Landmark Ruling for the Parental Rights of Known Sperm Donors

A recent Ontario ruling, *C.(M.A.) v. K.(M.)*,[1] pitted the parental rights of a lesbian couple against a gay man who was also the sperm donor. Justice Marion Cohen sided with the father, who refused to relinquish parental rights over the child, yet this ruling notably declares a donor agreement unenforceable. In 2002, prior to the child's birth, the couple and the gay man had signed a "donor contract," which stated that he was to have regular access rights as a "co-parent" and, if both mothers were to die, full custody.[2][3] challenge if followed through.[4] Interesting from a legal perspective was the prospect of a "three-way adoption" which would have required a *Charter* challenge.

It is believed the friendship between the man and the women had deteriorated, leading the couple to reduce the donor's access to the child. Access was restored by the courts in 2007, but the couple wanted more, asking the father to give consent for the non-birth mother to be named as an adoptive parent of the child. Where this to occur, the father would lose all rights as a parent.[5] Justice Cohen was decisive in her analysis of the situation, noting that "the issue for the court is not what kind of family the parents want, but what is best for the child."[6]

Looking at the public policy angle, many lesbian couples will most likely have to be much more careful when deciding who their sperm donor will be in light of this decision, perhaps no longer choosing a close friend.[7]According to family lawyer Jeffrey Wilson, "an anonymous donor is more likely to ensure the autonomy of a two-parent family."[8]
Additional Readings:

For previous proceedings, see *M.K. v. M.C. and C.D.*, 2007 ONCJ 456 (CanLII).

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[1] *C.(M.A.) v. K.(M.)*, 2009 ONCJ 18 (CanLII).
[2] *Ibid* at 14.
[3] *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.
[4] Shannon Kari, Court Backs Parental Right of Known Sperm Donor, *The National Post* (30 January 2009). Three-way parentage was allowed in *A.A. v. B.B. and C.C.*, 2007 ONCA 2 (CanLII), but a three-way adoption would require such

a *Charter* challenge.
[5] *Ibid*.
[6] *Supra* note 1 at 37.
[7] *Supra* note 4.
[8] *Ibid*.