A Victory for the Right to Know

By Françoise Baylis,
Canada Research Chair, bioethics and philosophy, Dalhousie University.

2

Published: May 28, 2011

The B.C. Supreme Court's striking down of anonymous sperm donations changes the game.

The noted American psychologist and philosopher William James once said, "Act as if what you do makes a difference. It does." A recent case in point is Olivia Pratten's landmark victory in her legal battle to ensure that donor offspring in British Columbia have access to information about their biological parents.

Pratten was born in March 1982. When she was five years old, her parents told her that she was conceived using sperm from an anonymous donor; her father was not biologically related to her. In the years that followed, Pratten had many unanswered questions about her biological heritage.

At age 19, she went to see Dr. Gerald Korn, the physician who had inseminated her mother. She asked him for information about her bio-dad. She learned that he was Caucasian, of stocky build, and had brown hair and blue eyes. His blood type was 'A,' and, at the time of the sperm donation, he was a medical student. Korn did not disclose the sperm donor's identity.

In October 2008, at age 26, Pratten filed a class-action lawsuit with the B.C. Supreme Court on behalf of persons conceived by donor gametes. She argued that donor-conceived offspring had a right to know the identity of their biological parents, and that the province had failed to protect this right. She asked for gamete-donor records to be preserved permanently, and for the information in those records to be available to persons born of reproductive donations.

On May 19, 2011, the B.C. Supreme Court ruled in favour of Pratten's views. In brief, the court accepted the argument that the province's adoption laws discriminated against donor-conceived offspring and should be amended so that donor offspring would have the same ability as adopted children to access information about their origins.

Two ethics arguments form the foundation of the court's decision. The first is about the obligation to treat similar cases similarly. In British Columbia, adoptees can access information about their biological parents when they turn 19, whereas children conceived using biological material from anonymous donors cannot access information about their biological parents at any age. During the trial, ample evidence was presented to show that the social, psychological, and medical need for background information about biological parents is similar for those who are donor-conceived and those who are adopted. On the basis of this evidence, the court held that the potential harm arising from anonymity was similar for both groups. For similar cases to be treated similarly, donor offspring should have the same ability as adoptees to learn about their biological heritage, and thereby avoid

MOST POPULAR

Documenting Our Changing Landscape
Award-winning environmental photographer James Bal...

Still Counting the Dead
For decades, Sri Lanka was the setting for civil w...

The Half-Life of Facts
Scientists measure the "half-life" of substanc...

How to Mine an Asteroid
* * * How is it possible to mine an asteroid? ...

The Learning Revolution
Human development has always been driven by knowle...

the harms arising from anonymity.

The second ethics argument is about the obligation to promote the best interests of children. Here, the focus is not on what prospective parents or biological donors want, but on what prospective children need. In reviewing the evidence, the court determined that protecting donor anonymity was harmful to the children, and thus contrary to their best interests. An important feature of the best-interests argument is that it shifts the debate away from competing rights claims, where donors' rights to privacy are pitted against children's rights to know their biological heritage.

While these two ethics arguments are sound, they may not carry the day. The Pratten decision is a fragile victory, as the attorney general of British Columbia may yet appeal the decision. If there is no appeal, then work can begin to amend relevant legislation. Changes will have to be made to the B.C. Adoption Act and adoption regulations. It will also be necessary to review family law to make sure biological donors are protected from being financially responsible for children born of their genetic material, and also to ensure that donors cannot assert any rights over their offspring.

Beyond this, further challenges remain if Pratten's victory is to benefit all donor offspring in Canada, and not just those conceived in British Columbia. For years, donor offspring have told poignant stories about their "need to know" their biological heritage and how this knowledge (or lack thereof) is integral to their identity formation. Some of these stories are now well-documented in social-science research. British Columbia has listened, heard, and responded. Canada's other provinces and territories need to do the same.

Pratten is part of the first generation of donor offspring born in Canada whose parents shared with them the "secret" of their conception. If Canada now moves to a system using only "known donors" or "open identity donors" (that is, donors who are "willing to be known" when the child reaches the age of majority), the next generation of donor offspring will not have their origins shrouded in secrecy, nor their genetic heritage cloaked in anonymity.

That's a significant difference.

Photo courtesy of Reuters.

Tags: *Adoption, Arts, B.C. Supreme Court, Donor Conception, Olivia Pratten, Right to Know*

← The Jobless Economy NATO strikes Gadhafi's Control Centre →

ABOUT CONTACT

Follow The Mark