

# The Case of the Excluded Father

## *Trociuk v. British Columbia (Attorney General)* [2003]

### Teacher Resource

**Curriculum Links:** Understanding Canadian Law (CLU3E), Grade 11, Workplace Preparation

**Legal Focus:** Equality Rights, *Canadian Charter of Rights and Freedoms*

**Estimated Time:** 1 period

#### **Overall Expectations:**

- Explain the rights and freedoms outlined in the *Canadian Charter of Rights and Freedoms* and how people can exercise them.

#### **Specific Expectations:**

- Identify the legal rights and fundamental freedoms outlined in the *Canadian Charter of Rights and Freedoms*.
- Explain how rights and freedoms may be limited under the *Charter*.
- Describe the remedies available to citizens whose rights have been violated.

#### **Description of the Case**

1. Darrell Trociuk and Reni Ernst became parents to triplets in January, 1996. They were unmarried and estranged from each other at the time of the babies' births.
2. When filling out the birth registration forms, Ms. Ernst indicated that the father was "unacknowledged by the mother". She also chose and registered the children's surnames as "Ernst".
3. The mother was allowed to do this under subsections 3(1)(b) and 4(1)(a) of the *Vital Statistics Act* of British Columbia.
4. Mr. Trociuk claimed that they had agreed on registering the children's surnames as "Ernst-Trociuk". However, subsection 3(6)(b) of the *Vital Statistics Act* prevented Mr. Trociuk from altering the children's birth registration forms.

5. Mr. Trociuk obtained a court order for supervised access to the children. He also wanted to have his identity included on the children's birth registration forms and wanted to change their surnames.
6. On two occasions, he requested that the Director of Vital Statistics amend the children's birth registration forms to acknowledge him as their father. Both requests were refused.

### **Supreme Court of British Columbia**

7. Mr. Trociuk then applied to the British Columbia Supreme Court for an order requiring the Director of Vital Statistics to register him on the children's birth registration forms, to change the surnames of the children from "Ernst" to "Ernst-Trociuk", as well as a declaration that sections 3(1) and 3(6) of the *Vital Statistics Act* violated the equality guarantee in s. 15(1) of the *Canadian Charter of Rights and Freedoms*.
8. The court declined to issue the orders sought by the father and also dismissed the father's *Charter* claim. The court ruled that even if these sections did violate the equality guarantee, they could be justified as a reasonable limit on *Charter* rights as permitted by s. 1 of the *Charter*.

### **Court of Appeal for British Columbia**

9. By a majority of 2-1, the Court of Appeal for British Columbia ruled that the trial level judgment should be upheld.
10. Mr. Trociuk appealed the decision to the Supreme Court of Canada.

## ***The Final Judgment***

### **Supreme Court of Canada**

11. In a unanimous decision, the Supreme Court of Canada reversed the decision of the British Columbia Court of Appeal and concluded that subsections 3(1)(b) and 3(6)(b) of the *Vital Statistics Act* violated s. 15(1) of the *Charter*.
12. The Court ruled that the challenged sections of the *Vital Statistics Act* treated fathers differently than mothers, because the sections allowed a father's information to be permanently excluded from his children's birth registration if the mother, for any reason, chose to list him as "unacknowledged" on the birth registration form. These sections also allowed a father to be excluded from the process of determining the surname of his child if he was "unacknowledged" by the mother.
13. The Court concluded that because only women can be mothers and men fathers, these sections treated parents differently and did so on the basis of sex, which is listed as a protected ground in s. 15(1). This constituted discrimination based on sex.
14. The Court held that the challenged sections of the *Vital Statistics Act* affected a father's human dignity because it was sending a message that a father's relationship with his children was less worthy of respect than a mother's relationship with her children. Because a parent's relationship

with his or her children is so central to a parent's identity, a reasonable person in the father's position would have understood this message to be a negative judgment of his worth as a human being.

15. The Supreme Court of Canada also noted that in cases where a mother has good reasons for not acknowledging a father – for example, where she has become pregnant as a result of sexual assault or incest – allowing a father to dispute the lack of acknowledgement would have a serious impact on the mother and would not be in the best interests of the child. It could also discourage mothers from reporting births. However, the Court concluded that the interests of mothers could still be protected without exposing other fathers to the risk of being excluded permanently.
16. The Court held that the infringement of s. 15(1) of the *Charter* was not justified as a reasonable limit under s. 1.
17. In conclusion, the Majority held that sections 3(1)(b) and 3(6)(b) of the *Vital Statistics Act* violated the *Charter* and were therefore invalid. They gave the British Columbia legislature a period of 12 months time to fix the problems with the sections without harming mothers who would want to not acknowledge fathers for legitimate reasons (e.g. incest, sexual assault).
18. The Court noted that the new system for not acknowledging fathers on birth registration forms must satisfy the requirements of s. 15(1) of the *Charter*, and also account for the legitimate interests of the mother, the right of the father not to be discriminated against on the basis of his sex, and the best interests of the child.

### **Teaching & Learning Strategies**

1. Read *The Big Question* and hold a U-shaped discussion on the issue. See the following page for instructions on conducting a U-Shaped discussion.
2. Using a teacher- or student-centred reading strategy, read *The Facts of the Case*. Afterwards, review *The Relevant Law* with students. Clarify any questions and explain how the law applies to the specifics of this particular case.
3. Have a class discussion about *The Issues*.
4. Using a teacher- or student-centred reading strategy, review the sections on *The Progression through the Courts* and *The Final Judgment* with students. Answer students' questions as you proceed.
5. Have students complete the *Check for Understanding* exercise and take up the answers as a class.
6. Ask students to complete the *Reflecting* exercise either in class or for homework. Have a class discussion about their answers afterward.

## Assessment & Evaluation

- Class discussions
- *Check for Understanding* worksheet
- *Reflecting* worksheet

## Resources

Ontario Justice Education Network  
[www.ojen.ca](http://www.ojen.ca)

- Landmark Case – The Parental Rights Case: *Trociuk v. British Columbia (Attorney General)*

Supreme Court of Canada Decisions – *Trociuk v. British Columbia (Attorney General)* [2003]  
<http://csc.lexum.umontreal.ca/en/2003/2003scc34/2003scc34.html>

## Instructions for U-shaped Discussions

The *U-shaped discussion* strategy offers an alternative to the traditional two-sided debate. Instead of an adversarial debating format, this strategy encourages students to see the merits of all sides and to recast binary opinions as positions along a continuum.

To implement this approach with students, arrange the class in a “U-shape.” Students with polar views (either strongly agreeing or strongly disagreeing with the proposition) seat themselves at either end of the “U”; students with mixed opinions sit at appropriate spots along the rounded part. Begin by asking students at each end of the “U” to state their position and offer a few reasons only. If there is an imbalance in strong support for one side or the other, locate yourself (temporarily) in a polar position to get the discussion going. Alternate from side to side, as students from all parts of the “U” offer their views. Stress that students are not to try to convince others, but merely to explain why the position they are sitting in is the most defensible one for them. At several stages in the discussion, encourage students to physically move along the spectrum if they have heard reasons that cause them to want to shift their intellectual position on the issue. The goal of the “U-shaped” discussion is to encourage students to endorse positions provisionally and to listen to others in an attempt to figure out the most defensible personal stance along a continuum of possibilities.

# The Case of the Excluded Father

## *Trociuk v. British Columbia (Attorney General)* [2003]

### Student Handout

#### *The Big Question*

Have a class discussion about the following question:

Should a father have the right to make decisions in his child's life even if the birth mother does not acknowledge the father, and does not want him to be included in the child's life?

#### *The Facts of the Case*

1. Darrell Trociuk and Reni Ernst became parents to triplets in January of 1996. They were unmarried and estranged from each other at the time of the babies' births.
2. When filling out the birth registration forms, Ms. Ernst indicated that the father was "unacknowledged by the mother". She also chose and registered the children's surnames as "Ernst".
3. The mother was allowed to do this under subsections 3(1)(b) and 4(1)(a) of the *Vital Statistics Act* of British Columbia.
4. Mr. Trociuk claimed that they had agreed on registering the children's surnames as "Ernst-Trociuk". However, subsection 3(6)(b) of the *Vital Statistics Act* prevented the Mr. Trociuk from altering the children's birth registration forms.

5. Mr. Trociuk obtained a court order for supervised access to the children. He also wanted to have his identity included on the children's birth registration forms and wanted to change their surnames.
6. On two occasions, he requested that the Director of Vital Statistics amend the children's birth registration forms to acknowledge him as their father. Both requests were refused.

## The Relevant Law

### **Vital Statistics Act**

3(1) Within 30 days after the birth of a child in British Columbia

- (b) the child's mother, if the father is incapable or unacknowledged by or unknown to the mother, must complete and deliver to the district registrar a statement in the form required by the director respecting the birth.

3 (6) If a statement completed by only one parent of the child or by a person who is not the child's parent is registered, the director must alter the registration of birth on application of any of the following persons:

- (b) the child's mother, if the father is incapable or is unacknowledged by or unknown to the mother;

### **Canadian Charter of Rights and Freedoms**

1. The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it *subject only to reasonable limits* prescribed by law as can be demonstrably justified in a free and democratic society.

15.(1) Every individual is equal before and under the law and has the right to the equal protection of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability

## The Issues

- Do the provisions in the British Columbia *Vital Statistics Act* infringe Mr. Trociuk's equality rights under s.15(1) of the *Charter*?
- Does this legislation treat fathers differently than mothers? If yes, does this constitute discrimination based on sex?

## ***The Progression through the Courts***

### **Supreme Court of British Columbia**

7. Mr. Trociuk then applied to the British Columbia Supreme Court for an order requiring the Director of Vital Statistics to register him on the children's birth registration forms, to change the surnames of the children from "Ernst" to "Ernst-Trociuk", as well as a declaration that sections 3(1) and 3(6) of the *Vital Statistics Act* violated the equality guarantee in s. 15(1) of the *Canadian Charter of Rights and Freedoms*.
8. The court declined to issue the orders sought by the father and also dismissed the father's *Charter* claim. The court ruled that even if these sections did violate the equality guarantee, they could be justified as a reasonable limit on *Charter* rights as permitted by s. 1 of the *Charter*.

### **Court of Appeal for British Columbia**

9. By a majority of 2-1, the Court of Appeal for British Columbia ruled that the trial level judgment should be upheld.
10. Mr. Trociuk appealed the decision to the Supreme Court of Canada.

## ***The Final Judgment***

11. In a unanimous decision, the Supreme Court of Canada reversed the decision of the British Columbia Court of Appeal and concluded that subsections 3(1)(b) and 3(6)(b) of the *Vital Statistics Act* violated s. 15(1) of the *Charter*.
12. The Court ruled that the challenged sections of the *Vital Statistics Act* treated fathers differently than mothers, because the sections allowed a father's information to be permanently excluded from his children's birth registration if the mother, for any reason, chose to list him as "unacknowledged" on the birth registration form. These sections also allowed a father to be excluded from the process of determining the surname of his child if he was "unacknowledged" by the mother.
13. The Court concluded that because only women can be mothers and men fathers, these sections treated parents differently and did so on the basis of sex, which is

listed as a protected ground in s. 15(1). This constituted discrimination based on sex.

14. The Court held that the challenged sections of the *Vital Statistics Act* affected a father's human dignity because it was sending a message that a father's relationship with his children was less worthy of respect than a mother's relationship with her children. Because a parent's relationship with his or her children is so central to a parent's identity, a reasonable person in the father's position would have understood this message to be a negative judgment of his worth as a human being.
15. The Supreme Court of Canada also noted that in cases where a mother has good reasons for not acknowledging a father – for example, where she has become pregnant as a result of sexual assault or incest – allowing a father to dispute the lack of acknowledgement would have a serious impact on the mother and would not be in the best interests of the child. It could also discourage mothers from reporting births. However, the Court concluded that the interests of mothers could still be protected without exposing other fathers to the risk of being excluded permanently.
16. The Court held that the infringement of s. 15(1) of the *Charter* was not justified as a reasonable limit under s. 1.
17. In conclusion, the Majority held that sections 3(1)(b) and 3(6)(b) of the *Vital Statistics Act* violated the *Charter* and were therefore invalid. They gave the British Columbia legislature a period of 12 months time to fix the problems with the sections.
18. The Court noted that the new system for not acknowledging fathers on birth registration forms must satisfy the requirements of s. 15(1) of the *Charter*, and also account for the legitimate interests of the mother, the right of the father not to be discriminated against on the basis of his sex, and the best interests of the child.



## Check for Understanding

1. Mr. Trociuk and Ms. Ernst were married and living together at the time of the birth of their babies. **TRUE/FALSE**
2. Birth registration forms are a legal requirement in British Columbia. **TRUE/FALSE**
3. When Ms. Ernst filled out the birth registration forms for her babies, she listed the father as “unacknowledged by the mother.” **TRUE/FALSE**
4. The children’s last names were listed on the birth registration forms as “Ernst-Trociuk.” **TRUE/FALSE**
5. Certain provisions of the *Vital Statistics Act* prevented Mr. Trociuk from altering the children’s birth registration forms. **TRUE/FALSE**
6. Section 1 of the *Charter* allows for limits to be placed on our *Charter* rights and freedoms if courts rule that the limits are reasonable. **TRUE/FALSE**
7. The Supreme Court of British Columbia dismissed Mr. Trociuk’s claim that the *Vital Statistics Act* violated the equality guarantee in s. 15(1) of the *Charter*. **TRUE/FALSE**
8. The Court of Appeal for British Columbia disagreed with the trial judge and ruled that the *Vital Statistics Act* was invalid. **TRUE/FALSE**
9. The Supreme Court of Canada concluded that the sections of the *Vital Statistics Act* being challenge by Mr. Trociuk discriminated against him based on sex. **TRUE/FALSE**
10. All of the judges at the Supreme Court of Canada agreed that subsections 3(1)(b) and 3(6)(b) of the *Vital Statistics Act* violated s. 15(1) of the *Charter*. **TRUE/FALSE**

## Reflecting

Even though the conditions listed in the *Vital Statistics Act* resulted in discrimination against Mr. Trociuk in this case, these provisions were originally included for valid reasons.

1. Why do you think the British Columbia government originally included these provisions?

---

---

---

---

2. Whose interests do you think the government was trying to protect when the original provisions were written? Explain your answer?

---

---

---

---

3. Under what circumstances would it be justifiable to *exclude* the father's name on a birth registration certificate? Provide an example.

---

---

---

---

4. Do you agree with the final judgment of the Supreme Court of Canada? Why or why not?

---

---

---

---

5. What should happen if the mother is incapable of completing the registration form? Can or should the mother's name ever be excluded or unacknowledged in the interests of protecting the child?

---

---

---

---