

HUMAN REPRODUCTIVE TECHNOLOGY ORDINANCE

PROHIBITION OF ADVERTISEMENT OF SEX SELECTION THROUGH REPRODUCTIVE TECHNOLOGY PROCEDURES

SUBMISSIONS

Background

1. The Food and Health Bureau (“the Bureau”) is proposing to amend the Human Reproductive Technology Ordinance Cap. 561 (HRTO) to prohibit advertisements in Hong Kong on sex selection achieved by reproductive technology (RT) procedures.
2. Currently, HRTO prohibits sex selection of embryos for non-medical reasons. Section 15(3) of HRTO provides that:

‘No person shall, by means of a reproductive technology procedure, cause the sex of an embryo to be selected, whether directly or indirectly (including by the implantation of an embryo of a particular sex in the body of a woman), except where-

- (a) the purpose of such selection is to avoid a sex-linked genetic disease specified in Schedule 2 which may prejudice the health of the embryo (including any foetus, child or adult which may arise from the embryo); and*
- (b) not less than 2 registered medical practitioners each state in writing that such selection is for that purpose and such disease would be sufficiently severe to a person suffering it to justify such selection.’*

While sex selection of embryos on non-medical grounds is not allowed, the Ordinance does not prohibit advertisements of such sex selection services.

3. The Law Society was advised that there have been increases in local press advertisements and promotional materials on sex selection in obstetric

services through RT procedures offered in overseas countries. The Bureau now proposes legislative amendments to

- (a) prohibit advertisements and promotion of sex selection services on non-medical grounds, irrespective of whether the service is rendered inside or outside Hong Kong;
- (b) impose prohibition on advertisement and promotional materials which appear on the internet and other media; and
- (c) impose penalty for contravention of the abovementioned prohibition; the level of proposed penalty would be similar to the current penalty for the prohibition of advertisement relating to surrogacy arrangement and commercial dealings of embryos / gametes.

Comments

4. The Law Society has reviewed the HRTO and a few comparable jurisdictions. There is seemingly a general trend on the ban of advertisements on sex selection on non-medical grounds. For example, in Canada *the Assisted Human Reproduction Act 2004* (AHRA) bans sex selection in human reproductive technology, subject to an exception that allows sex selection to prevent sex-linked disorder or disease (section 5 (1)(e)). The legislation further provides that no person shall advertise the doing of any human reproduction act prohibited in the Act¹. Advertisements on purchase of gametes², purchase and sale of embryos³ and other reproductive materials (cells or genes)⁴ are not allowed as well.
5. In New Zealand sex selection of an embryo for any reason is prohibited⁵. Section 15(1) of the *Human Assisted Reproductive Technology Act 2004* stipulates that no one may, with the intention of obtaining responses from members of the public, publish, or arrange for any other person to publish,

¹ s.5 (2).

² s.7 (1) of the AHRA.

³ s.7(2) of the AHRA.

⁴ s.7(3) of the AHRA.

⁵ s.11(1) of the Human Assisted Reproductive Technology Act 2014 (New Zealand).

any material that invites persons to participate, or to inquire about opportunity for participating, in actions prohibited by section 8, 13 or 14. Approval is to be sought from an Ethics Committee for any use of reproductive technology pursuant to section 19.

6. The Law Society considers sex selection of embryos for social reasons, i.e. on non-medical grounds, could lead to encouragement of eugenics and stereotypes, imbalance between males and females, entrenchment of gender-specific preference and also sex discrimination. As such commercial advertisement and promotion of such services should not be allowed. A ban on such advertisement is also in line with the above international practices.
7. In the course of review of the proposal, the Law Society is aware of a current Discrimination Law Review launched by the Equal Opportunities Commission. The review invites, among other things, views on amendments to the HRTO (Consultation Question 71). The Law Society is studying the said consultation paper of the EOC.
8. Subject to the above review on discrimination legislation, and also subject to the drafting of the proposed legislative amendments, the Law Society is therefore in support of the proposal for prohibition of advertisements for sex selection on non-medical grounds. The ban should be imposed on the promotional materials available on the internet and other media.
9. The Law Society also agrees that the legislative amendments should be sought to introduce penalty with level similar to those currently in place for contravention of prohibition of advertisements on surrogacy arrangements and commercial dealings of embryos / gametes. The penalty now in place for these offences is that on a first conviction, a fine at HK\$25,000 and imprisonment for 6 months; and on a subsequent conviction, a fine at HK\$100,000 and imprisonment for 2 years.
10. The HRTO, which was drafted more than a decade ago, is outdated when compared to overseas legislations. The HRTO requires a revamp to bring it in line with the current values and norms, both locally and internationally. When the Administration is drafting the legislative amendments, the Law Society suggests the Administration to draw reference from legislation in comparable jurisdictions. Examples are the *English Surrogacy Arrangements*

Act 1985 which carries definitions of "*advertisement*", "*electronic communications network*" and "*on a commercial basis*". The Canadian *Assisted Human Reproduction Act 2004* on the other hand deals with the types of human reproductive technologies of which advertisements are banned.

11. Apart from the above, the Administration should also review the experience of these countries in the implementation of their law relevant to the banning of the advertisements. The proposed review is relevant in particular when nowadays promotion could be offered online with wide and easy accessibility.
12. The Law Society is concerned that there is currently a lack of resources available for members of the public to understand the law and consequences relating to RT procedures. The Law Society stresses that enforcement of the law should be accompanied by measures to educate and raise public awareness on the HRTO. There should be clear guidance and explanation, in laymen's terms, offered to the public to ensure that there is a correct understanding of the strict prohibitions under the Ordinance, its underlying objectives, and the far reaching consequences which may arise from RT procedures, to include potential parental status, criminal and immigration issues.

The Law Society of Hong Kong
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