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Two mothers should be allowed on birth document, judge says

Found in breach of Charter, Ontario told to alter rules to include lesbian parents

KIRK MAKIN

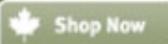
JUSTICE REPORTER

June 7, 2006

An Ontario judge struck down a birth registry provision yesterday that prevents lesbian couples from being registered as parents of babies conceived through artificial insemination, saying that the regulation causes them unjustified "pain and hardship."

Mr. Justice Paul Rivard of the Ontario Superior Court ruled that the province violated the litigants' right to equality by stopping them from adding their names to the Statement of Live Births after their babies are born.



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Lesbian mothers live in an atmosphere of homophobia that only is exacerbated when rules and conventions leave an impression that "there is something wrong or unnatural about their families," Judge Rivard said.

"Likewise, for children of lesbian mothers -- who are even more vulnerable than their parents to the lack of symbols of their families in popular culture -- exclusion of their parents from birth registration furthers this vulnerability."

Lawyers Martha McCarthy and Joanna Radbord, who represented the applicants, said yesterday that the case held enormous symbolic value for the gay and lesbian community.

"Although the case addresses one of the very last issues of discrimination against gays and lesbians in Ontario law, it is also probably the most important of all to lesbian mothers," Ms. McCarthy said in an interview.

"Indeed, I venture to say that our applicant couples would have traded all of their employment benefits, spousal support rights -- even marriage rights -- in exchange for the basic recognition that they are parents to their children. It is, in many ways, like we left the most important issue to the last."

The legal clash stemmed from the fact that the province's Vital Statistics Act specifies the terms "father" and "mother" when it comes to filling out a Statement of Live Birth.

The government insisted that the "father" has to be a biological father, and that it would be illegal to include both members of a lesbian couple on a Statement of Live Birth, since that would be tantamount to including two mothers.

About 4,500 non-biological parents are listed in Ontario each year. Judge Rivard noted in his judgment that non-biological fathers are not impeded when they attempt to register their names, yet efforts are routinely made to "target lesbian co-mothers."

Evidently moved by many of the litigants' accounts of suffering discrimination and being made to feel that their relationships and families could not measure up to those of heterosexual families, Judge Rivard said this amounted to unacceptably unequal treatment.

He noted that in the case of one couple, the birth mother was diagnosed with breast cancer shortly after having her child.

The couple feared that if the mother were to die before they could get a proper declaration of parentage, the child "would be left without any certainty as to parentage."

Judge Rivard suspended the effect of his ruling for one year to allow the province time to legislate a solution to the Charter breach.

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