



THE CANADIAN  
BAR ASSOCIATION  
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BARREAU CANADIEN

March 30, 2011

Via email: [kathryn.sabo@justice.gc.ca](mailto:kathryn.sabo@justice.gc.ca)

Kathryn Sabo  
General Counsel and Director  
International Private Law Section  
Department of Justice Canada  
284 Wellington Street  
Ottawa, ON K1A 0H8

Dear Ms. Sabo,

**Re: Agenda for Council on General Affairs and Policy of the Hague Conference**

Thank you for seeking the views of the Canadian Bar Association on the matter of the status of children, and, in particular, on the issue of recognition of filiation. We understand that these issues will be considered by the Council on General Affairs and Policy of the Hague Conference on Private International Law (the Council).

The CBA is a national association of over 37,000 lawyers, law students, notaries and academics. Our mandate includes improvement in the law and the administration of justice. Several interested groups in the CBA have contributed to this response, including the national Family Law, Wills, Estates and Trusts, and Health Law Sections, and the Sexual Orientation and Gender Identity Conference.

In correspondence dated April 7, 2010, the CBA's Family Law Section indicated that legislative reform to advance recognition of parent and child relationships is urgently needed. While some Canadian jurisdictions are taking steps to deal with the realities of parentage in the context of reproductive technologies (including surrogacy), current laws establishing parentage differ across Canada. In some regions, parentage legislation has not yet dealt with such changes.

Surrogacy laws also vary greatly around the globe. In some jurisdictions, paid surrogacy is legal. In others, it is not. In some jurisdictions, even altruistic surrogacy is illegal. Many Canadians seeking reproductive technologies to build their families go to jurisdictions where these activities are legal. Accordingly, children are born in jurisdictions with parentage laws that differ from the laws of their parents' home state.

The CBA urges that parentage laws be consistent, always with the best interests of the children in the forefront. Children must not only be recognized as the legal children of their parents, but also be afforded the safety and protection of being able to live with their parents, in their parents' home state. Births are generally registered in the jurisdiction in which children are born. The Supreme

Court of Canada has recognized that birth registration is not only an instrument of prompt recording, but a means of affirming ties between a parent and a child.<sup>1</sup>

It is in the child's best interests to be afforded the appropriate legal recognition of a parent. This recognition may be based on either genetics or intent. There are numerous permutations and combinations involving genetic and non-genetic parents, post-humous parents, same sex parents, single parents, and situations in which there may be more than two parents. The Uniform Law Commission of Canada has recently adopted the *Child Status Act 2010*, with a concentration on parentage.<sup>2</sup> Appropriate consideration must also be given to estate matters to ensure that the administration of estates and limitation periods on claims against estates are respected.

Certainly, filiation is a timely topic for international consideration. The CBA urges that any approach taken by the Council focus on the best interests of the child as a paramount consideration. Further, the CBA urges that the reality of people who seek assistance to build their families, whether by reproductive assistance or adoption, be carefully considered. Those people may be increasingly dismayed as global laws further reduce their options. They can be expected to look to jurisdictions where third party assisted reproduction laws are most welcoming. In our view, international regulation in this area should not further hinder available options.

We appreciate the opportunity to contribute our views to the Canadian perspective brought to the Council's agenda. The CBA would be pleased to participate further in future.

Yours truly,

*(original signed by Gaylene Schellenberg for Anu Osborne)*

Anu Osborne  
Chair, National Family Law Section

*(original signed by Gaylene Schellenberg for Karen Anne Platten)*

Karen Anne Platten  
Chair, National Wills, Estates and Trust Section

*(original signed by Gaylene Schellenberg for Annette Lefebvre)*

Annette Lefebvre  
Chair, National Health Law Section

*(original signed by Gaylene Schellenberg for Kristine K. Barr)*

Kristine K. Barr  
Chair, Sexual Orientation & Gender Identity Conference

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<sup>1</sup> *Trociuk v. British Columbia (Attorney General)*, [2003], S.C.J. No. 32.

<sup>2</sup> See, Uniform Law Conference of Canada, *Child Status Act 2010*; <http://www.ulcc.ca/en/us/>