EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN [SQUARE BRACKETS].

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**IN THE FAMILY COURT**
**AT NORTH SHORE**

**I TE KŌTI WHĀNAU**
**KI ŌKAHUKURA**

**FAM 2022-044-000019**
**2022-044-000020**
**[2023] NZFC 6916**

IN THE MATTER OF THE ADOPTION ACT 1955 AND IN THE MATTER OF THE APPLICATION BY [WEI CHANG] AND [HAN JIAN] TO ADOPT [YAZHU CHANG] AND [FEN CHANG]

Hearing: 21 June 2023

Appearances: S Dalley for the Applicants
S Butterfield for the Chief Executive

Judgment: 30 June 2023

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**RESERVED JUDGMENT OF JUDGE I A McHARDY**
**[Reasons for making a final adoption order]**

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## Introduction

[1] The applicants applied for an adoption order in respect of twin children [Yazhu Chang] and [Fen Chang] who were born on [date deleted] 2019. After hearing the matter, I granted a final adoption order in the first instance having been satisfied that

special circumstances existed. I indicated I would provide my reasons for granting the application.

[2] I accordingly provide my reasons in this decision.

**Background**

[3] The applicants are in a same sex de facto relationship having lived together since 2016. They wish to have children of their own and after international enquiries they successfully completed a surrogacy arrangement facilitated by an agency in China. The in-vitro fertilisation (IVF) procedure took place in Thailand with a Thai surrogate Ms [Kanda Bunnag] (Ms [Bunnag]) using eggs donated from a woman identifying as being of Brazilian ethnicity and Mr [Jian]'s sperm. The surrogate mother gave birth to twins in China on [date deleted] 2019.

[4] Mr [Jian] is the genetic father of the twins, and it is confirmed by the results of a DNA test which was translated into English by Reprotrans Co limited, received on 5 April 2022.

[5] The children are Chinese citizens. They had come to New Zealand on 7 June 2023 following the grant of visitors visas issued to them by Immigration New Zealand. Mr [Chang] and his mother had travelled to New Zealand with the children.

[6] In Chinese legal documents, Mr [Chang] and his ex-wife Ms [Chen Wei] (Ms [Wei]) are recorded as the birth parents of the twins. This marriage was arranged by the fertility agency in China to be able to register the birth of their twins as the surrogate mother did not want to be named on the twins' birth certificate.

[7] Although Mr [Jian] is reported as the genetic father, under New Zealand law Ms [Bunnag], the Thai surrogate, was the legal parent of the twins. There was a need to adopt them under the New Zealand adoption law. The applicants tried to contact the fertility agency to contact Ms [Bunnag] but were unsuccessful. Ms [Bunnag] has not signed a consent to this adoption.

[8] The applicants wanted to bring their twins to New Zealand as early as 2020 but due to Covid-19 border restrictions set by New Zealand and Chinese governments they were unable to bring the twins to New Zealand until this month.

[9] The applicants have resided in New Zealand since June 2018. Mr [Chang] acquired a permanent resident visa on 29 April 2014. [Mr Jian]was approved for a New Zealand permanent residence partnership visa on [date deleted] 2019, a few months before the twins were born.

[10] On 2 January 2020 Ms [Wei] and Mr [Chang]entered a divorce agreement. Translations of this agreement record the parties' signatures were given by fingerprint. The children are referred to as being born in wedlock. The divorce agreement records the children are to be parented by the male party and the female party voluntarily gives up parenting rights in respect of the two children. Ms [Wei] also signed a declaration of non-objection in which she refers to herself as the mother of the children and declares that the children may live permanently in New Zealand with their father [Wei Chang]. That document is dated [date deleted] 2021 signed in the presence of a notary. Subsequent to this, Ms [Wei] affirmed an affirmation stating that she did not give birth to the twins. That affirmation was signed on 27 April 2023 before the New Zealand Consulate-General.

[11] Following their discharge from hospital the twins were living full time with Mr [Chang]'s parents in [a city in China]. Mr [Chang]'s parents believe that the twins are their biological grandchildren. They were aware the children were born through surrogacy because they paid for the surrogacy arrangement believing their son would provide the genetic material for the expected children. For a greater part of this period of time the applicants have lived apart from the children because of the restrictions caused by the global pandemic.

[12] It is noted that surrogacy arrangements are prohibited in China. In Thailand since 2015 only Thai Nationals and married opposite sex couples (married for at least three years) are able to access surrogacy. A surrogate should be a blood relative of the intended parents and should have previously given birth to a child. A surrogacy proceeds when the committee for the protection of a child born via medical assisted reproductive technology gives permission.

[13] Upon receipt of the application the Court requested a s 10 report under the Adoption Act 1955. That report was provided dated 22 August 2022. On 1 December 2022 Judge Maude made directions which included a direction to appoint a lawyer to assist to provide advice to the Court as to the issues of Ms [Wei]'s consent or service on her, dispensation of consent of surrogate mother and also whether there is relevant case law or information that the Court should receive around the issue of determination of whether the applicants are fit and proper persons to adopt. These directions followed from matters raised in the social worker's report dated 19 August 2022.

[14] The social worker report referred to the fact that the applicants' desire to have their own children through IVF surrogacy led them to have an illegal surrogacy arrangement with a Thai national, being untruthful to Mr [Chang]'s parents who paid for the procedure and falsifying the twins' Chinese birth certificates. The social worker raised the issues on the basis that they may have consciously done all these due to their naivety or out of desperation to have children. This concern as to the applicants' integrity was behind the direction for counsel to assist to provide feedback as to the issue of determination of whether the applicants are fit and proper persons to adopt.

[15] Judge Maude on 4 May indicated that the primary issue for this hearing was whether, given the lies that have been told, these applicants are fit and proper, proper people to adopt because the s 10 social work report finds they can otherwise provide appropriate care. The additional issue identified was determination of the application to dispense with the consent of the birth mother.

**Dispensing with consent of surrogate mother**

[16] The applicants have provided the surrogacy agreement they entered with the agency involved, Thai Perfect Life. There was no surrogacy agreement signed directly with the surrogate. The surrogacy agency provided the applicants with the surrogate's identity documents and advised she may be able to carry twins. The agency provided the applicants with photographs of the surrogate, both before and during the pregnancy, and related obstetrics reports. The agency notified the applicants of the surrogate's arrival and departure from China and the applicant Mr [Chang] met the surrogate prior to and post birth of the children who are the subject of this application.

Evidence is provided as to the applicant's travels to China and Thailand. These confirm that neither applicant has spent any time in Thailand other than the brief seven-day period in [2019]. The applicants also confirmed they have never been in a relationship with a surrogate. I agree with lawyer to assist, alluding in her memorandum to the Court that it is unlikely any further attempts to locate the surrogate mother, given the illegality of her actions, would be fruitful.

[17] The agreement entered into with the surrogate agency was dated [date deleted] 2019. The children were born on [date deleted] 2019 (nine months following the applicant's visit to Thailand).

[18] The DNA evidence filed confirms that Mr [Jian] is the biological father of the children. The evidence supports the applicant's contention that the children were born as a result of a surrogacy agreement, the surrogate is Ms [Bunnag] and she has played no role in the parenting of the children since birth and that her intention all along was that she would have no role in their lives.

[19] The submission is made that the surrogate is the birth mother of the children, and she has in effect abandoned them. Efforts to trace her have been fruitless. Accordingly it is submitted that her consent can be dispensed with.

[20] The applicants were told that Ms [Bunnag] would return to Thailand on [date deleted] 2019 (five days after the children were born). The applicants have no means of contacting Ms [Bunnag] now because the agency has said that they have lost contact with her.

[21] Given this reality it is appropriate that the consent of the surrogate mother be dispensed with.

**Fit and proper persons to adopt s (11)(1)(a)**

*Legal jurisdiction*

[22] Section 11(a) of the Adoption Act 1955 provides that the Court must be satisfied that "every person who is applying for the order is a fit and proper person to have the role of providing day to day care for the child and of sufficient ability to bring

up, maintain and educate the child." Counsel for the Chief Executive made the submission that when the Family Court considers the s 11(a) requirement, the assessment must go beyond what would be considered as part of the assessment of an applicant's "fitness and propriety" in a Care of Children Act application. Instead the Court should consider the type of person the applicants are, whether or not they are of good characters, ages, means, and what their expectations for the child and the child's health are. The "fit and proper" test under s 11(a) imports a high threshold that must be met before an adoption can be granted.

[23] Ms Casey KC identified in her report dated 14 March 2023 that many decisions about s 11(a) are focused on the applicants being "fit and proper" in light of previous criminal convictions. There are also decisions about the applicant's ability to adequately provide for an adopted child, concealment of a child's birth identity and concerns about the health of the applicants. The dishonesty of the applicants was considered in *Re C (adoption)*.[1] In this case the applicants had been dishonest in their application to the Family Court and there were concerns about the backgrounds of the applicants. In the case of *Dradler v Ministry of Social Development* the Court held in reference to *Re C:* "where the applicants have deliberately misled the Court as in *Re C* (supra) the outcome may be clear."[2]

[24] Counsel to assist in her report also notes that:

> [32] Cases where criminal convictions ultimately do not prevent a positive fit and proper finding are cases where there are countervailing positive factors. Such factors include:
>
> (a) full disclosure of what has occurred;
>
> (b) expressions of regret and remorse;
>
> (c) where the offending is a first offence or one-off event;
>
> (d) where there is a plan in place to balance or mitigate the consequence of the negative reviewed behaviour.

[25] Ms Casey's position was that the current proceedings are "unique as the fit and proper assessment is being undertaken in respect of an international surrogacy

[1] *Re C (adoption)* (2001) 20 FRNZ 624.
[2] *Dradler v Ministry of Social Development* [2015] NZFC 1477 at [79].

arrangement. She summarises that the s 11(b) restriction is engaged because of the "multiple transgressions" and "dishonesty on multiple occasions" by the applicants.

[26] The social worker has summarised the concerns as being concerns about the "integrity" of the applicants. The concerns identified by the social worker about the applicants' integrity in the s 10 report are as follows:

(a) the surrogacy being undertaken in Thailand despite being illegal in that country since 2015;

(b) the surrogate being moved from Thailand to China to give birth;

(c) false marriage of Mr [Chang] to Ms [Wei];

(d) the deliberate falsifying of birth records in China to conceal the surrogacy arrangement;

(e) the concealment of the genetic father of the children from Mr [Chang]'s parents who have raised the children since almost birth;

(f) the concealment of the relationship between Mr [Chang] and Mr [Jian] from their parents. It is accepted that the applicants have since disclosed to their parents.

[27] Also of concern to the social worker was that on 20 April 2022 the social worker was advised via email by Mr [Chang] that he had told his parents that Mr [Jian] was the genetic father of the children and they were sad but still accepted the children as their grandchildren. On 15 June 2023 the social worker contacted Mr [Chang] to arrange a home visit and to check what Mr [Chang]'s parents knew, so that she would not accidentally divulge information on the visit. During this call Mr [Chang] advised that he had not informed his parents that Mr [Jian] was the genetic father. This was confirmed in an email, him claiming the inconsistency to have been due to miscommunication on his part.

[28] Counsel for the applicants in his memorandum of 15 June noted that "the applicant Mr [Jian] has also advised his parents his parents of his biological connection

to the children. Mr [Chang] provides that he plans to tell his parents in time. Again this speaks positively of the applicants."

[29] The Court shares the social worker's concern that there remained an issue as to honesty on Mr [Chang]'s part in respect of this exchange.

[30] Regarding the "countervailing positive factors", the applicants have:

(a) advised their parents of their relationship and intention to adopt the children jointly;

(b) undertaken counselling;

(c) disclosed the "transgressions" around the surrogacy arrangements to their lawyer, the Family Court and Oranga Tamariki;

(d) the applicants have advised that they will inform the children about their birth origins.

[31] It is acknowledged that the applicants claim that they were misled by the surrogacy agency, that the surrogacy was legal in Thailand and that the subsequent actions, movement of the surrogate to China, false marriage and falsifying the birth certificates, were done to maintain that deception.

[32] The applicants also claim that they would have been discriminated against if they had lived in China.

[33] It was as a result of these matters that the social worker was unable to reach a position about the applicants being fit and proper to adopt pursuant to s 11(a) of the Adoption Act 1955.

*Cultural identity (s 11(b))*

[34] Section 11(b) provides that "the welfare and interests of the children will be promoted by the adoption, due to consideration being for this purpose given to the wishes of the children, having regard to the age and understanding of the child." The

social worker has considered the children's identity issues under s 11(b). She is concerned that the children will not be informed about the genetic identity of the father, or that if they are informed they will be required to be complicit in continuing their deception of their grandparents.

[35] Counsel for Oranga Tamariki also noted the importance of identifying the ethnicity of the genetic mother.

[36] In counsel for Oranga Tamariki's submissions the Court is referred to New Zealand's ratification of the United Nations Convention on the Rights of Children (UNCROC). Specifically, Article 7 of UNCROC provides that the children shall have the right, as far as possible, to know and be cared for by his or her parents. Article 8 of UNCROC provides that state parties shall respect the right of children to preserve his or her identity. Article 9(3) provides that state parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the children's best interests. The Court is referred to the fact that the Ministry of Justice is considering a reform of the adoption law which echoes these principles. The submission is made that essentially the children have rights under UNCROC to know and have contact with their parents (as far as possible), know their identity, and preserve their identity. In this regard it is noted the egg donor is identified as being of "Brazilian ethnicity" in the s 10 report. This assignation of Brazilian is a nationality, not ethnicity. Although this is not a barrier to s 11(b) it may be something the applicants may be interested in exploring in informing their children.

[37] In respect of the genetic father in the s 10 report the social worker acknowledges that Mr [Chang] and Mr [Jian] have advised that they will be honest with the children about their birth identities. However the social worker expressed concern about how the applicants will tell the children this information without telling Mr [Chang]'s parents. The social worker is concerned that if this occurs, the children may be in a position where they must lie to their grandparents about their genetic identity.

[38] In summary, the social worker still had concerns about the integrity of the applicants and whether the "fit and proper" restriction can be overcome.

[39] There were also concerns in relation to s 11(b) about the children's identity interests and whether the children will be informed about their genetic background (eg Mr [Jian] being the genetic father). The social worker is concerned that if the children are informed that they will be required to continue the deception of Mr [Chang]'s parents. However the social worker has acknowledged in the recommendation section of the s 10 report that:

> There are no other parental alternatives for [Yazhu] and [Fen]. They are Mr [Jian]'s genetic children; they have the right to know and be parented by their father who supplied their genetics. In saying that [Yazhu] and [Fen] identity rights need to be upheld, and they need to be informed of their identity which Mr [Chang] and Mr [Jian] plan to do.

[40] The social worker concludes that the s 11(b) restriction is overcome for these reasons and it is appropriate for an adoption order to be granted.

[41] Counsel for the applicants submits that the applicants are fit and proper people to adopt because there is no evidence before the Court that is suggestive of the fact that they pose any risk to the children nor is there any evidence adversely impacting on their future ability to care for the children. They have a shared culture and language. There is no evidence to suggest that there are any concerns relating to their physical or financial health that would hamper their ability to provide day to day care, bring up, maintain and educate the children.

[42] It is said that the applicants entered into a surrogacy agreement in Thailand not knowing it was illegal. Accordingly they did not have the mens rea to commit any offence in Thailand. The applicants have not been convicted of any crimes in Thailand or elsewhere.

[43] It is acknowledged that the applicant Mr [Chang] entered a marriage of convenience with Ms [Wei] in order to obtain birth certificates for the children. A marriage of convenience is not of itself a crime. The marriage occurred out of a matter of practical necessity because the surrogate did not want to be named on the birth certificate, and the children would otherwise have been stateless without the ability to access any medical or welfare services. While the birth registration was fraudulent, Mr [Chang] was motivated by the children's welfare and best interests within the context of their birth (in compliance with ART 7 UNCROC). This isolated incident is

not indicative of a finding that the applicants are serial criminal offenders such as they pose a risk to the children.

[44] It was further acknowledged that the applicants did not previously reveal to their parents that they were in a same sex relationship and that Mr [Jian] was the biological father of the children. The point is made that the applicants cannot be alone in concealing important information from their parents to the point where it can be said that they are not fit and proper persons to adopt.

[45] The applicants have undertaken counselling and prepared a booklet for their children to provide them with the truth of their origins. As Mr [Jian]'s affidavit provides, the applicants since informed their parents of their relationship and Mr [Jian] has advised his parents that he is the biological father of the children. The submission is made that the applicants have taken these actions despite the risk that they would not be accepted by the parents due to entrenched discrimination against members of the LQBTIQ+ community in China because they want to demonstrate to the Court that they have their children's welfare and best interests at heart. This it is submitted suggests they are fit and proper persons to adopt.

[46] The Court is referred to a number of cases where the Court considered the applicant has not been fit and proper to adopt and invariably was declined the application to adopt.

[47] In *Re C (adoption)* an application to adopt was declined because it was determined that the applicants were not fit and proper persons on the grounds that they filed deliberately false affidavits, falsified consent to adopt and that the child subject to the application filed a deliberately misleading affidavit, they had involvement in the sex industries, they were financially unstable, the motivation for this application was influenced by immigration factors and one of the applicants had a criminal conviction list which included serious sexual offending as well as multiple alcohol-related offences and a history of gang affiliations. In holding this the Judge noted that if the factors had occurred individually, it was likely they could be balanced against some positive factors, such that a different outcome may have been achieved.

[48] In respect of the cases referred to, declined applications to adopt on the grounds of fit and proper persons assessment have mainly focused on criminality and behaviour that is deemed to place the child to be adopted at some risk of serious harm. Where dishonesty has been a factor, it is generally related to the concealment of matters that pose a potential danger to the child to be adopted, including sexual offending.

[49] On behalf of the applicants it is accepted they have made mistakes in the past by entering a commercial surrogacy arrangement in Thailand, where such matters are illegal for foreigners. However, in this case the evidence is that the applicants were misled by the agency involved, as to its legality. They had not been convicted nor would they likely be given they lacked the mens rea to commit the offence. While not excusing their actions, it is submitted that the entering of a commercial surrogacy contract in Thailand does not in itself mean the applicants pose an appreciable risk to the children to be adopted. Further, while the applicant Mr [Chang] entered a marriage of convenience to enable the children to obtain birth certificates in China, he was effectively compelled to take this action because the surrogate mother did not wish to be named on the birth certificate and it was the only way to secure access to state services for the children. In that regard, he was motivated by the welfare and best interests of the children. Again, this is not behaviour that suggests that Mr [Chang] poses a risk to the children.

[50] While the applicant withheld information from their parents relating to their relationship, they have since told them. This provides further evidence to their willingness to make tough decisions to demonstrate to the Court they are motivated by the children's welfare and best interests as opposed to their own.

[51] Both applicants are committed to telling the children the truth of their origins. In that regard I was shown the beginnings of a life story book which will contain a photo of the egg donor who did meet with the applicants and also a photo of the surrogate mother which will appear in the booklet that is ultimately shared with the children when they are age appropriate.

[52] The submission is made that these matters provide scope to the Court to determine that despite past dishonesty in respect of the Chinese birth registration, since engaging in the adoption, the applicants have been open and honest with everyone. Of

course this has not occurred in respect of Mr [Chang]'s exchange with the social worker about he having told his parents the exact situation.

[53] The submission is made that further, while the Courts have previously considered dishonesty as an element of whether an applicant to adopt is a fit and proper person, the dishonesty has related to concealing criminal behaviours, including sexual violence which may pose an appreciable risk to the child to be adopted. The dishonesty of the applicants in this case is clearly distinguishable.

[54] Counsel to assist had canvassed the non-binding protocol the Ministry of Immigration considers when determining whether to grant a visa to a child born from an international surrogacy arrangement including whether the applicants who adopt have shown respect for the laws of the country where the surrogacy occurred. The Court is referred to the affidavit of [person A] of Oranga Tamariki where it was indicated the Minister has approved every application made, including two where the applicants to adopt had not shown respect to the laws of the countries involved. [Person A] also provided that when making such requests of the Minister, both Oranga Tamariki and Immigration New Zealand provide all relevant information to aid the determination of the Minister. The point is made that the relevant minister approved visas to be granted to the children in this application, with an apparent awareness of the issues involved. The submission is made that in doing so the Minister did not see the Thai surrogacy arrangement nor the marriage of convenience and the subsequent birth registration as being matters to prevent the children from being granted visas to come to New Zealand for the purposes of their adoption.

[55] Further, it is pointed out the applicants have undertaken counselling to enable them to best prepare for being open and honest with their children about their origins. They have spoken with friends about this and have enlisted their help with settling the children into their planned new lives in New Zealand.

[56] Affidavits in support have been filed by friends who have spoken highly of the applicants and of the assistance they will provide to the applicants and the children.

[57] Mr [Chang]'s mother, who the children have been in the care of since not long after birth, has made the journey to New Zealand to assist in transitioning the children.

[58] The applicants have researched kindergartens for the children to ensure that they are aided in their transition by having Mandarin-speaking staff and have enrolled them in one close to their home. The applicants have also enrolled the children with their local GP practice so that they have appropriate medical care and immunisation.

[59] The submission is made that the applicants for these reasons are fit and proper persons to adopt.

[60] In *Norman v Attorney-General* the Court of Appeal noted that the paramount consideration in an application to adopt is the welfare and best interests of the children, New Zealand is to give full effect to the international obligations under ART 21 United Nations Convention on the Rights of Children UNCROC.[3]

[61] The Court of Appeal in *Norman* further provided that the following UNCROC rights are relevant to enquiries regarding the best interests of the child:

(a) the child's right to survival and development, to the "maximum extent possible": Art 6 (2);

(b) the children's right to a standard of living "adequate for the child's physical, mental, spiritual, moral and social development": Art 27(1);

(c) the child's right to education, directed to the "development of the child's personality, talents and mental and physical abilities to their fullest potential": Arts 28(1) and 29(1) and (a).

[62] Judge Mather also identified relevant UNCROC provisions to the enquiry of best interests of the children when the adoption would result in a child being raised in a family they are genetically connected to, including Art 7 right as far as possible, to know and be cared for by a parent; Arts 8 and 9 rights of the child to identify and to maintain personal relations and contact with the parents and wider family.[4]

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[3] *Norman v Attorney-General* [2021] NZCA 78 at [64].
[4] *Re adoption application of SSL* [2009] NZFLR 1089 (FC) at [33].

[63] It is pointed out that China is not a state party to the UNCROC. Accordingly, these rights are not guaranteed in China. The children are however guaranteed that the New Zealand Court will give said rights due consideration in these applications.

[64] The submission is again made that while the applicants are Chinese citizens, they cannot live openly in China as a same sex couple with their children because there is an appreciable risk of them being subject to discrimination, violent attack and potential cruel and inhumane treatment in breach of the convention against torture. Further, they would be denied their rights as referred to previously. Clearly this is against the welfare and best interests of the children.

[65] Further, refusing the application would result in the children and the applicants being forced to return to China to live together which would run counter to the children's Art 2(2) UNCROC welfare and best interest rights to live a life free from the discrimination irrespective of their parents' sexual orientation.

[66] The point is made that children are now living in New Zealand with the applicants. One of the applicants is the genetic father of both children. The applicants have made provision to ensure the children are aware of their identity and to provide for their education and health needs. The submission is made that granting the adoption orders in favour of the applicants is in the children's best interests.

[67] The applicants sought an order to release the s 10 social worker's report to the applicants so they could share this with their children as they mature to further assist in their understanding of their origins. It is appropriate that the order be made.

**Discussion**

[68] I have referred in detail to the submissions made by counsel for the applicant, counsel to assist and counsel for Oranga Tamariki. These submissions have in my view dealt with all the relevant issues in this "unique" situation. This would have been a somewhat straight forward adoption to consider but for the "transgressions" that the applicants made. The Court cannot condone these transgressions. Even if the applicants are given the benefit of the doubt in respect of their understanding of the validity of the surrogacy agreement entered into in Thailand, some of their actions and

statements made subsequently do not stem from their desire to avoid the illegality of the arrangement. They were not initially honest with their parents about their relationship. There is still the situation where Mr [Chang]'s parents have been misled as to who is the biological father. These transgressions certainly raise a significant question as to the integrity of the applicants. However while the submissions have focused on these failures, they do not fall into the category where the applicants disqualify themselves on the grounds of not being fit and proper in respect of an adoption application.

[69] The countervailing factors in this application are important. The applicants' parents now know of their relationship. They have undertaken counselling. They have disclosed their transgressions around the surrogacy agreement with their lawyer, the Family Court and Oranga Tamariki and they have indicated that they will inform the children about their birth origins.

[70] I was satisfied that the applicants will carry through with advising the children of their birth origins. They were able to provide to me in Court the work they have already done to begin the family history booklet for the children. This will include not only a photograph of the surrogate mother but also the egg donor.

[71] In respect of the s 11(b) issues, it is acknowledged the social worker in her recommendations recognised there were no other parental alternatives for the children. They are Mr [Jian]'s genetic children and they have a right to know and be parented by their father who supplied their genetics, and the applicants plan to advise the children of their identity.

[72] The social worker concluded that the s 11(b) restriction was overcome for these reasons and it was appropriate for the adoption order to be granted to the applicants.

[73] I accept these submissions made by counsel for the applicants in respect of s 11(b). The paramount consideration has to be the welfare and best interests of the children.

[74] It has to be acknowledged that the adoption is going to result in the children being raised in a family they are genetically connected to and be raised by caring

capable parents who will ensure the children know their identity and maintain personal relations and contact with their grandparents and wider family. This is the expectation of UNCROC provisions.

[75] Given the alternatives if the adoption was not granted, it has to be said that this is an application that for the sake of these children has to be granted. But for the transgressions it is an application that had merit and it is an application the Court is able to grant.

[76] The uniqueness of this situation provide the special reasons for making the Order final in the first instance. There is no point in making an interim order.

[77] A copy of the s 10 report is to be made available to the applicants.

Dated at Auckland this 30th day of June 2023

**Judge I A McHardy**
**Family Court Judge | Kaiwhakawā o te Kōti Whānau**
**Date of authentication | Rā motuhēhenga: 30/06/2023**