

Canadian court bans anonymous sperm donation

For the first time in North America, the child of a donor has won the right for future donor offspring to know their biological parents.

Alison Motlik

Olivia Pratten may never find out who donated the sperm that made her conception possible, but a case won by the 29-year-old journalist in the Supreme Court of British Columbia now means fewer people will face the same situation. In a 19 May ruling, the first of its kind in North America, the court sided with Pratten, who argued that the Canadian province's laws discriminate against the offspring of anonymous sperm and egg donors because, unlike adopted people, they have no right to know their origins or prevent the destruction of records that would help identify their biological parents.

The judgment puts British Columbia on par with the UK and several other European nations, as well as the state of Victoria in Australia, in banning anonymous gamete donation. It is expected to spur changes in other provinces and may galvanise the offspring of American donors to attempt a similar challenge.

Juliet Guichon, a lawyer and bioethicist at the University of Calgary, says it marks a new direction for North America. "This is the beginning of offspring asserting their interests before the courts," she says. "Their interests have been underrepresented."

Madam Justice Adair gave the province 15 months to come up with a new adoption law that recognizes the rights of those conceived via donors. Currently, people adopted in the province can know the identity of their birth parents at age 19. People adopted in British Columbia before 1996, whose birth parents were given the promise of anonymity, have the opportunity to approach their biological parents with the help of the government, though those parents retain a veto. Pratten's lawyer, Joseph Arvay, believes a similar arrangement will be put in place for people conceived via donor gametes and that records previously considered to be the mother's medical records will now have to be turned over to a central registry. An injunction has been in place since October 2008, when Pratten first filed her suit, prohibiting the "destruction, disposal, redaction or transferring out" of donor records.

The province has 30 days to appeal, and if the ruling were to be upheld in the Supreme Court of Canada, the entire country would have to comply. Alternatively, similar cases could be brought forward in other provinces, such as Ontario. Arthur Leader, a fertility specialist based at the Ottawa Fertility Centre, says doctors in other provinces should prepare for change. "The smart physician will not destroy records," he says.

Game changer

But what effect the ruling will have on the US is still unclear. "People have talked to me about bringing similar cases," says Naomi Cahn, a law professor at George Washington University in Washington DC. She says the Canadian ruling has infused the donor-conceived movement in the US with a lot of energy. "I think it is likely that someone will bring something forward in the US in the next five years." Several states, including Kansas, Alaska, Maine, New Hampshire and Oregon, allow adoptees to learn the identity of their biological parents, which could be used to advance the cause of donor offspring based on equal rights.

But the American Society for Reproductive Medicine (ASRM), an advisory and advocacy group for the American fertility industry, says it will strongly oppose any move to ban anonymous donations. "We think that people ought to be able to build their families the way they see fit," says Sean Tipton, a spokesperson for the ASRM. "And you don't change the rules in the middle of the game."

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An egg surrounded by human sperm.

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One immediate effect of the British Columbia ruling may be a shortage of donor sperm and eggs. The province has no sperm banks, so fertility doctors mainly rely on two US sperm banks run by Xytex of Augusta, Georgia, and Fairfax Cryobank, near Washington DC. There are currently only 33 men in Canada who are sperm donors, and all of them are anonymous.

Carl Laskin, president of the Canadian Fertility and Andrology Society, an advisory body to the Canadian fertility industry, is doubtful the province will be able to compel American banks to release the identities of men already promised anonymity. Sperm banks agree. "It would be quite a challenge to apply that retroactively," says Michelle Ottey, director of operations at Fairfax.

Fairfax does have a class of donors, called "identity option" donors, who have contracts committing them to release identifying information when the child becomes an adult. But many banks have an opt-out clause for their open donors, which may disqualify their sperm from use in British Columbia.

Any new law may also decrease the number of egg donors. Many Canadian clinics that specialise in egg donation rely on US-based egg donor agencies to circumvent a Canada-wide ban on payment for gametes. Some 150 American women travel to Canada every year to anonymously donate their eggs to Canadians.

Wendy Kramer, founder of the Donor Sibling Registry (DSR), a website where donor-conceived people can find genetic relatives, says that the key is in education. "Sperm banks need to properly educate and counsel donors about what it means to be an open donor," she says. She points out that 1,214 gamete donors are currently on the DSR to find genetic offspring.

Pratten calls the ruling "tremendously gratifying," and a relief.

"There's nothing more frustrating and humiliating than to be told that 'We know who it is but we won't tell you,'" she says. "So much of the ability to create an identity for yourself is knowing where you come from."

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Olivia Pratten

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