



Family Rights group praises Alberta court ruling on parental responsibility

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BY JOHN COTTER

EDMONTON (CP) – A family rights group is praising an Alberta court ruling that upholds the responsibilities of people in common-law relationships when children are conceived through artificial insemination.

The case involved a Calgary woman who became pregnant by artificial insemination with another man's sperm.

Her partner did not want to be a father, so the couple, identified only as John and Jane Doe, signed a pre-parenting agreement that they hoped would excuse him from any legal obligations to the child.

The Alberta Court of Appeal ruled on Tuesday that such an agreement doesn't absolve people in a common-law relationship of their parenting responsibilities.

The Institute of Marriage and Family Canada praised the judgment and hopes other provinces will take a hard look at Alberta's Family Law Act.

"Courts from one jurisdiction to the other will often look at what has been settled in similar circumstances looking for a precedent. In my view this is a good precedent. This is in the best interest of the child," said Dave Quist, executive director of the Ottawa-based organization.

Legal experts consider Alberta's Family Law Act to be cutting-edge legislation.

Enacted in October 2005, it was designed to give clear guidelines about the rights and responsibilities of family members with a special emphasis on children.

It sets out the responsibilities of parents, guardians and others – including how to share responsibilities, powers and time with children when parents do not live together and how to decide on amounts of support.

The Alberta law states that a man in a common-law relationship with a woman who conceives by artificial insemination is considered to be the baby's father.

"Section 13 is a very Alberta-specific provision and very forward thinking and very novel," said Lucinda Ferguson, a University of Alberta family law professor.

"It tells you what is in the best interests of children in much more detailed terms than almost any other province's statutes. It is really an attempt to try and help lawyers and courts better understand what to do with modern families."

Ferguson said lawyers and judges across Canada may look at Alberta's law when dealing with cases, but the legislation is Alberta-specific and doesn't set a legal precedent outside the province.

The Appeal Court ruling, written by Justice Ronald Berger, said the fact the couple remain together demonstrates that John Doe has a "settled intention" to act in the role of father, regardless of what he might say.

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"Can it seriously be contended that he will ignore the child when it cries? When it needs to be fed? When it stumbles? When the soother needs to be replaced? When the diaper needs to be changed?" asked Berger.

"In my opinion, a relationship of interdependence with the mother of the child in the same household, of itself, will likely create a relationship of interdependence of some permanence vis-à-vis the child."

The court also rejected the couple's argument that the law infringes on John Doe's constitutional right to personal liberty.

Quist said as the definition of what constitutes a family evolves, it's vital for the legal system to ensure that the needs of children come before the wants of individuals.

"This is a reflection of our 'me' society – what's in it for 'me' as opposed to giving and supporting, which is what a family involves and requires."

Ronald Robinson, the lawyer who represented John and Jane Doe in the case, said his clients have no comment on the ruling.

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