

## The state does decide what makes a parent

Monday, June 11, 2007  
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Is there a Charter right to be irresponsible? Alberta courts have said "no." Now the case is off to the Supreme Court of Canada. When Jane Doe told her live-in boyfriend John Doe that she wanted a baby, he said he didn't. It's a sad but common story: Typically, the couple splits to find partners with matching interests.

Not in this case, as outlined in an opinion article on this page on Wednesday ("The state can't decide what makes a parent"). Jane Doe had a baby in August 2005 by artificial insemination using an anonymous sperm donor. She continued to live with her boyfriend. Jane and John Doe both wanted to draft a contract saying Mr. Doe is in no way responsible for the child but before doing so, they approached the courts -- in order to ascertain what the end result might be.

"The parties have not yet entered into an agreement in part because they want to know the results of this application," reads *Doe v. Alberta* 2005. They worry Alberta's Family Law Act might, in the future, infringe on their rights.

Clear as mud, right? Jane and John Doe have approached the state to clarify their contract -- before writing it -- all to ensure less state involvement in their lives. They've made the main point of this article by their own actions: Complicated parenting arrangements, legally contracted, tend to fall into the courts at high taxpayer expense. And the more involved the state is in our family life, the less freedom we have as citizens.

The Does -- if one can call them that -- are right to be concerned about freedom from the state. Yet this is not strictly a case of that. In this case, that concern must be balanced by the ethical right of a child to a mother and a father, whenever possible.

Indeed, the Alberta Court of Appeal wrote that the child's rights were not represented. Jane Doe's child will grow up in an environment where a man is daily present, but never intends to father. How fair is this? Can Jane Doe contractually assert that John Doe must not listen to loud music during naptime or that he is required to visit the zoo on Sunday? The child in this type of relationship fast becomes a transaction, legally written up -- a widget in a war of adult rights. How far are we willing to go down this road?

Pretty far, actually. Children in the eyes of Canadian federal law recently became legal entities. The Civil Marriage Act of 2005 replaced the term "natural parent" with "legal parent."

Whatever one's views on same-sex marriage one thing is true: It demands state involvement in family life. This is more than semantics. Same-sex reproduction always requires a third party, and if two-party divorce -- read traditional moms and dads -- is messy, it is not too great a leap to assume that three-party custody suits will be even more so.

With this change from natural to legal parents in the eyes of the law, the state now has an official role in defining parenthood and family, where previously it did not. State involvement in families will increase because modern relationships know no bounds. Case in point: In January this year, the Ontario Court of Appeal ruled a child can have three legal parents.

Ultimately, Jane Doe wants quite the opposite: She wants to be the sole legal parent. In a way, she is concerned she is being denied a concept that does not exist. "Independent motherhood" is an oxymoron. All mothers -- indeed, all people, but especially mothers -- depend on friends, family and communities, and no woman has ever become a mother on her own, least of all those who use in vitro fertilization.

Assisted human reproduction gives the illusion of singleness. But the embryo is made with the help of doctors and yes, a man's sperm, who does not know for certain even if he has become a dad. Jane Doe's baby is absorbing his or her environment and that currently includes John Doe, whether he wants it or not.

It's a great time to be a lawyer in Canada. It's not such a good time to be a kid -- with an anonymous sperm donor father and a live-in dude who's purportedly only there for the cable TV. The Supreme Court is being asked to comment on a problem that doesn't yet exist and won't arise until or unless Jane and John Doe stop getting along. At which point, it's highly likely their legal acrimony against the Alberta Family Law Act will be redirected -- toward breaking the very contract they are now in the process of making.

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