

## **R. v. Picard and Canadian Fertility Consulting Ltd.**

### **Agreed Statement of Facts**

#### **Background**

1. Pleiades (Leia) Picard became involved in the fertility industry in 2004 as a surrogate mother. Between 2004 and 2007, she was a surrogate on two occasions and worked in the industry as a fertility consultant.
2. In 2007, Picard opened a fertility consulting business, Canadian Fertility Consulting Ltd. (CFC)<sup>1</sup> in Brighton, Ontario, conducting business throughout Canada and internationally. CFC links interested parents with surrogates and egg donors and offers referrals to clinics and lawyers. Typically, CFC would have approximately 30 active donors, 20 pregnant surrogates and 30 intended parents. Intended parents pay CFC a consulting fee of \$1,125 for egg donation, \$4,520 for surrogacy (later increased to \$6,400), while international clients pay \$8,400 for surrogacy. Parents also pay sums into a CFC trust account to cover surrogate and donor expenses. Fertility clinic fees and medical expenses are additional and are paid directly by the parents.
3. The federal government regulates the fertility industry through the *Assisted Human Reproduction Act* (AHRA). Section 6(1) of the AHRA prohibits the payment of consideration to a surrogate. Section 6(2) prohibits accepting or offering consideration for arranging the services of a surrogate. Section 7(1) prohibits the purchase of ova from an egg donor. Health Canada policy permits reimbursement to donors and surrogates of expenses and disbursements related to donation or surrogacy. This cannot involve paying consideration to donors or surrogates for their services or accepting payment for arranging surrogate services or similar financial gain. At all material times, Picard had been advised of and knew and understood the AHRA prohibitions and Health Canada policy.
4. In August and September of 2011, Assisted Human Reproduction Canada (AHRC)<sup>2</sup> received complaints that Picard and CFC were contravening the AHRA. It referred the matter to the RCMP. The RCMP investigation revealed violations of sections 6(1), 6(2) and 7(1) of the AHRA. The evidence gathered by RCMP investigators included the business records of CFC, such as expense receipts, spreadsheets, emails, contracts and health profiles that were seized pursuant to search warrants; the financial records of CFC and Picard obtained by means of production orders; and statements from egg donors, surrogates, intended parents, former and current employees of CFC and from Hilary Neiman, a US lawyer convicted in the United States of mail fraud by circumventing adoption laws. Some donors, surrogates and intended parents refused to be interviewed. Picard and CFC were charged with various offences in February 2013. This is the first prosecution under the AHRA.

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<sup>1</sup> Picard is the sole director and directing mind of CFC.

<sup>2</sup> This agency was closed on September 30, 2012 and Health Canada assumed its responsibilities.

Count 1: Purchasing Ova from Egg Donors, contrary to s. 7(1) of the AHRA

5. Former and current CFC employees told the RCMP that CFC paid egg donors a flat fee of \$5,000 and did not request expense receipts for these payments. In August, 2011, Picard received a letter from the AHRC warning her that this practice might be in contravention of the AHRA. Some CFC employees said that Picard directed them to create "fictitious" or "estimated" expense spreadsheets. Employees were supposed to estimate donor expenses, ensuring that the total amount was close to \$5000.

6. The RCMP reviewed CFC's business and financial records and interviewed five egg donors in the GTHA: B.K., H.O., A.B., C.S. and N.V. In each case, CFC paid the donor significantly more than her actual incurred expenses. The egg donation process involved a few steps. The first step was to complete a donor profile; the second step was to attend a fertility clinic for physical examination, an ultrasound, review of medical history and counselling; and the third step was to attend the clinic several times to receive hormone treatments, culminating in the egg retrieval procedure.

7. B.K. told RCMP the following: In 2011, she donated eggs through CFC three times and received \$5,000 per donation. She never sent receipts to CFC and incurred few expenses. From the outset, B.K. made it clear to CFC that she was not willing to submit receipts. When asked about her motivation for donating, she told the RCMP that she loved what CFC did, that it was a "learning experience" and that she was "curious," but later agreed she would not have become an egg donor if CFC had only provided reimbursement for actual expenses incurred. She reported that she had a good experience with CFC and recommended egg donation to her girlfriends.

8. H.O. told RCMP the following: She was referred to CFC by a fertility clinic and by intended parents that she planned to work with. After speaking with Picard, however, H.O. decided that she was more comfortable with the anonymous donor process and completed donor profile forms for CFC. She liked that Picard was always available to talk to her and answer her questions. In the fall of 2011, H.O. donated eggs once and received \$5,000. CFC never asked her to submit receipts. She estimated her actual expenses were \$2,500 or \$3,000, as she missed several days of work for medical appointments and health issues.

9. A.B. told RCMP the following: She discovered CFC through a Craigslist ad searching for healthy eighteen to twenty-five year olds who were willing to donate eggs. Starting in 2010, A.B. donated eggs through CFC five times and received \$5,000 per donation. During one of the donation processes, Picard asked her for a completed "expense spreadsheet." She asked A.B. to break down her expenses by category and fill in numbers so that they added up to \$5,000. When A.B. told Picard that she only paid only for gas and parking, Picard stated she would also be reimbursed for her time, hassle and for the toll on her body. When the RCMP seized CFC's records in February, 2012, A.B. was referred to another fertility consultant. That company asked her to fill out a similar expense spreadsheet "the same way I did Leia's." CFC did not ask for receipts and did not ask A.B. to complete spreadsheets for her four other donations. A.B.

estimated that her actual expenses were \$300 to \$500 per donation. Medical expenses were paid separately by the intended parents.

10. C.S. told RCMP the following: In 2010 and 2011, she donated eggs through CFC twice and received a total of \$10,000. She became involved with CFC after responding to a Craigslist ad for egg donors. While C.S. understood that she would be compensated for her transportation, medication and other costs in attending the fertility clinic in Toronto for a medical exam, hormone treatments and the harvesting of her eggs, C.S. paid nothing for these expenses. CFC did not ask her to track expenses or submit receipts and she was not presented with an expense spreadsheet.

11. N.V. told RCMP the following: She was referred to CFC by a friend. She donated eggs through CFC once in 2011 and received \$5,000. CFC did not ask her to submit receipts or an expense spreadsheet. N.V. did not experience a loss of wages and estimated that her total expenses were \$250. CFC continued to send emails to N.V. requesting her to donate again and offering \$200 for successful referrals of other women as egg donors. CFC records show that 29 eggs were retrieved from N.V. and shared with two couples.

#### Count 2: Paying Consideration to Surrogates, contrary to s. 6(1) of the AHRA

12. CFC surrogacies involved two different contracts. (1) The intended parents would sign a contract with CFC for their consulting services. (2) The intended parents and surrogates sign a contract setting out the terms of the surrogacy. Such contracts typically included a provision requiring the parents to pay surrogate expenses up to a capped amount (usually \$18,000 to \$24,000 in monthly instalments). In many contracts, reimbursement was conditional on the surrogate providing receipts "if receipts are available given the nature of the particular expense." The parents then contracted with CFC to provide disbursements and reimbursement on their behalf.

13. CFC employees told the RCMP that CFC paid all surrogates the maximum contracted amount for expenses whether or not the surrogate provided receipts and regardless of the nature or amount of their actual expenses. Several surrogates submitted receipts for expenses that were not related to surrogacy. These included rent, family expenses, household purchases, entertainment-related purchases, car insurance, internet, utility and phone bills. Some of these expenses would have been incurred irrespective of the pregnancies. The tallied receipt totals often differed from the monthly payments given to surrogates. In many instances, the envelopes containing receipts for reimbursement had not been opened by CFC and were filed away in banker's boxes.

14. The RCMP investigated three surrogacies in the GTHA: the L.S. L.H. and R.D. surrogacies. In each case, CFC made monthly payments to the surrogate that were unrelated to their out-of-pocket expenses.

(i) The L.S. surrogacy

15. L.S. told RCMP the following: She met Picard online in 2010 when she responded to a Craigslist advertisement seeking surrogate mothers. She completed one surrogacy through CFC for intended parents N.F. and C.B., a couple from France. L.S. told RCMP that she primarily communicated directly with the intended parents and communicated with Picard only to get her monthly payments or when she sent in her expense receipts. She also said, however, that Picard was "very supportive along the way."

16. L.S. reported that she had an embryo transfer performed in San Diego. She received the maximum contracted monthly payments of \$1950 from CFC while she was pregnant. CFC reimbursed her separately for travel expenses, maternity clothing and expenses she incurred while on bed rest, including childcare and housekeeping. In 2011, L.S. delivered twins, for which she received an additional \$2,000, as per her contract. She submitted many receipts unrelated to her surrogacy. L.S. agreed that she would have received the payments regardless of what she submitted in receipts. L.S. estimated that she received \$22,000 to \$24,000 in total from CFC.

17. L.S. reported that near the end of her pregnancy, CFC asked all surrogates to tally their receipts and complete an expense spreadsheet. In April 2010, L.S. sent an email to Picard asking why she had to do this. Picard told her she did not, that as long as they had \$27,000 in receipts from her, they were fine and that if Health Canada audited CFC, they needed to have properly managed receipts.

(ii) The L.H. surrogacy

18. L.H. told RCMP the following: She became involved with CFC after responding to an advertisement placed by intended parents on Kijiji. L.H. completed two surrogacies through CFC for intended parents N.A. and I.M. between 2009 and 2012. L.H. received the maximum contracted monthly payments of \$1950 during her first pregnancy and \$2,200 during her second pregnancy. She also received a \$500 transfer fee, a \$500 clothing allowance, \$2,000 for a positive pregnancy and a total of \$7,400 for C-section deliveries, as per her contract. The intended parents paid her medical expenses directly.

19. The receipts submitted by L.H. to CFC were not itemized or organized in any way and appeared to be random bulk receipts. There was no correlation between the expenses and the monthly payments. When asked about the expenses she submitted, L.H. responded, "I don't understand how she comes up with the figures that she does, and how she decides to reimburse it. She just asks for, for all my receipts and expense, other expense receipts, so I sent it to her."

20. I.M., the intended father, agreed that Picard informed him that Canadian law prohibited payment to a surrogate, but allowed for reimbursement of expenses. Picard told him the monthly payments were an average of L.H.'s expenses. I.M. did not ask to



see any receipts submitted by L.H. He never questioned the payments and if asked for more money he would have paid it as he received the "gift of life," referring to his two children.

(iii) The R.D. surrogacy

21. In 2010, intended parents N.F. and S.P. a couple from British Columbia, signed a contract with Picard and CFC to assist them in finding a surrogate. They paid an initial deposit of \$5,000. In 2010, CFC found them a surrogate, R.D, who eventually became pregnant with twins. Prior to the pregnancy, N.F., S.P. and R.D. signed a contract that provided for monthly payments of \$1950, a transfer fee of \$500, a maternity clothing allowance of \$500 to \$750, a \$2,000 payment for twins, and a \$2,000 payment for having a C-section. The contract provided that N.F. and S.P. were responsible for any additional expenses incurred for such things as child care or bed rest.

22. N.F. and S.P. sent money to CFC who, in turn, disbursed the payments to R.D. They paid R.D.'s medical expenses directly. Medical expenses were not included in the monthly payments. There was no correlation between the monthly payments and the receipts submitted by R.D.

Count 3: Accepting Consideration for Arranging the Services of a Surrogate, contrary to s.6(2) of the AHRA

23. In 2011, Hilary Neiman, a US fertility lawyer, and two co-accused were convicted of defrauding the U.S. government. They sent surrogates from the US and Canada to other countries for IVF procedures. Once pregnancy was confirmed, they sought out intended parents and told them the previous intended parents had backed out of the arrangement for a variety of reasons. In most cases, there were no previous intended parents. To circumvent the U.S. adoption process, Neiman and her co-accused filed falsified pre-birth orders in San Diego, claiming there had been an agreement between the surrogate and the parents prior to impregnation, a process permitted under California law. The falsified pre-birth orders thus registered the intended parents as legal parents and gave them custody of the newborn babies.

24. In October 2011, the Federal Bureau of Investigation (FBI) told the RCMP that Neiman had made some financial payments to Picard. The charge against Picard does not involve any allegation that Picard defrauded the U.S. government or knowingly or otherwise participated in any such fraud committed by Neiman, but rather that she violated the Canadian regulatory scheme that makes it an offence to accept payment for arranging the services of a surrogate.

25. The RCMP investigated three occasions on which Neiman made payments to Picard. Investigators showed Neiman two \$10,000 cheques and one \$11,000 cheque that she wrote to Picard. Neiman told the RCMP that these were "referral fees" paid in exchange for referrals of intended parents. The amount of the fee was not divulged to

the intended parents or the surrogates. Picard did not provide any consulting services to the intended parents or the surrogates for these surrogacy arrangements. No record of the US surrogacy agreements were found in CFC files or on its computers, nor were CFC employees aware of these agreements. One of the referrals (the "J.M. surrogacy") is the subject of Count 3 on the Information.

(i) The J.M. surrogacy

26. J.M. told RCMP the following: He contacted Picard because he needed help finding a surrogate. In late 2009, Picard asked if he wanted to assume a surrogacy agreement in the U.S. She told him the original intended parents had backed out. J.M. said yes and subsequently paid \$130,000 to Neiman in two installments. Through Neiman, J.M. and his wife assumed custody of a baby girl born in San Diego to a surrogate, A.S. Picard did not provide any additional services. Unbeknownst to J.M., on March 4, 2010 Neiman sent Picard \$10,000 for referring the intended parents. When asked by J.M., both Picard and Neiman denied that Picard had received any money. When J.M. became aware of Neiman's fraud charge, he asked for a refund. Neiman sent him a cheque for \$20,000, inclusive of the \$8,951 that Picard returned to her.

(ii) Other referrals to Hilary Neiman

27. While Neiman could not remember specifically what the other \$10,000 and \$11,000 payments were for, they are believed to be related to two other Canadian couples Picard referred to Neiman: (a) J.L. and A.L. and (b) M.K. and T.D.

28. J.L. told RCMP the following: In 2010, she retained Picard to help her find a surrogate. Picard told her about a U.S. couple who had reportedly backed out of a surrogacy agreement. The surrogate was pregnant and needed new intended parents to take over the agreement. Picard referred J.L. to Neiman. J.L. and A.L. paid \$149,000 US for and completed the surrogacy through Neiman and her associates. They took custody of a baby born in San Diego to a surrogate. Picard did not provide any additional services. Neiman sent Picard a cheque for \$10,000, dated July 1, 2010.

29. M.K. and T.D. told RCMP the following: They were existing clients of Picard's looking for a surrogate. In 2008, Picard told them about intended parents in the U.S. who had reportedly backed out of a surrogacy agreement. M.K. and T.D. signed a contract and Neiman sent them the surrogate's medical and personal profile. They subsequently paid a total of \$120,000 to \$130,000 US and completed the surrogacy entirely through Neiman. Picard did not provide any additional services. M.K. and T.D. took custody of a baby born in 2009 in San Diego to a surrogate, pursuant to a pre-birth order filed in San Diego. Neiman sent Picard a cheque for \$11,000, dated October 21, 2008.