

QUEEN'S BENCH FOR SASKATCHEWAN

Citation: *Jankus v. Saskatchewan (Attorney General) et al*, 2022 SKQB 397

Date: 20220928
Docket: Q.B.G. No. 087/2022
Registry: Saskatoon

Between:

MARIJKE JANKUS

Plaintiff

And:

**ATTORNEY GENERAL OF SASKATCHEWAN and
COLLEGE OF PHYSICIANS AND SURGEONS OF SASKATCHEWAN**

Defendants.

Before: The Honourable Justice Porteous

REASONS FOR JUDGMENT

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Introduction

[1] Marijke Jankus is an electrician in her late teens. In 20--, she was conceived using sperm from an anonymous donor. Like many donor offspring, Ms. Jankus knows nothing about the man who provided one-half of her genetic makeup. She has long felt that a part of her identity is missing. She risks inadvertently forming a romantic relationship with a half-sibling. She worries her health, and the health of her future children, could be compromised by the lack of information.

[2] Ms. Jankus went to Dr. Anita Ng, the Saskatoon doctor who performed the insemination, seeking information about her donor. As of April, 20-- when she retired, Dr. Ng was not obliged to keep records for a patient for more than six years from the last entry recorded, according to the rules of the College of Physicians and Surgeons of Saskatchewan (the "College") then in place. Dr. Ng says she no longer has any records relating to Ms. Jankus's donor, and that all records have been destroyed. Ms. Jankus says that the government of Saskatchewan (the "Province") permitted the destruction, thereby depriving

her of basic personal information that is necessary for her physical and psychological health.

[3] From Ms. Jankus's perspective, the Province has recognized, in the experience of adopted children, that questions about biological origins and feelings of loss and incompleteness are legitimate. The Province has addressed those concerns by enacting laws whereby information about the biological origins and family history of adoptees is gathered and preserved, and adoptees have the opportunity (and in some cases, the right) to obtain that information. These laws are found in *The Adoption Act, 1998*, S.S. 1998, c.A-5.2 (the "Adoption Act"), and the *Adoption Regulations, 2003*, R.S.S. c.A-5.2, Reg. 1 (the "Adoption Regulation"). Ms. Jankus cannot understand why the Province would recognize the needs of adoptees to learn about their biological parents and roots, but ignore the very same needs of individuals who, like her, are donor offspring and experience the same sense of loss and incompleteness as adoptees.

[4] Ms. Jankus asserts that this situation is profoundly unfair and discriminatory, and contrary to the *Canadian Charter of Rights and Freedoms* (the "Charter"). She has, therefore, brought a constitutional challenge to the absence of legislation that would ensure information about gamete donors is recorded and preserved for donor offspring, and could be made available to them.

[5] Ms. Jankus's challenge has two parts.

[6] The first part is a claim under s.15 of the Charter alleging discrimination as between adoptees and donor offspring. Ms. Jankus says that the Province has discriminated against donor offspring by enacting under-inclusive legislation – the Adoption Act and Adoption Regulation – and by failing to enact any legislation to provide her and other donor offspring with the rights and opportunities to know their origins that most Canadians take for granted.

[7] The second part is a claim under s.7 of the Charter that the liberty and security rights of donor offspring are violated by the Province's failure to enact legislation to protect fundamental aspects of their personal autonomy and health. Here, Ms. Jankus argues that s.7 of the Charter guarantees a positive right to liberty and security of the person, and therefore guarantees a free-standing constitutional right to know one's origins and genetic heritage. Ms. Jankus seeks, on her own behalf and on behalf of all donor offspring, the right to the identity of the donor, irrespective of when donor offspring were conceived, and irrespective of whether the donor believed that he would remain anonymous.