

Court rules boy has dad and 2 moms

Case believed to be first in Canada to give a child three legal parents

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Ontario's highest court has given legal parental status to the lesbian partner of a biological mother, essentially giving a young boy three parents.

The case is believed to be the first in Canada in which a child has more than two legal parents, said Peter Jervis, a lawyer for the partner. He said while there have been birth-registry cases in which lesbian couples sought parentage of their children, the fathers in those cases were not active or were unknown due to sperm donations.

In this case, the biological father, a friend of the lesbian couple, remains involved in the 5-year-old boy's life at the request of the two women. The father would have lost his parental rights if the lesbian partner had been able to adopt the boy under Ontario law.

The lesbian partner brought the case against the biological mother and father, seeking a declaration for parentage. They fully supported the legal action.

The Ontario Court of Appeal ruling released yesterday overturns a 2003 Superior Court of Justice decision not to give the female partner legal status as the child's mother. The judge said the court did not have jurisdiction to grant the title.

Justice Marc Rosenberg, writing on behalf of Chief Justice Roy McMurtry and Justice Jean-Marc Labrosse, found that due to a gap in legislation, the court in this case can exercise its "parens patriae" – the legal term for the state to act as the guardian for a minor – in declaring the partner a mother.

"Advances in our appreciation of the value of other types of relationships and in the science of reproductive technology have created gaps in the (Children's Law Reform Act's) legislative scheme," Rosenberg wrote. "Because of these changes, the parents of a child can be two women or two men."

The sudden death of the biological mother was the couple's main reason in asking for legal status, the court noted. If the woman did not receive the legal rights before her partner died, she would not be able to make decisions on behalf of their son.

"It's very good news for her, for her son and for her family," Jervis said. "She's been the mom of this child since he was born, but this grants legal recognition to her status."

Jervis said he was unable to reach the family over the phone, but he wrote an email with the subject line, "Congratulations, you're a mom."

Like any case at this level, it could create a precedent, he said. "I strongly suspect that if another case like this came forward, there would be a similar request for the courts to exercise its jurisdiction (of *parens patriae*)."

The "three-parents case" drew criticism from the Alliance for Marriage and Family. The umbrella group – comprising Focus on the Family, the Catholic Civil Rights League, REAL Women of Canada, the Evangelical Fellowship of Canada and the Christian Legal Fellowship – was an intervener in the case and opposed the declaration, saying it would go against the traditional family unit.

"This ruling concerns us," said David Quist, executive director of the Institute of Marriage and Family Canada, an organization started by Focus on the Family. "What about grandparents? If there's a divorce and a remarrying, how many parents do we get? Those are questions that are unanswered at this point."

Quist said it's too early to say whether the alliance will appeal the ruling, but he added there may be a need to call a royal commission on the future of the family.

"What we do know from social-science research right now is that children raised by their married biological mom and dad do best, but we also know that's not a fact of life for a lot of kids out there," he said. "Let's put in (some policy) that supports the outcomes for the children the best we can."