

Where did I come from?

Island native's lawsuit aims to identify sperm donors to offspring

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Olivia Pratten doesn't really want to talk about how she was conceived, but it seems to dominate her life just the same.

The 26-year-old New York-based broadcast journalist who grew up in Nanaimo and Victoria is engaged in a public fight at the B.C. Supreme Court to find out about her biological father -- a medical student who donated his sperm.

"For me he's not my father or my 'dad' -- I already have one," she says in an e-mail to the Times Colonist after declining an interview in her home territory. "Not knowing my biological roots is a big loss for me and is something I've had to grieve. I just want to know where I came from so that I can know my place on the human tree."

Her mother gave birth to her in 1982 after visiting Vancouver fertility practitioner Dr. Gerald Korn. Olivia was told about her unusual conception when she was five. Her parents did not want to deceive her. They back their daughter in her court battle to keep B.C. donor records from being destroyed after six years.

"I've spoken to policy makers, politicians and very little has changed [at] both the provincial and federal level," she adds. "Filing this lawsuit was the last and only thing left to do to protect this vital information."

The discrepancy also violates the equality provisions of the Charter of Rights, argues Victoria lawyer Sean Hern, who is co-counsel in the case. The province has not yet filed a response and has no comment on the case. – Sean Hern

Thanks to Pratten's challenge, Chief Justice Donald Brenner issued a temporary injunction on Oct. 28 ordering all fertility doctors to keep their donor records.

Her proposed class-action lawsuit names the attorney general of B.C. as discriminating against people born of sperm or egg donation because provincial law now gives adoptees the right to learn about their biological parents. The discrepancy also violates the equality provisions of the Charter of Rights, argues Victoria lawyer Sean Hern, who is co-counsel in the case. The province has not yet filed a response and has no comment on the case.

The Adoption Council of Canada is on-side. Victoria-based president Sandra Scarth says a non-contact registry might be in order for long-ago donors who expected anonymity, similar to the one for people adopted before the 1996 B.C. Adoption Act. But from now on, identities for sperm and egg donors should be the rule once the child reaches the age of majority.



Farris lawyer Sean Hern features in the Victoria Times Colonist.

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The College of Physicians and Surgeons of B.C. is cited in Pratten's statement of claim because it has allowed doctors to shred donor information after six years. The college did not oppose the temporary injunction forbidding destruction, but spokesman Dr. Doug Blackman had no further comment.

Unlike adoptees, there is no way that Pratten can learn whether her biological father has fathered half-siblings who could conceivably end up as her sexual partner. That contravenes security of the person under the charter, Hern argues.

According to Pratten's statement of claim, when she approached Korn about her biological father, he informed her that he was "a Caucasian medical student, who had a stocky build, brown hair, blue eyes, and Type A blood, and was 'healthy,' according to a verbal medical interview."

Korn refused to reveal the donor's identity because he had been promised anonymity. He also refused to assure Pratten that he would preserve his donor records indefinitely. The college declined Pratten's request to take custody of the records.

"Farmers have kept better records on the artificial insemination of cattle than the physicians of B.C. have kept on people like myself," Pratten has said in a news release.

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Other countries, including Sweden and the United Kingdom, have rescinded donor anonymity without lawsuits.

Nobody knows how many people born of donor gametes there are. Estimates range from 4,000 to 40,000 for Canada.

Dr. Korn confirmed to Canwest News Services in 2006 that about 1,500 children had been fathered at his clinic, but believed "many more than that" were born to women who didn't let him know. He said donors were cut off at eight known children, with the majority fathering two or three. He denied speculation that some men had dozens of offspring.

The province and the college have until Dec. 28 to file a response. After that, Hern will seek certification to continue as a class-action suit. If the court agrees, a trial would begin as soon as a year.

About Sean Hern

Sean Hern practises as general litigation counsel and has appeared before all levels of court and numerous administrative tribunals. He has experience in a wide range of commercial matters including contractual disputes, debt collection matters, real estate litigation, corporate oppression cases, negligence issues and fraud. Of particular interest for Sean is the defence of class actions, complex commercial litigation and the conduct of Canadian aspects of multi-jurisdictional disputes. Sean runs Farris' Victoria office and practices out of both Victoria and Vancouver.

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