

Fatherhood is determined by more than just DNA

Quebec court was right to focus on what is best for the child

By ROBERT LECKEY, The Gazette, July 10, 2009, A17

In Quebec, DNA confirmation that a man has no genetic link to his partner's child offers no legal basis for challenging his paternity - at least, not when he's on the birth documents and has reared the child as his own. So says the Quebec Court of Appeal in a judgment that the Supreme Court of Canada recently refused to review.

There's no question the facts in this case are sad. The man and woman began living together in 1998 and a girl was born in 2002. The couple broke up three years later. Only then did someone tell the man that he wasn't the girl's biological father, which was subsequently confirmed by a DNA test.

His former partner had never told him she'd had an affair. No doubt hurt and angered by his ex's betrayal, the man attempted to sever his relationship with the girl by legally revoking his paternity.

It's understandable that spousal deception might generate hostility and disappointment, but should it allow the aggrieved partner to repudiate a child who for years viewed this person as her parent?

Some say that it's time to amend the rule in Quebec's Civil Code barring challenges to paternity in such cases. After all, this rule predates reliable DNA testing. Now that science can precisely match children with their genetic parents, shouldn't "incorrect" birth records be amendable when new information becomes available?

And shouldn't a man who learns he is not a child's genetic father be able to shed his paternal status, including child support and other duties?

This position reflects a view of fatherhood and parenthood that is far too narrow and simplistic. It implies that genetic connection is the only basis for the legal bonds between adults and children. It implies that absent such connection, a legal family bond is an unjustified burden.

While it's true that DNA testing has led to greater emphasis on genetic connections, the law's appreciation of parent-child relationships is more complex. Law recognizes adoption as forming bonds of parentage. Since 2002, the Civil Code has recognized intention to become a parent, not

genetics, as the key consideration in assisted reproduction. Canada's Divorce Act may require adults to support stepchildren after a marriage breaks down, on the basis of past parental conduct.

Crucially, the Civil Code's bar against denying filiation operates only when the paternity on a child's birth document is confirmed by what is called uninterrupted possession of status. This means that, for a sustained time, the named father has acted as if the child were his. In other words, the rules forbid challenges to paternity only when the man has acted as a dad for a significant period.

The idea that during those years, a man cares for a child and develops a relationship with her on the sole basis that she carries his genetic imprint is unattractive. We must believe that there is more than that animating a close adult-child relationship. If we didn't, there would be no room in our appreciation of family for parental relationships formed by assisted conception, adoption, or remarriage and repartnering.

Most importantly, the view that a man should be able to end his parental status on receipt of fresh DNA evidence overrides the interests of the child. Under the law, that's the paramount consideration in any decision affecting children. Focusing on the man's anger and disappointment sidelines the child's interests. It makes her a pawn in a dispute between adults.

Note that the claim in this case concerned the legal father's ability to deny his paternity. It did not depend on finding the true genetic father to step in and replace him in supporting the child. Rewriting the rules as the man wanted might result, sometimes, in children's switching fathers. Other times, though, it would just result in their losing them.

Some will say that the child's best interests call for her to know her genetic origins. But Quebec's current rules don't stop children from learning the identity of their genetic forbears. In the interests of stability, however, they prevent changes to children's legal parentage after a significant time has passed.

Our lawmakers can of course decide that I am wrong and amend the Civil Code. But the debate must focus on children's interests, not adults' anger. And it should bear in mind that the law's treatment of family relationships is already based on much more than genetics.

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