



Coalition des
Familles LGBT+
LGBT+ Family Coalition

A LITTLE GUIDE ABOUT SURROGACY

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INTRODUCTION

An increasing number of LGBTQ+ people are turning to surrogacy as an option for family building. This guide was created to share basic information around the process of starting a family through surrogacy. It is intended to complement our workshops for future parents where more detailed information is provided. Please keep in mind that the information in this guide is a snapshot of surrogacy, for Quebec residents, in the fall of 2021. We hope to be able to update this guide very soon once Bill 2 on family law reform is adopted.

This booklet is a work in progress. As surrogacy is constantly evolving, we learn as much from members of the LGBTQ+ community as they do from us. If you have any comments, questions or things you would like us to correct in this document please let us know by contacting: info@famillesLGBT.org

A LITTLE GUIDE ABOUT SURROGACY

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We have attempted as much as possible to use, in this guide, a gender-neutral language to recognize the fact that trans and non-binary people start their families through surrogacy and are as well sperm and egg donors.

BECOMING A PARENT: A PERSONAL JOURNEY

We often hear that being a parent puts you in the public domain. In your case, your decision itself is a public affair, before conception has even happened! Believe us, once you announce your intention to others, you'll hear all kinds of reactions. The majority of those around will rejoice with you. And many people will ask you lots questions. Indeed, you might be the only future LGBTQ+ parent whom they know and your unusual path to parenthood will peak their curiosity. The questions will follow you with the arrival of your child. It's therefore important that you feel comfortable with how you create your family.

How will the child come into your life? Who will carry it? Can a child be raised without a father/mother? Could you raise a child in a multi-parent family (3 or more parents)? Will your extended family accept each parent (whether biological or not) as the child's real parents? Will you be able to be out as an LGBTQ+ parent at work? How will your child talk about their family at school?

You're not obliged to respond to these questions from everybody you know. It's up to you to judge what you reveal, when you choose to share and to whom. But keep in mind that how you talk about your family can help sensitize the world about the reality of LGBTQ+ families; when done thoughtfully and candidly, it can contribute to a world more open to our children. There are no right or wrong answers; take the time to find answers that work for you. Become comfortable with the idea that having a child is a well thought-out choice, both positive and personal.

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01 DIFFERENT ROLES) AND WHAT LANGUAGE DO WE USE TO DESCRIBE THESE ROLES (ESPECIALLY GIVEN THAT TRANS AND NON-BINARY PEOPLE CAN BE INVOLVED IN THIS PROCESS)?

Surrogacy is one of several paths that people in the LGBTQ+ community take to start their families. The most common example that we see in our community is a couple of cisgender men who would like to have a baby using the sperm of one of the two men. Surrogacy is also used by lesbians who can't or don't want to carry a child, as well as for any situation with trans or non-binary parents where a pregnancy is not possible or desired. In all these cases, whether we are referring to solo parenting, parenting as a couple or pluriparental families, when a surrogate is required, we refer to these future parents as "intended parents".

In English we use the non-gendered term 'surrogate' to refer to the person who will carry the foetus. Many in our community refrain from calling this person a 'surrogate mother' because the term 'mother' has very special meanings and connotations that revolve around parenting. Often surrogates are not comfortable with this term because they do not see themselves in a parental/maternal role. Many intended parents feel the same way.

In French, terminology is more complicated. If we use the feminized term 'porteuse' or 'gestatrice' it implies that the person who carries the foetus is a woman. We are however increasingly encountering non-binary and trans-masculine surrogates and so we prefer the term 'personne porteuse' or 'personne gestatrice' (the word 'personne' is feminine so its corresponding adjectives are always feminized).

The same question of inclusive language applies to 'sperm donors' who also, of course, play a role in the process. Sometimes one of the intended parents can be the person who provides the sperm and so the word 'donor' may have a strange resonance. Sometimes the sperm will come from an outside source (friend, sperm bank). The same linguistic considerations in French apply to sperm donors because the donor can be a trans woman or non-binary person. So instead of saying 'donneur de sperme' we prefer saying 'la personne qui fait le don de sperme' unless we specifically know that this person is male.

Finally, another person involved in the process is the 'egg donor'. As you will see below, the egg donor is not always the same person as the person who will carry the pregnancy. In French we like to refer to this person as 'la personne qui fait un don d'ovules' or the 'personne donneuse'.

02 WHAT IS THE DIFFERENCE BETWEEN TRADITIONAL AND GESTATIONAL SURROGACY (ADVANTAGES AND DISADVANTAGES)? ARE THERE OTHER TYPES OF SURROGACIES?

Traditional surrogacy refers to the situation where the person who will carry the baby is also the person whose own eggs are used in the creation of the embryo. Usually, this type of surrogacy is carried out simply by inseminating the surrogate and this can be done at home (see our insemination guide by clicking the link: familieslgbt.org/documents/pdf/CFLGBT_inseminations_EN.pdf) or in a fertility clinic. The surrogate will therefore be genetically related to the baby. There are several advantages to this type of surrogacy. First, an egg donation is not necessary and so expenses are decreased. Also, traditional surrogacy usually requires very little medical intervention and is therefore easier on the surrogate's body and much less expensive for intended parents. Finally, for the children of traditional surrogacy their origins are easier to explain given that the person that carried them is also their genetic genitor.

Most surrogacy in Canada however is carried out through what we call gestational surrogacy, meaning that the surrogate will go through in vitro fertilisation (IVF) with an embryo which was created with a donated egg from another person. All surrogacy agencies in Canada insist on doing surrogacy through gestational carriers. The thinking behind this is that the psychological connection to the foetus will be less strong if there are no biological connections and the surrogate will more easily give the newborn to the intended parents.

Variations on these two themes depend on the source of the gametes (sperm and eggs). Traditional surrogacy can be carried out with the sperm of one of the intended parents or with donor sperm. The embryo used for gestational surrogacy can be from the gametes of the intended parents or donors or a combination of both.

03 WHAT IS THE DIFFERENCE BETWEEN TRADITIONAL AND GESTATIONAL DO SURROGATES EVER WANT TO KEEP THE BABY?

Research shows us that there are extremely few cases of surrogacy where the surrogate doesn't want to give the baby to the intended parents.¹ Also, gestational carriers, who are mostly associated with surrogacy agencies, go through a rigorous screening and counselling process before being accepted as potential surrogates. In Canadian surrogacy agencies surrogates must also already have a child of their own, so what it means to give birth to a child is not just an abstract notion. Finally, as mentioned above, most surrogates are not biologically linked to the baby they are carrying and clearly separate their role as surrogate from a parental role.

04 WHO PROVIDES THE GAMETES? WHERE CAN I FIND EGG AND SPERM DONORS?

In some cases, the intended parents can provide the gametes required for surrogacy. When this is not possible, some people are lucky enough to have friends or even family members who are willing to donate their sperm or eggs. When this is not available, intended parents often turn to egg and/or sperm banks. Sperm and eggs can only be ordered through a licensed fertility clinic and every clinic chooses which banks it will or will not work with according to health and safety regulations as well as their assessment of the quality of the donated gametes. Once you start to work with a fertility clinic or agency you can access donor profiles (medical history, physical characteristics, ethnicity, education level, etc.). See our resource list for sperm and egg banks that are often used.

One other option is to find egg and/or sperm donors through online groups (see resources below). Although this can be less expensive, this person will not have gone through a screening or counselling process and will most likely have to do so at the fertility clinic that you use.

1 Karen Busby & Delaney Vun, "Revisiting *The Handmaid's Tale*: Feminist Theory Meets Empirical Research on Surrogate Mothers" (2010) 26:1 Canadian Journal of Family Law.

Janice C. Ciccarelli & Linda J. Beckman, "Navigating Rough Waters; An Overview of Psychological Aspects of Surrogacy" (2005) 65:1 Journal of Social Issues 21.

05 CAN SURROGACY BE CARRIED OUT IN QUEBEC? WHAT IS THE LEGAL SITUATION IN QUEBEC/CANADA? WILL THE LEGAL SITUATION CHANGE?

Though surrogacy itself is not technically illegal in Quebec, surrogacy contracts will not be legally recognized or enforced. In fact, the *Civil Code of Quebec* establishes that ‘any agreement where a person agrees to procreate or carry a child for another person is absolutely null.’

The *Assisted Human Reproduction Act* (2004) is the federal law that addresses surrogacy. The *AHRA* makes it illegal to pay a person to be a surrogate meaning that paying a salary to a surrogate is not allowed. Intended parents are however allowed to reimburse expenses that a surrogate may incur related to the conception, pregnancy, or delivery. These are called receiptable expenses because proof of expenses must be provided.

In Quebec, legislators have been talking for the past five years about laying down a legal framework for surrogacy. There is a consensus from all four provincial political parties that surrogacy should be ‘legalized’ in Quebec, and it is only a matter of time before legislation around family law reform will be put into place to better regulate Quebec surrogacy. With Bill 2, launched on October 21, 2021, the government is proposing a legal framework for surrogacy that will be very beneficial to future parents.



06 CAN I FIND A SURROGATE ON MY OWN?

Independent surrogacy or private surrogacy is an arrangement where the intended parents and surrogates decide to bypass the use of an agency. While the technical aspects of the surrogacy can be completed using only legal and medical professionals, using an independent surrogate is less expensive because there are no agency fees.

Those who decide to proceed with independent surrogacy arrangements should make sure that the surrogate receives third-party support (counselling, emotional support) throughout the process.

It should also be noted that if you do take the independent route, all financial transactions, including reimbursements, must be handled directly between you and the surrogate. Although this renders all your transactions completely transparent, not having the agency as an intermediary in this process could create tensions between you and the surrogate.

Sometimes intended parents find a friend or family member who is willing to carry their child.

When the intended parents know their surrogate personally the term used is 'identified surrogacy'. In these situations, intended parents and surrogates may be able to work directly with an attorney to complete the surrogacy process.

07 ARE THERE ADVANTAGES TO USING AN AGENCY?

Full-service surrogacy agencies are essentially one-stop shops for intended parents and surrogates. Agencies bring structure to your parental project and support for intended parents regarding the different steps and their logical sequence.

Agencies provide all the necessary surrogacy services, including matching of surrogate with intended parents (which can be a highly difficult process when unaccompanied), screening, counseling, surrogacy planning and case management. They can help you coordinate the necessary legal and medical processes, providing you with numerous choices of professionals that you can work with.

In independent surrogacy, it is up to the intended parents to find their surrogate as well as the necessary professionals on their own.

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WHAT ARE THE BASIC STEPS IN A SURROGACY PROJECT?

The following are the steps that usually occur in a surrogacy project though the order may vary:

- Finding information (online, through friends and acquaintances, through the LGBT+ Family Coalition, through a fertility clinic or surrogacy agency)
- Determining if the surrogacy will be traditional or gestational
- Deciding on whether to proceed through an agency or independently
- Determining who the surrogate will be
- Choosing an egg and/or sperm donor if necessary
- Establishing a contract(s) with the egg/sperm donor(s) if one has not already been created in the medical setting
- Having discussions with the surrogate to determine if the match is appropriate
- Establishing a legal contract between surrogate and intended parent(s)
- Writing up a will, to define who will be the guardian of the child if anything happens to both intended parents during and up through the pregnancy
- Choosing a fertility clinic and having fertility assessed
- Insemination (for traditional surrogacy) or in vitro fertilisation (for gestational surrogacy)
- Following up with the surrogate during the pregnancy
- Pregnancy and childbirth
- Signing the final legal papers

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WHERE ELSE CAN SURROGACY TAKE PLACE FOR INTENDED PARENTS LIVING IN QUEBEC?

Because of the legal grey zone around surrogacy in Quebec some intended parents choose to do surrogacy outside of the province. The most popular destination by far is Ontario because of its proximity as well as the fact that members of our community have already worked with different agencies in the province (see resources below). There are other agencies elsewhere in Canada that can be used.

International surrogacy is also a possibility. The LGBT+ Family Coalition advises against international surrogacy which is currently open to Canadians who wish to do surrogacy in other countries. One of the main reasons we are against international surrogacy is because of our strong ethical stance that all parties directly involved in a surrogacy project (intended parents, surrogate, gamete donors and the future child) must be treated in an ethical manner. For jurisdictions outside of our own country Canadian citizens have no control over the laws, regulations, and practices and so the ethical treatment of all parties cannot be ensured. We are especially concerned about situations where there is a large wealth discrepancy between surrogates/gamete donors and the intended parents because the risk of exploitation is high.

Although it may also be tempting to do surrogacy in the United States because of promises of guaranteed success and full-proof legal recognition, members of the Coalition have experienced several problems with American agencies relating to unforeseen medical expenses not covered by health insurance and laws that vary between American jurisdictions vs what is legally recognized in Quebec.

We therefore currently suggest that Quebec residents who are interested in surrogacy proceed with Canadian agencies.

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WHAT HAPPENS, LEGALLY SPEAKING, IF I DO SURROGACY IN ANOTHER PROVINCE?

Because surrogacy arrangements are recognized in Canadian provinces outside of Quebec, when a child is born through surrogacy in another Canadian province the legal contract in place makes it easy for the surrogate to immediately renounce parenting rights and for the intended parents to be named on the child's birth certificate.

A birth certificate from another province is legally recognized in Quebec. While it is possible to request the issuance of a Québec birth certificate once the family is back in Québec after the birth, there is no strong reason to have the initial document changed to a Quebec birth certificate.

There are some differences from province to province in terms of recognition of intended parents on official documents. For example, Ontario doesn't require a court order to say that the intended parents are the parents after the birth, whereas Alberta still requires a court order to be put in place. A fertility lawyer will be able to explain these differences.

For children born through surrogacy in Quebec, after the baby is born, the surrogate must formally renounce all parental rights and obligations and the second parent (usually in the case of gay couples this is the non-biological parent) adopts his partner's baby through what is called an 'adoption by special consent'. This is a straight-forward process has been tried and tested many times in Quebec and results in the legal recognition of both intended parents and a birth certificate that is registered in Quebec.

Once there is a legal framework for surrogacy in Quebec this will no longer be necessary. We will not have to adopt our own children and the procedure will be automatic as is the case in other Canadian provinces.

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WILL WE BE ABLE TO TAKE PARENTAL LEAVE ONCE OUR BABY IS BORN?

Although parents through surrogacy have had difficulty accessing parental leave in the past, this is no longer the case. Both parents (if there are two) in a surrogacy project will receive parental leave. Once the parent or parents are legally recognized (whether the birth certificate is from Quebec or another Canadian province) access should go smoothly.

There are currently differences in the number of weeks of parental leave afforded to surrogate parents in Quebec (whether they are LGBTQ or not) and families that have been created through other means (assisted procreation, adoption, heterosexual relations).

People who have children through a sexual relationship or by assisted procreation have access to a maximum of 55 weeks, in total, of parental leave that can be divided in various ways between the parents. The type of leave available is organized in three categories: maternity leave, parental leave and paternity leave. For lesbian couples, the same number of weeks is available, as the non-biological mother has access to ‘paternity’ leave even though she is not the father. In 2020, the Quebec government amended the *Civil Code of Quebec* to afford the same number of weeks (55) to adoptive parents by adding on ‘Benefits for when a child arrives for adoption’. Parents through surrogacy are currently only eligible for 37 weeks (parental and paternal leave) because the surrogate is awarded the 18-week maternity leave. Until surrogacy is legally recognized in Quebec, it will be difficult to even attempt to change this practice.

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DO FERTILITY CLINICS IN QUEBEC HANDLE SURROGACY PROJECTS?

Some fertility clinics in Quebec support surrogacy projects despite the lack of a legal framework for surrogacy in Quebec. These clinics require that intended parents find their own surrogate, whether the person is an ‘identified surrogate’, or someone found through a site or agency (see resources).

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WHAT TYPE OF QUESTIONS NEED TO BE BROACHED WITH THE SURROGATE?

Starting a family with the help of a surrogate can be an emotional journey that can be either very frustrating or extremely rewarding for intended parents, the child as well as for the surrogate. Because this is a pathway full of emotions, communications between the surrogate and the intended parents must be strong and consistent from the outset.

Here is a non-exhaustive list of some of the subjects that you might want to broach with your surrogate before trying to conceive:

- What will your relationship with the surrogate look like during the pregnancy? Will there be frequent or infrequent visits (in person/online?) Will the surrogate's family (partner, children) be part of these visits?
- How will you speak to your child, in the future, when the child asks about their origins? Can you talk openly about the surrogate to friends, family members, colleagues at work?
- Has the surrogate ever done surrogacy before? Do they know other people who have experienced surrogacy who they can talk to?
- Would the surrogate be open to doing surrogacy again for a second child?
- What will the surrogate's relationship be to the child? Will there be any contact? An exchange of photos or letters?
- How do the surrogate's partner and/or children feel about the surrogacy project?
- What kind of support the surrogate does have in their city/town/region?
- Will the surrogate nurse the baby immediately after birth??
- How many embryos will the surrogate accept for implantation (NB: many clinics and jurisdictions have their own rules regarding the number of embryos that can be implanted)
- What type of medical intervention would the surrogate prefer for their delivery? Would they want an epidural? Do they want to deliver at home, in a birthing centre or in a hospital? Can the intended parents be present? What would an ideal delivery look like?
- Would the surrogate want a selective abortion if they were pregnant with triplets?
- How would you all react to finding out the child had Down syndrome?

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WHAT'S IN THE CONTRACT BETWEEN SURROGATE AND INTENDED PARENTS?

Contracts/agreements show the “intent of the parties” and help as a guideline to a surrogate and the intended parents on many issues that occur (or could occur) during the relationship. These contracts/agreements set out the rights, responsibilities, and intent of all parties, in advance of the embryo transfer or insemination. Surrogacy contracts/agreements deal with important considerations/issues including:

- psychological assessment of all involved parties
- understanding of the process of in vitro fertilization
- medical examinations and medications
- sexual abstinence in the timeframe around transfer
- timing and number of embryos transferred
- number of cycles agreed upon
- prenatal obligations (in terms of alcohol, tobacco, and drugs), food or activities restrictions
- travel restrictions before term (ex: avoiding countries with diseases like Zika virus or travelling near term)
- ideas around early termination or selective reduction
- custody and parental rights
- relationship with the child after the birth
- maintenance of a valid will with the name of the guardian for the child
- life insurance for the surrogate
- assumption of risks
- expenses during the pregnancy
- expenses in case of bed rest or in case of early termination
- breach of contract
- confidentiality

Remember that in Quebec, until family law evolves, surrogacy contracts will not be legally recognized or enforced. In fact, the *Civil Code of Quebec* establishes that ‘any agreement where a person agrees to procreate or carry a child for another person is absolutely null.’ For the time being surrogacy contracts are only enforceable in Canadian provinces other than Quebec.

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WHAT DOES THE CONTRACT WITH THE EGG DONOR COVER?

Contracts/agreements with egg donors are usually much shorter than those developed with the surrogate. These contracts deal with important considerations/issues including:

- statement of intent: motivations of the donor
- custody and parental rights
- relationship with the child after the birth
- medical examinations and medications
- expenses around fertility treatments including travel expenses
- assumption of risks
- breach of contract
- confidentiality

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HOW MUCH DOES SURROGACY COST? WILL THESE COSTS CHANGE IF SURROGACY IS RECOGNIZED IN QUEBEC?

Surrogacy, even when carried out as independently as possible, is usually an expensive endeavour. Costs can include: agency fees, travel expenses, reimbursement of various expenses to the surrogate, purchase of donor eggs and/or sperm, medical fees, legal fees, counselling fees, etc. Expenses can vary a lot, depending on how many transfers will be needed, or if you must change to another surrogate mid-process.

Members of the LGBT+ Family Coalition have told us that costs are usually around \$100,000. Although these fees are high, keep in mind that they usually are spread over 2-3 years.

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CAN THE CHILD HAVE A RELATIONSHIP WITH THE SURROGATE/ EGG DONOR?

The level of involvement your surrogate has with your child in the future depends on what all parties feel comfortable with. If possible, maintaining a relationship with the person who has carried your child can be rewarding for everyone (surrogate, parents and child). Studies have shown that children who know about their birth story feel a stronger sense of self-identity. If at any point your child (or children) asks about meeting their surrogate, having a relationship will help make the experience that much smoother.

During the highs and lows of fertility treatments and the nine months of pregnancy, the intended parents have a lot of time to bond with the surrogate and the surrogate's family. Regular contact is usually maintained throughout this whole period, so when the child is born the intended parents and surrogate already share many stories, visits and web calls. This can even continue after the child is born, when the surrogate can share tips about parenting and the intended parents continue to recognize the surrogate's incredible generosity.

Interestingly, people in the LGBTQ+ community who do surrogacy speak much less often of building a relationship with their egg donor, even though it is this person and not the surrogate who has a genetic connection to the child. This is probably because contacts with gamete donors are limited to an extremely short period of time.



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WHAT ARE SOME OF THE UNKNOWNNS IN A SURROGACY PROJECT?

Surrogacy is an amazing journey, but it can be complicated! For people who are used to controlling many details of their lives, it can be frustrating because there are so many unknowns! It is important to prepare yourself for the unexpected: surrogates don't always get pregnant on the first try; there may be delays in the process or unexpected costs (medical bills or travel expenses); emotions can run high when something so important is at stake and sometimes communications between intended parents and the surrogate can break down. Trying to start a family can even create tensions in your personal relationships. Please remember to seek out support, whether through professionals, among friends or family members, or through the LGBT+ Family Coalition.

Tip: Be flexible and let go! Realize that this process requires you to relinquish control over what you thought was in your control. Think of it as practice for becoming a parent as parenting is all about letting go!

Good luck and enjoy the journey!



RESOURCES

There are many Facebook groups and resources that exist online. Some have excellent information; others are more questionable. Keep in mind as well that sometimes the information may or may not apply to your province or country. Use the internet to build your knowledge but know that each journey is unique.

NB: the list of resources provided below are only provided for informational purposes. The LGBT+ Family Coalition is not responsible for the content and information generated by these independent online resources.

Surrogacy agencies in Ontario

Canadian Surrogacy Options (CSO)

canadiansurrogacyoptions.com

Canadian Fertility Consultants (CFC)

fertilityconsultants.ca

Agencies elsewhere in Canada

Proud Fertility

proudfertility.com

Alberta Surrogacy

albertasurrogacy.com

Genesis Fertility Centre British Columbia

genesis-fertility.com

Pacific Centre for Reproductive Medicine

pacificfertility.ca

JA Surrogacy Consulting

jasurrogacy.com

Fertility clinics that do surrogacy in Quebec

MUHC Reproductive Centre

muhc.ca/reproductivecentre

Ovo Clinic

cliniqueovo.com/en

Procréa Quebec

procrea.ca/understanding-infertility/lgbt2qs-infertility

Fertility clinics in Ontario

Create Fertility Centre

createivf.com

Hannam Fertility Centre

hannamfertility.com

Repromed

repromed.ca

Sperm and Egg Banks

Can-Am Cryoservices (sperm and eggs)

canamcryo.com

Outreach Health Services (sperm only)

fertilitymatters.ca

ReproMed (sperm only)

repromed.ca

Little Miracles (eggs only, related to Canadian Surrogacy Options)

little-miracles.ca

Egg Helpers (eggs only, related to Canadian Surrogacy Consultants)

egghelpers.com

RESOURCES (CONTINUED)

Sites to find egg donors and surrogates

My Surrogate Mom

mysurrogatemom.com

Donneuses D'ovules, Mères Porteuses et Dons D'embryons du Québec

facebook.com/groups/1475805792646556

Independent Surrogacy Canada

facebook.com/groups/233516807027907

Canadian Independent Surrogates and Intended Parents - No agency staff

facebook.com/groups/994236127437644

Independent Surrogacy Canada for LGBTQ+ Community

facebook.com/groups/1561423460787765

Surrogacy Canada Support Group

facebook.com/groups/surrogacycanada

Other interesting resources

Surrogacy in Canada Online

surrogacy.ca

Canadian Surrogacy Community

surrogacycommunity.ca

Livret sur la gestation pour autrui du CUSM

muhc.ca/sites/default/files/users/user187/SUR_Surrogacy_Booklet_EN_042318.pdf