woman to have her family. All the money in the world would not make me undertake this journey if it was something I did not want to do in my heart.

I hear about exploitation of surrogates because of payment and I think the very opposite. The dictionary describes exploitation as an action or fact of treating someone unfairly in order to benefit from their work. Yes, it was my job to carry the pregnancy but it would have been my job whether I was being compensated or not. Women who make the decision to be surrogates are not being treated unfairly in my opinion, as we make an informed decision to proceed and are compensated for our time fairly. It is the total opposite of exploitation. It is about informed consent and where I come from or my economic background should not automatically mean I am not able to make a informed decision and choose what is best for me. I was supported every step of the way on my surrogacy journey. The laws in my country ensured I was protected. I received constant monitoring medically throughout the pregnancy and after the children were born. I was given the option of counselling after the birth and in the months that followed but I choose not to accept, as nothing would provide me more solace and reassurance, if it was needed, than seeing the children I grew in their own mother's arms. If one could bottle that feeling, the pride, the joy and the emotion, one could sell it as medicine for the soul.

Deputy Kathleen Funchion: I acknowledge all three women and think they are amazing. I thank them for sharing their stories and for being with us, either virtually or in the room. I

also acknowledge Ivana and the situation she has come from in her home country in Ukraine. I know that has been difficult and stressful. I acknowledge her presence here and her family. I cannot imagine or even think of words in this regards, but I just acknowledge that.

Is there anything the women would like to see changed if they were in the surrogacy journey again? Are there any additional supports they think should be there? I am asking that so that we can see what we might add to or do our system, let us say. In regard to the birth certificate, do they believe the birth certificate should solely name the intended parents? Some people have mixed views on the birth certificate. I personally believe it should be the intending parents, but I am interested in hearing people's views. It is important for children to be able to access their information and know about their identity and journey. What are the witnesses' views on the birth certificate?

Ms Ellen Embury: I cannot speak to what a surrogate would feel like in terms of making her journey differently so I will refer to the really incredible women we have heard from this morning. With respect to the birth certificate, I would turn that around. There is nothing secret about a surrogacy journey. Perhaps it could be mandated that children are entitled to know whose womb they grew in. Think about the intended mother who is so desperately afraid that the surrogate is going to have a link with her child, who is terrified that perhaps the surrogate is going to attempt to keep the child, which does not happen in practice in Canada. To say that, by virtue of having gestated a child, you are entitled to be named a parent on the birth certificate is very demeaning to the intending parents. There are other ways of managing it because, ultimately in Canada, what I do when a baby is born on Saturday, the baby never appears on the birth certificate in Alberta, but I have a court order by Monday that says the surrogate is not a legal parent. There is simply no point in having her on the birth certificate.

Ms Jennifer Armstrong: From a professional perspective the surrogacy agencies could be better regulated. There really is not that much regulation of surrogacy agencies and what is supposed to happen. I have seen different agencies work differently and support the surrogate differently. I personally chose my agency because of how well they support surrogates but I know in my experience that is not necessarily the case for all agencies. Better regulation from the agency perspective would be an improvement.

As for me being put on a birth certificate, if I was going to be told that I had to be the parent of the child I was carrying, I probably would not have been a surrogate. I have no desire to have any other children. For me the idea of being listed on a birth certificate is crazy. That would make me not do it because I do not want to be responsible for another child. If I wanted to be responsible for another child, I would have had another child.

Ms Ivana Holub: *Replies in Ukrainian*.

Chairman: For people listening to or reading this debate, Ms Holub is very determined that there should be no recognition on the birth certificate.

Senator Lorraine Clifford-Lee: I thank all our witnesses, in particular Ms Holub, Ms Armstrong and Ms Schiewe for their contributions. We have been on a journey ourselves, educating ourselves about surrogacy. We have heard from many different groups and parents who have used surrogacy. For me, the women's contributions here today have been the most powerful contributions I have heard, because I often feel the surrogate is left out of the conversation. To hear from them the reasons they undertook this journey with other people to produce a lovely little baby at the end is really powerful. I thank the women. Like my colleague, Deputy

Funchion, I especially wish to acknowledge Ms Holub and the very difficult time she, her family, her country and her people are going through. We stand with her on that.

I have some brief questions. Deputy Funchion's question about the birth certificate were particularly good. Even though we are examining international surrogacy, some other witnesses have presented to us to say that because the domestic arrangement is so limited, especially regarding the birth certificate, it forces people into an international situation, and that if we had a better domestic arrangement here, perhaps it would be better all round for people.

Ms Armstrong and Ms Schiewe are both Canadian surrogates and got their expenses paid. Ms Holub indicated she was compensated fairly for her service. Would Ms Armstrong and Ms Schiewe have any objection to being compensated fairly? Would it have made any difference to them had they been compensated fairly, as Ms Holub was?

Ms Megan Schiewe: I do not think it would have mattered to me if I had been compensated versus reimbursed because the reason I was doing this was the same reason: for the family.

Ms Jennifer Armstrong: As with Megan, I do not know that it would have made much of a difference. It was something I was always willing to do for free anyway. Like most people, I am not going to refuse money, but it would not necessarily change the outcome.

Senator Lorraine Clifford-Lee: It does not change the motivation.

Ms Jennifer Armstrong: No. I would not be any more motivated to complete the surrogacy journey.

Senator Lorraine Clifford-Lee: All the women outlined they have children of their own. Were supports put in place for their own children to explain to them? They were very young. What sort of supports were put in place for their children? Were they happy with those supports?

Ms Ivana Holub: *Replies in Ukrainian.*

Senator Lorraine Clifford-Lee: Thank you very much. In relation to the supports that were provided for their own children, were the witnesses happy with the services? Were therapy services provided or was that even necessary in their experience?

Ms Jennifer Armstrong: In my experience, my kids did not really need it. They were nine and 13 years old at the time. They were old enough to understand. There were able to access counseling services through my agency, if they needed it. They did not as I am a family therapist and it was easy for me to describe the whole situation. Had they required it, or had they any issues, I would have absolutely been able to access services. It is also part of my surrogacy contract. Services for them are written into it.

Senator Lorraine Clifford-Lee: If Ms Schiewe-----

Chairman: Would Ms Meghan Schiewe like to answer that?

Ms Megan Schiewe: Sure. My children were also young - they were six and three years old. I did not need any supports but there was therapy available to them via my agency.

Chairman: We have lost Ms Schiewe there.

Senator Lorraine Clifford-Lee: I think I got the flavour of Ms Schiewe's response. Thank

you very much.

I have another question for Ms Armstrong very briefly and it is totally fine if she is not comfortable answering it. Can she explain why, on meeting a woman who was looking for a surrogate, she decided she was not a good fit? Did she feel she might be pressured at some stage during the journey, or was that the issue? Was there some other reason outside the actual process?

Ms Jennifer Armstrong: Yes. It was just a personality thing for me. It did not seem like our personalities were going to fit. I did not feel forced or anything like that. I just felt like I was looking for a very intimate experience for my second surrogacy and I did not feel like we had a personal connection for that. It was really sad that I had to say no but I knew, for me, it was not going to fit between us.

Senator Lorraine Clifford-Lee: Okay, thank you very much.

Chairman: We will go now to Deputy Emer Higgins.

Deputy Emer Higgins: Thank you Chair and I thank all four of our guests for being here today. When Ms Embury started her contribution I was thinking it would have been great to have her in for the legal session earlier. The more she spoke, however, I understood why she is speaking at this session because she has so many insights around surrogates, their personality types and the supports that they need. It is really interesting to have that conversation in the presence of three absolutely amazing surrogates. I thank Ms Embury for her contribution and for sharing those insights with the committee. I thank Ms Armstrong, Ms Schiewe and Ms Embury for their really personal stories. Ms Schiewe, in particular, really delved into a lot of trauma and that helped us to understand her reasons for deciding to go down the surrogacy route and for being here today.

It is so important that these women all have such different stories and such different backgrounds but the thing they have in common is the fact that they really wanted to help other families who were not as lucky and who could not become pregnant as easily. I have so much respect for all three of the guests for that. They speak about surrogacy with pride - like it is the most wonderful thing ever - but I am sure it is a tough decision to arrive at so well done and congratulations to them for being so brave.

One of the discussions we had earlier on in the committee was with a lawyer from the United States who spoke about the preconditions that surrogates have to fit in order to be considered in certain states. One is that they are over 21 years old. A second one, which struck me, is that they already have children and that they would undergo counselling and evaluation and have their own independent legal advice. From our perspective as a committee, we are tasked with coming up with recommendations for how this would work in Ireland and how, if we are to agree bilateral agreements with countries such as Ukraine, what best practice should look like. Given that the three witnesses have been through that process, I would really value their opinions on whether those kinds of things - like age, whether they had children already, whether they were willing to undergo psychological evaluation - would work for the witnesses? I think having legal advice is fairly standard. Do they think this is something that would have been offputting or do they think they would have been happy to sign up for that? Perhaps they did sign up to all of those conditions unwittingly, without knowing they were conditions, or maybe knowing that they were conditions, depending on their situations?

As a comment rather than a question, I would like to particularly welcome Ms Holub, not just to our committee but to Ireland. I read her story in the newspapers and thought it was really interesting how she spoke about blood donation and surrogacy. I had never thought of it in that way and it is such a simple analogy. I thank her for sharing that with me.

My questions for the three witnesses are around those requirements or eligibility. Could they give us some examples as to whether they think these requirements are fair or unfair or if there is anything they might add or take off the list of conditions? I would value that.

Chairman: Thank you very much.

Ms Ivana Holub: *Replies in Ukrainian.*

Deputy Emer Higgins: Before I ask the other witnesses to come in, I would like to say to Ms Holub that she has been through so much in the last year and I am really sorry when she came to Ireland that she found herself with added stress and a legal responsibility she never signed up to. That is what all the members of the committee want to rectify.

Ms Jennifer Armstrong: Deputy Higgins talked about requirements and surrogates have similar requirements. I do not know what was on the entire list but all the things you listed were a requirement to be a surrogate in Canada. I think, very specifically, that the requirement of having a baby ahead of time is a very important one, mainly because you need to know what you are signing up for. You do not know what pregnancy is like. The other part of that is that you need to know that you can become pregnant and maintain a pregnancy. If someone is going to invest sometimes up to $100,000 in Canada - I cannot do the conversion for euro - that is a lot of money to not know whether the person you are asking to carry for you can actually carry a baby. I would want to know that person has been able to carry a baby. It is also important from the surrogate perspective. The surrogate needs to know what she is doing and signing up for because pregnancy is no joke. If you have never been through a pregnancy, you cannot make an informed decision about what you are signing up for with surrogacy.

Ms Megan Schiewe: I was also aware that we had those requirements when I signed up. One that is very important, as Ms Armstrong mentioned, is that the surrogate already have had children. The thing that sticks out is that-----

Chairman: The connection seems to be gone again.

Ms Ellen Embury: May I address the committee on one short point?

Chairman: Please do.

Ms Ellen Embury: It is not a legal requirement in Canada that a surrogate have had previous children. I would characterise it as best practice. It is something the agencies typically request from surrogates signing up with them. Ultimately, it is the clinician who makes the decision on whether a woman is able to carry, together with the psychosocial evaluations. I certainly have been involved in surrogacies where, for example, family members are carrying for each other or close friends are carrying for intended parents and the woman has not had children before. It is not a legal requirement. It is a practice that is typically directed by physicians who are in the best position to decide whether a woman is in a position to be a surrogate on that basis.

Chairman: If Ms Schiewe switches off her camera, it might help the connection.

Ms Megan Schiewe: I was making the comment that I was just glad of the requirement that

surrogates have had a baby previously. What if I had lost my own fertility or something had gone wrong and I had to have a complete hysterectomy? It is good to know that I had completed my own family first before trying to help somebody else complete theirs.

Senator Lorraine Clifford-Lee: Thank you very much. I have a brief question to put to Ms Armstrong and Ms Holub in relation to the pre- and post-birth models. We have heard some people say it is better to have legal clarity and that from the moment the baby is born, the legal rights should be with the parents. We have also heard from others that they would recommend a period of seven days or a few weeks to give the surrogate some breathing space. I would love to hear what Ms Armstrong and Ms Holub feel about that. Would they prefer circumstances in which all legal rights would go to the parents at the point at which the baby is born or do they think a hiatus, perhaps a seven-day period, would be worthwhile and useful?

Ms Jennifer Armstrong: When I hear of the seven-day process, it seems like it is coming from the adoption model to allow for the mother to change her mind. I signed a legal contract when I started and knew this was not going to be my baby. Before I even transferred, I had six or seven months to come to terms with that breathing period. Personally, I did not need any time to reflect. I knew from conception that I had no intentions. My mind was already set and I knew that this was their child. I was giving birth to their child. I do not see a need for a seven-day process.

Ms Ivana Holub: *Replies in Ukrainian.*

Chairman: Thank you very much.

Ms Megan Schiewe: I felt similarly and did not feel I needed a seven-day period. I really wanted to get the legal process over as quickly as possible. It was their child from the beginning so I did not need that waiting period either.

Chairman: Thank you. Would Ms Embury like to make a comment on that?

Ms Ellen Embury: The problem we have with the legislation in most Canadian provinces, with the exception of the province of Newfoundland, is that there is no ability to do a pre-birth order. That is an issue we have with our family law statutes from province to province. I am confident that I speak for all of the lawyers who practise in this area, probably all of the surrogates and certainly all of the agencies. Having a model that insists on a waiting period after the birth is very stressful for intended parents and it is equally stressful for surrogates. If a woman has just given birth, I will, of course, wait 24 hours to ensure she has no medication in her system before talking to her. It is at that moment that the stress can be felt and there is a fear of what is going to happen in the process at that time. The prospect of a pre-birth order, particularly with some of the pre-conception policies that the committee is considering, is something that would mesh very well. It does not have to be a one-size-fits-all formula. I would love to see Canada move towards a pre-birth law.

Chairman: I thank all the witnesses for participating today. I also want to acknowledge that they have told us their stories, which are so important. Many people are concerned about the surrogates in the discussion around surrogacy. They talk about vulnerable surrogates and how they can be protected. It is clear that once the right regulatory systems are in place, we are talking about women who are making decisions about their own bodies. It is clear from the witnesses' stories that this is how they feel as well. I thank them all so much for participating. I hope Ms Holub's time in County Wicklow is very nice and also short and she can get home

soon. I wish all the witnesses the best of luck.

The joint committee adjourned at 4.48 p.m. *sine die.*