



Saskatchewan two dads case "troubling" say CCRL

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TORONTO - A court ruling that a surrogate mother can be legally removed from a birth certificate so two men in a same-sex relationship can be registered as the parents of an adopted baby is redefining the definition of motherhood in a "troubling" way and ignores the child's best interests, says the Catholic Civil Rights League.

At the request of a same-sex male couple, a Saskatchewan judge ruled in mid-September that the name of a surrogate mother who gave birth to a baby girl in 2009 be stricken from the baby's birth certificate. Instead of naming a mother, the birth certificate will name two men as the child's parents.

"One aspect of these cases that often gets overlooked is the interest of the child," said CCRL Executive Director Joanne McGarry. "What entitlements will this baby girl have as a teenager or as an adult to have access to medical or other records of the anonymous biological mother, or the surrogate mother?"

The child was conceived from an anonymous egg donor and the sperm of a male parent that was implanted in the gestational mother. She consented to being removed from the birth certificate.

According to Madame Justice Jacelyn Ann Ryan-Froslic, although the law defines mother as the woman who delivered a child and is presumed to be the parent, that is not always the case and that being a parent is an important "legal designation."

"It is clear from the definition of 'mother' contained in The Vital Statistics Act, 2009, that Mary, the gestational carrier, is Sarah's mother for the purposes of that act, as she is the woman from whom Sarah was delivered. Naming her as Sarah's mother on the registration of live birth raises a presumption that she is also Sarah's biological mother," the judge said.

"In this case, I am satisfied on a balance of probabilities that Mary, the gestational carrier, is not Sarah's biological mother. I am also satisfied neither (John nor Bill) nor Mary ever intended that Mary would assume any parental rights or obligations with respect to Sarah. As such, a declaration that Mary is not Sarah's mother is warranted," she said.

Andrea Mrozek, research and communications manager at the Institute of Marriage and Family Canada, echoed CCRL's concerns.

"It's evidence of a very adult-centred world. It's not a very child-friendly decision," she said. "The child will always wonder 'Who is my mom?'"

Mrozek said the decision also reflects a "big brother" mentality where "the state, in the form of the courts, is stepping into private family affairs."

Lawyer Rebecca Jaremko Bromwich, a part-time family law professor at Carleton University, said although the Saskatchewan legal decision is not directly binding in Ontario, it "could form a highly persuasive precedent."

"It reflects a further development away from traditional concepts of motherhood and fatherhood, the influence of new technological possibilities and social change," she added.

But this isn't something new in the province, Bromwich noted. She referred to Ontario's "three persons case" where the judge saw "a separation in law between the legal mother and parent, and biological parentage."

CCRL intervened in that 2007 Ontario Court of Appeal case where the court allowed a third party to be named a parent of a child, resulting in three legal parents for the child.

Meantime, in the U.S., the issue of biological parents' identity has led to the creation of online groups connecting children of sperm donors, including some of the 150 children from one donor.

Concern has been about the possibility of passing on genes for rare diseases to several potential children and increased odds of accidental incest between half-siblings who could be living close to one another but unaware of their familial roots.