

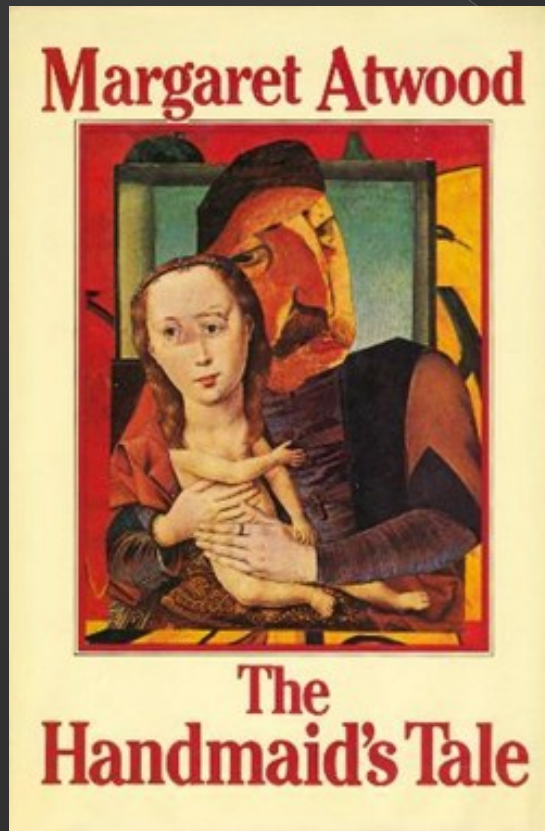


# *Empirical Research on Surrogacy and its Implications for Law Reform*

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# Cautionary Tales

- Margaret Atwood's *The Handmaid's Tale* (1985).
- The *Baby M* Case (1987)



# Royal Commission on New Reproductive Technologies (1989-93)

Recommended that all surrogacy arrangements be prohibited because:

- Women cannot give true consent until after the birth.
- The practice exploits vulnerable women.
- The practice commodifies women and children.

## *Assisted Human Reproduction Act S.C. 2004 c. 2*

6. (1) No person shall pay consideration to a female person to be a surrogate mother...

(2) No person shall accept consideration for arranging for the services of a surrogate mother.....

....

(5) This section does not affect the validity under provincial law of any agreement under which a person agrees to be a surrogate mother.

...

12. (1) No person shall, except in accordance with the regulations and a licence,

....

(c) reimburse a surrogate mother for an expenditure incurred by her in relation to her surrogacy.

*(section 12 not yet proclaimed in force.)*

# Persistency of Surrogacy Arrangements

- 25,000 babies have been born to surrogate mothers in the US. Three are born each day.
- Reproductive tourism is worth \$450 million (US) annually in India.
- It is easy to find surrogate mothers in Canada.



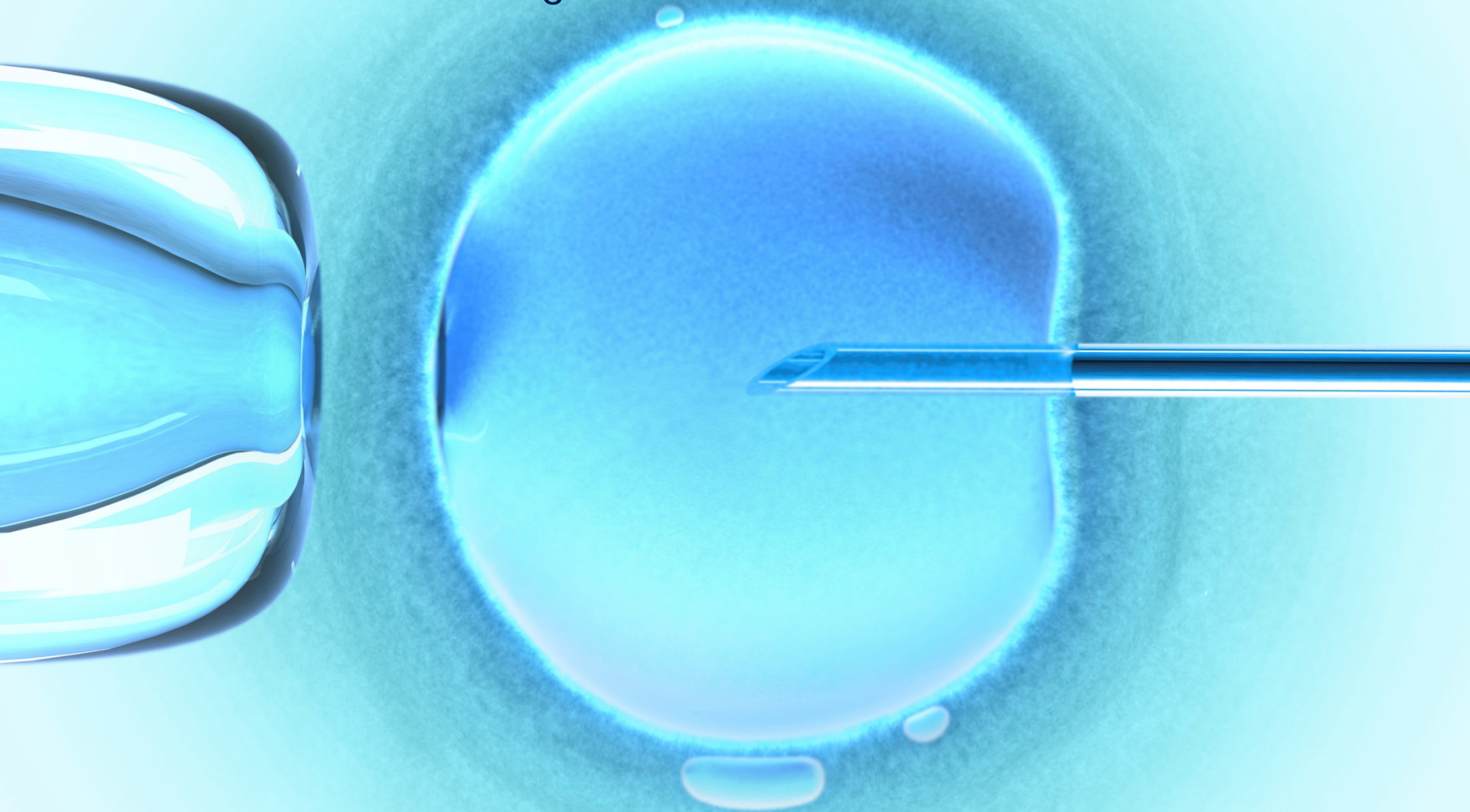
# Provincial Law

- Statutes in three provinces permit birth registration in intended parents' name.
- Courts in five provinces have ordered registration.
- A Quebec law prohibits all surrogacy but courts have ordered registration.





1994: 50% of surrogacies were by *in vitro* fertilization  
2004: 5% of surrogacies were *in vitro* fertilization



"Canadian surrogates don't want to talk because they are being paid. If they talk, there'll be a record of them somewhere ....Because they could end up in prison. Most of them have signed a contract saying that they won't talk to anyone. I remember when a couple tried to throw that into my contract and I was pretty quick with that-you ain't going to gag me."





# Vulnerability

- “often have little education, little or no income, and very little personal security”. Christine Overall (1993)
- “...minority women increasingly will be sought to serve as “mother machines” .... It’s a new, virulent, form of racial and class discrimination”. Anita Allen (1991)
- “...poor, uneducated third world women and women of color...can be hired more cheaply. They can also be controlled more tightly.” Barbara Rothman Katz (1989)

# Research on Socio-Economic Status

- Most are Caucasian, Christian and in their late 20-early 30s. Most have finished high school and some are university educated.
- They have modest (not low) family incomes and relatively stable financial situations. None are on social assistance.
- Women of colour are greatly under-represented as surrogate mothers.



"I haven't thought of [the child] as mine, because she is not mine, she never has been. For one thing, she is totally Japanese. It was a little hard for me. In a way she will always be my Japanese girl, but she is theirs."

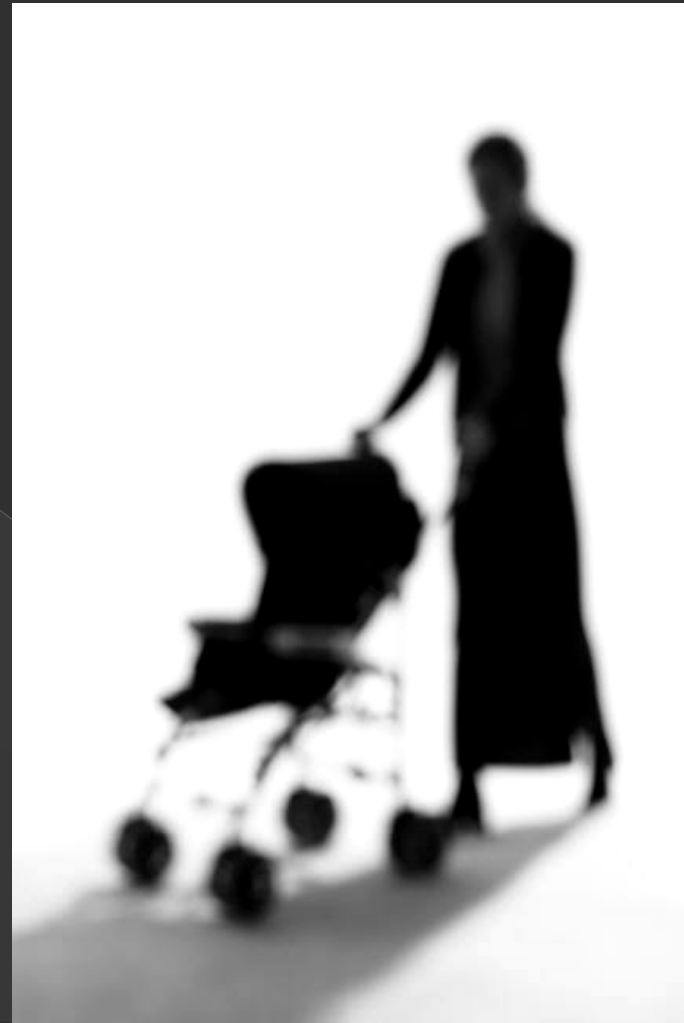


# Psychological Profile

- Standardized psychological profiling tests have consistently found that surrogate mothers are well within normal ranges on these tests.
- Surrogate mothers tend to be more likely than the general population to be self sufficient, independent thinkers, non-conforming extraverts. They are self aware, stable, and optimistic.

# Capacity to Consent

The RCNRT concluded that the physical and hormonal changes of pregnancy may "affect her thoughts and feelings about what she is doing and the foetus she is carrying, [and] these effects cannot be predicted precisely before pregnancy begins".





"I almost felt guilty for not feeling bad about giving up the baby."

"Surrogate mothers were highly confident from the start about the surrogacy process...many knew that they could do this emotionally, and were convinced that they would succeed, demonstrating self-efficacy at the start ... and six months post relinquishment." van den Akker (2005)

# Motivations

- "...little self-determination if she cannot find sustaining and dignified work and resorts to surrogacy as a final economic resort." (Raymond, 1993)
- "reproductive prostitution" and "a form of slavery." (Overall, 1993)
- "...economically and socially vulnerable women as at its disposal for a price." (Allen, 1991)



## Findings on Motivations

"If you're being paid for your time, it's like a contract and it severs it completely at the end because it is a job done and you're paid for it and that's the end of it. And so if you think like that, I think it's, it balances everything up and it's like a goal to go towards if you see it."



“[We] have completed our family but I was disappointed at never having the opportunity to be pregnant again. At the same time, I was becoming increasingly disillusioned with, what I feel are, the social injustices of gay rights. ....With surrogacy, I can help create a family for a person who otherwise would have no way of fulfilling their dream or parenthood, AND experience pregnancy again for myself....well, I only needed to know where to sign up!”



# Relationship with the Commissioning Parents

"...the surrogacy business...intends to keep the inseminated women under constant surveillance by his private detectives throughout the nine months of their pregnancies." Gena Corea (1988)





# What the research shows

- The relationship between surrogate mothers and commissioning parents are very good.
- Pre-conception agreement on issues such as medical issues (abortion and fetal reduction); information sharing, conduct and diet, expenses, insurance, details of turning the child over, parentage, and post birth contact.





"It's given me the chance to experience a pregnancy and a birth when I'm in control, not the doctors. ...I know what I'm doing this time and I'm not going to allow things to be done to me that were done to me in my previous pregnancy. ...One of the things that attracted me to surrogacy [was] the opportunity to have a pregnancy and birth without the responsibility of having a child to bring up after it."

# Feelings during and after the pregnancy

- Very few women regret the decision to participate.
- Rarely refuse to hand over the child.
- Overwhelming majority express feelings of pride and accomplishment.

"The best part was giving [the commissioning parents] a daughter. It is a humbling experience. When I gave [the baby] to [the commissioning mother] she stated, "I'm holding my dream. Not many people get to do that in their lifetime". And that to me summed it all up, I'd given her her dream."

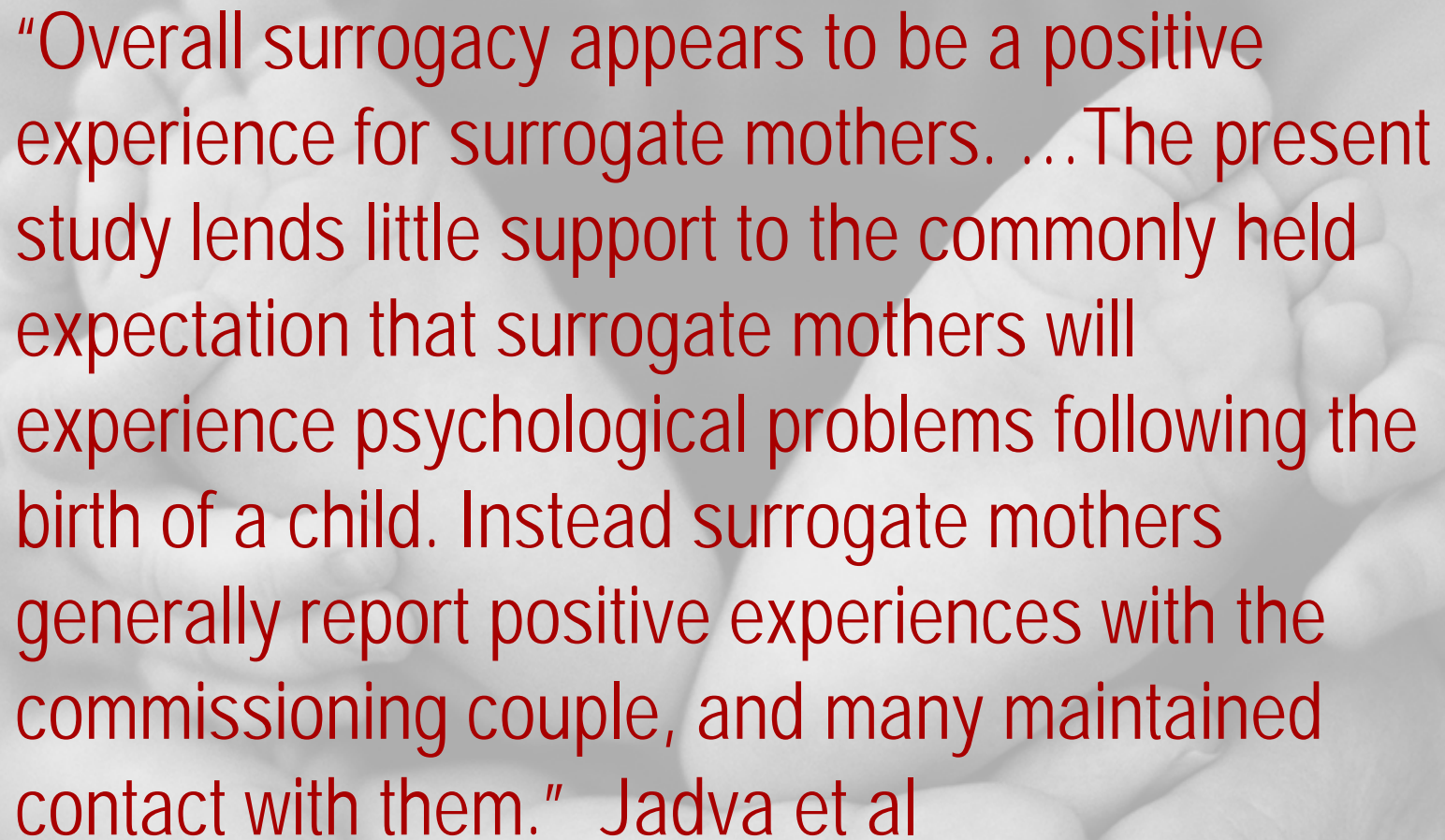
# Objectives of A Regulatory Regime

- To ensure that women contemplating surrogacy have the informed ability to make that decision.
- To ensure that they have the capacity to be able to resist the pressure to participate in surrogacy or to be controlled by others during the pregnancy.





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- Informed consent
  - Screening and counseling
  - Independent legal advice
  - Statutory provisions on personal autonomy and privacy
  - State-insured health care
  - More uniformity on birth registration
  - International protocols



"Overall surrogacy appears to be a positive experience for surrogate mothers. ...The present study lends little support to the commonly held expectation that surrogate mothers will experience psychological problems following the birth of a child. Instead surrogate mothers generally report positive experiences with the commissioning couple, and many maintained contact with them." Jadva et al