

**COMMENTS OF THE HONG KONG BAR ASSOCIATION (“HKBA”)
ON THE DRAFT REVISED CODE OF PRACTICE ON
REPRODUCTIVE TECHNOLOGY AND EMBRYO RESEARCH
(as at March 2011)**

1. **Chapter II** – Staff: The integrity, qualifications and competence of the staff responsible for clinical RT services must form the cornerstone of the Code. While most of chapter II is mandatory, some sections have been drafted permissively. In contrast, note the uniform mandatory language relating to medical treatment methods used in Chapter VIII. In Chapter II, for example :

(a) “2.4 – The person responsible *should* ensure that this Code is made known to all staff involved”.

It is the HKBA’s view that it is mandatory that the Code be made known to all persons involved in an RT service;

(b) “2.7 – the overall clinical responsibility for RT procedures *should* be held by registered medical practitioners....”.

It is the HKBA’s view that this should be a mandatory requirement and any necessary practicable exclusions can be prescribed, as has been done for intravaginal and intracervical insemination.

(c) “2.10 – the person in charge of a RT laboratory *should* have an appropriate scientific or medical degree”...

It is the HKBA’s view that the person in charge of an RT laboratory must have an appropriate scientific or medical degree to ensure the protection of the public and proper standards of care.

2. **Chapter III** – The general tone of this chapter requires mandatory compliance but in para 3.4 under the subheading ‘Minimum requirements for RT Centre Offering IVF Service’ permissive language is used.

Where the RT centre is undertaking research (possibly ethically the most challenging area of RT) para 3.7 sets no minimal requirements in this regard at all.

3. **Chapter IV** – “any RT procedure may be provided only to persons who are parties to a marriage...” Also see Chapter X, 10.10 ‘Storage of embryos for married persons only’.

The HKBA notes that many jurisdictions adopt the view that the right to reproduce is a basic human right.

Similar RT provisions in the UK, Canada and Australia have been found to be unconstitutional and have been amended accordingly.

The requirement of marriage has obvious implications for “3 parent IVF” which is likely soon to be introduced in the UK to assist couples afflicted by mitochondrial diseases.

The HKBA notes the practical effect of the current legislation would force a single, sterile Hong Kong woman who wants to conceive, elsewhere. Jurisdictions nearby provide RT for single women and unmarried couples, as well as ‘family balancing’ (in other words gender selection when there are no sex-linked genetic indications).

The Council is asked to provide an indication in practical terms of the effect of the marriage requirement in Hong Kong on RT.

4. **Chapter VIII** deals with the treatment method. The Council is asked to comment on the following:

Para 8.10 does not stipulate when pre-implantation genetic testing, say for example in Tay-Sachs disease, familial Alzheimer’s or Huntington’s disease, should be undertaken. However ethical guidelines for such a procedure are dealt with under Appendix III.

The Code does not appear to address the circumstance where a donor asks not to be informed if he carries a defective gene with the promise of severe disability later in life.

The Code does not appear to address pre-implantation genetic testing, as distinct from infectious disease testing, when the gamete donor is anonymous, except on a case by case basis.

The HKBA recommends that Council give consideration to the foregoing and stipulates that each set of unique circumstances be considered on a case by case basis.

5. **Chapter X** –

In 10.13 – 10.15 post-humous should be one word, ‘posthumous’.

A surviving widow can donate gametes or embryos but cannot legally be inseminated herself as she is no longer married. The language of 10.15 does not recognise that under current legislation, implanting a widow with her own fertilised embryo would be unlawful.

6. **Chapter XI** – Para 11.9 refers to inducement and payment to potential donors and 12.1 with commercial surrogacy, which appears less restrictive. Appendix II deals with Guidelines for Payment to Donors but does not refer to or prohibit payment by way of gift.

Other jurisdictions prohibit ‘valuable consideration’ in relation to gamete donation and surrogacy arrangements, which includes payment by way of gift.

The Bar Council noted this wider ambit which may be a matter that should be considered in the context of this Code revision.

Hong Kong Bar Association

12th May 2011