

Winnipeg couple became parents through surrogacy — but not in the eyes of Canadian law

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John Woods / Winnipeg Free Press In their home Monday, May 6, 2013, Mike Olson (left) and wife Lisa Seel (centre) hold their sons Keenan and Kai. The boys are biologically theirs but were born to Lisa's sister Averill Stephenson, who acted as a surrogate.

After many heartbreaking attempts at conceiving naturally, Lisa Seel and husband Mike Olson were overjoyed when her sister, who had volunteered to undergo in-vitro fertilization and carry the couple's child, became pregnant with twin boys.

Ms. Seel and Mr. Olson began to prepare for the twins' arrival at their Winnipeg home, consulting with lawyers about the laws governing surrogacy in Manitoba and drawing up an agreement they were certain would define them as the true parents.

But when the boys arrived on Christmas Eve, the couple was shocked by Canada's bureaucracy, which they believe is out of step with the new realities of family making.

Under Canadian law, Mr. Olson and Ms. Seel have no legal right to their child because the provincial birth registry operates under the assumption that the woman who delivers the child is the biological mother and, if she is married, that her husband is the father.

Across the country, with one small exception, the surrogate mother's name is the first one on the birth registry, followed by a costly in-depth court process to change the record and transfer parental rights.



John Woods / Winnipeg Free Press Averill Stephenson holds baby Kai on Monday, May 6, 2013. Husband and wife Mike Olson and Lisa Seel are fighting with the Manitoba to have their sons Keenan and Kai recognized as their own and not that of Lisa's sister Averill, who acted as a surrogate for them.

But compared with other provinces, Manitoba's process is fraught with unnecessary hurdles, lawyers argue, including the fact that judges often request the surrogate participate in the hearings.

“It’s so silly and so frustrating,” Mr. Olson told the Winnipeg Free Press. “We’ve been through so much already.”

The new parents, who have a court date later this spring, have gone public in the hopes that their story might prompt the provincial government to amend legislation so that couples who seek help from surrogates may sign the birth certificate before the child leaves hospital, eliminating red tape.

Who gets to register as the legal parent depends on the province in which the child is born, explains Sara Cohen, a fertility lawyer based in Toronto. In British Columbia, a new law states that the intended parents may sign off on the birth certificate, provided that they reached an agreement with the surrogate prior to the transfer of the embryo and assuming no one backs out.

In other provinces, parents must petition the courts with a declaration of parentage, which can take weeks to sort out. While the option exists in Manitoba, it’s more common for lawyers to advise their clients to privately adopt their children because the process is better known and understood.

“God forbid,” Ms. Cohen said, “that one of the kids has a major medical need and the kids are staying with the intended parents and they go to a hospital and the staff won’t take instructions from these people because they’re not the registered parents.... They can’t give consent for life-saving measures.... They don’t have the same rights.”

Jim Rondeau, the minister in charge of Manitoba’s vital statistics department, told the *National Post* that he has asked that the process be reviewed in a bid to streamline the procedure, using B.C. as a model.

“Families have changed and we think the law should change and we’re taking steps to do that. There’s no opposition to modernizing regulations, but, for the safety of the child, we must proceed cautiously,” Mr. Rondeau said. “When the vital statistics law was created many years ago, there weren’t so many issues. I’ve asked the department to look into it.”

National Post