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## Need to Know

*Category: Custody & Access*

Picture this scenario, a child is born out of wedlock in BC. Not, I would venture, a terribly uncommon event. The mother decides not to inform the father of the birth, and subsequently decides to put the child up for adoption. The child is placed with caring adoptive parents who then apply for a final order of adoption. Is the child's father required to receive notice of his child's proposed adoption? Shockingly, no, according to BC Supreme Court Justice D. Smith in a recently released decision overturning a lower BC Supreme Court decision.

At the lower court level of the Supreme Court (where judges are referred to as Masters) a Master decided, after his review of BC's Adoption Act, that the adoptive parents were indeed legally required to serve the birth father with notice of their application. The Master also referred to "policy reasons for why a birth father should be notified of a proposed adoption."

But after her review and interpretation of BC's Adoption Act Justice Smith arrived at a markedly different conclusion. Justice Smith determined that the only parties to whom notice must be given, was anyone named by the birth mother as the child's birth father, or anyone registered with the birth father's registry. But since the mother had failed to inform or identify the father, and accordingly the father had no reason or opportunity to register with the birth registry Justice Smith determined there was no requirement for notice. As a result, the Master's decision was overturned by Justice Smith, and the adoption was allowed to proceed.

But Justice Smith's decision also revealed what I believe to be a glaring omission in the legislation, specifically, any legal requirement for the birth mother to acknowledge the identity of the birth father. This legislative oversight leaves the birth mother in virtual total control of the adoption process. In fact,

as commented by Justice Smith, the reasons why a birth mother declines to identify or acknowledge the birth father is "not material to determining the issue of who must be notified of a proposed adoption pursuant to the Act's provisions" While Justice Smith acknowledged that "a birth father may take issue with the omission of such requirements, there are policy choices within a legislature's jurisdiction to make."

With respect, I believe there was another judicial option available to the Court. A Supreme Court has the authority, pursuant to its inherent "parens patriae" jurisdiction, to act protectively in the best interests of children, and fill in any legislative gaps, pending changes in legislation. In this case the gap is the lack of any legal requirement of birth mothers to acknowledge the identity of the birth father, thereby effectively eliminating birth fathers from any role in the lives of their children.

We'll never know whether or not the birth father in this case would have opposed or consented to the adoption, or even bothered to care about his son. But that's not what's important. What is truly important is the need of this child, and every child like him, to know where they came from, and the chance to share their life with their father. 🌱