

Canadian Journal of Family Law

Volume 29 | Number 2

2015

Book Review: Petra Nordqvist and Carol Smart, *Relative Strangers: Family Life, Genes and Donor Conception*

Machteld Vonk

Follow this and additional works at: <https://commons.allard.ubc.ca/can-j-fam-l>



Part of the [Family Law Commons](#), and the [Law and Society Commons](#)

Recommended Citation

Machteld Vonk, "Book Review: Petra Nordqvist and Carol Smart, *Relative Strangers: Family Life, Genes and Donor Conception*" (2015) 29:2 Can J Fam L 421.

The University of British Columbia (UBC) grants you a license to use this article under the [Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International \(CC BY-NC-ND 4.0\) licence](#). If you wish to use this article or excerpts of the article for other purposes such as commercial republication, contact UBC via the Canadian Journal of Family Law at cdnjfl@interchange.ubc.ca

BOOK REVIEW

Petra Nordqvist and Carol Smart, *Relative Strangers: Family Life, Genes and Donor Conception* (Houndmills, UK: Palgrave Macmillan, 2014)

Machteld Vonk*

Relative Strangers: Family Life, Genes and Donor Conception,¹ written by Petra Nordqvist and Carol Smart, both from the University of Manchester, describes the results of interviews with parents and grandparents about their experiences with donor conception. The book starts with a story from the mother of a donor-conceived child who is sitting in a crowded waiting room of a doctor's office with her four-year-old daughter. This mother had been open with her daughter about the fact that her daddy is not her biological father and the child starts talking to her mother in the waiting room about Mr. Donor who provided sperm. The mother has no option but to hide her embarrassment and confirm that her daughter is right.² This story puts the reader instantly in the middle of the dilemmas faced by parents of donor-conceived children. Being open with their children about donor conception does not necessarily prepare parents for the consequences, including that the children will talk about being donor conceived with other people, which means the donor conception is no longer a private matter but, rather, public knowledge.

* Dr. Machteld Vonk is an assistant professor of family and child law at the Child Law department of Leiden University Law School, the Netherlands. This review was partly written while visiting the law schools of the University of British Columbia and the University of Victoria.

¹ Petra Nordqvist & Carol Smart, *Relative Strangers: Family Life, Genes and Donor Conception* (Houndmills, UK: Palgrave Macmillan, 2014).

² *Ibid* at 1–2.

In the UK the use of anonymous donor sperm, eggs, and embryos has been illegal since early 2005, and the acquisition of anonymous reproductive material through the Internet was banned in 2007.³ Children conceived after April 1, 2005, with donor material in licensed fertility clinics will have access to identifying information about their donor once they turn eighteen. This means that April 1, 2023 will be the first time that donor-conceived children may make use of this option. Canada takes a completely different approach to the issue of openness about the identity of gamete donors, which will be discussed later in this review. Nordqvist and Smart explain that in the early days of gamete donation, parents in the UK were advised not to tell their children they were donor conceived, and then, quite suddenly, in the late twentieth century there was a complete shift from secrecy to openness. The authors refer to the parents interviewed for this book as pioneers who “are entering into a new way of doing family life.”⁴ The generation of donor-conceived families before them raised their children in a different cultural context. This does not mean that the previous generation has not felt the consequences of the sudden shift from secrecy to openness, but the group of parents interviewed have all conceived and raised their children in a new culture of openness.

The book is based on in-depth interviews with twenty-two heterosexual couples, twenty-two lesbian couples, fifteen grandparents who had a heterosexual son or daughter who made use of donated sperm or eggs and fifteen grandparents who had a lesbian daughter who made use of donated sperm or eggs.⁵ The parents and grandparents do not belong to the same families, which means that a total of seventy-four families were involved in the project. Most of the children in these families were of pre-school age during the interviews, so issues that arise when donor-conceived children become adolescents or reach adulthood are not included in this study. The young age of the children

³ *Ibid* at 6.

⁴ *Ibid* at 3.

⁵ *Ibid* at 4.

is also the reason they themselves were not interviewed. It would be interesting to follow these families and interview the children as they grow older.

The families were recruited in 2011 through different communities and organizations to ensure that a range of families who conceived through different donor conception routes were included. Most of the families made use of donor sperm (76 per cent), a smaller number made use of egg donation (21 per cent) and an even smaller number made use of embryo donation (less than 4 per cent).⁶ The result is that the families interviewed have followed different routes to realize their wish for a child and thus the study gives a broad perspective on the challenges faced by these families. The book takes the reader through the experiences of these families, from coming out as a lesbian, the failure of fertility treatment, the support offered by family members, the selection of donors, and the support during treatment to questions relating to openness about the donation and the embedding of the child in the wider family. Nordqvist and Smart, however, stress that their sample of donor-conceived families does not include families who have no plans to tell their children about their “unusual” origins. The book sets out to explore the experiences of donor-conceived families as fully as possible in the context of their wider network of friends and family members. It is a comprehensive work in more than one sense.

Relative Strangers is too broad and complex a book to easily summarize, not in the least because the narrative is richly laced with quotes from the interviews. So I will try to give a sense of the matters discussed in the book, without claiming to give in any way a complete account.

The book starts with exploring the cultural expectations of family life and how donor conception upsets the current ideas about

⁶ *Ibid* at 168.

what constitutes a “proper family.” As Nordqvist and Smart state early on in the first chapter, “[t]he dominant cultural narrative about family life is still largely based on the idea of a married heterosexual couple who live together with their ‘own’ genetic children.”⁷ What does this mean for parents of donor-conceived children? The authors describe the case of a lesbian couple and their known sperm donor who fight over their roles in the child’s life and conclude that conceiving with donated genetic material will always bring a third (or even a fourth) person into the child’s life and raise the question of what role this person (and his or her family) will play in the child’s life. Even when the identity of the donor is not known to the parents or grandparents, he or she may be a continuing presence.

Another topic explored in this context is that of identity, particularly whether and how identity is linked to genetics. The authors “suggest that there is now ample evidence to show that, on the one hand, genetic kinship does not automatically lead to caring, loving, close families and, on the other hand, family practices between non-genetic kin can give rise to bonding, security and a strong sense of belonging.”⁸ In the chapters that follow, Nordqvist and Smart try to trace in detail how the families concerned deal with these issues in daily life.

“Uncharted Territories,” the second chapter, concerns the roads parents travel in order to fulfill their desire to have a child. Heterosexual couples and lesbian couples are discussed separately as their experiences turn out to differ substantially. Heterosexual couples come to the decision to use donor gametes because one or both of them have discovered they are infertile, usually after trying for a child for some time. These couples have to come to terms with their infertility and may experience feelings of failure and loss. This process is seen as akin to bereavement. Lesbian couples, on the other hand, have been

⁷ *Ibid* at 11.

⁸ *Ibid* at 27.

aware from the start that having children together might be challenging and that they would need donor sperm to achieve pregnancy. For them, they frame exploring the options of donor conception as an opportunity.

The third chapter, “Ripples through the Family,” starts from the premise that assisted reproduction not only concerns the couple undergoing treatment but also the wider family, including parents and siblings. The involvement of parents and other family members and the support offered (or not) by them is discussed. Again there are differences between heterosexual couples and lesbian couples, the latter group being far less likely to involve parents in the process of fertility treatment. However, after the birth of the child there is more family involvement, and in most cases (though not in all) the birth of the child led to an improved relationship between the lesbian couples and their parents. The wider families of the heterosexual couples were in general more involved during the fertility treatment process and offered necessary support. The response of grandparents to the donor conception “could make a great difference to whether or not parents could create a proper sense of belonging to a family for their children.”⁹

“Keeping It Close,” the fourth chapter, focuses on the role of secrecy surrounding donor insemination and delves deeper into the role that the wider family plays in the process of embedding the donor-conceived child in the family. The chapter discusses the issue of information ownership and the consequences of sharing sensitive information. Many parents felt the information about the donor conception was not theirs to share but the child’s. Furthermore, parents are not always certain whether the wider family will accept the child when they are told the child is not genetically related to them. The authors compare secrecy surrounding donor conception in families to Pandora’s box; parents may be afraid of their secret being revealed because they cannot predict the consequences. The authors suggest that

⁹ *Ibid* at 66–67.

families struggle with three interlinked priorities in their family lives: the commitment to sharing the information first with the child; concern about the issue of privacy because they fear social stigma; and decisions about non-disclosure. These struggles are shaped by the complexity of living embedded and connected lives.

The next chapter, “Opening Up,” explores experiences with openness about the donation in families. As was mentioned earlier, openness with children about their donor conception has been the norm in the United Kingdom since 2005. The underlying idea behind this norm is that children have a right to know who their genetic parents are, on the basis of articles 7 and 8 of the 1989 United Nation’s *Convention on the Rights of the Child (CRC)*¹⁰, and to be told about their donor conception at an early age. The shift from non-disclosure to disclosure in the UK was quite sudden and may go against assumptions held by parents and grandparents about what is in the interest of their (grand)children. “This means not only that there may be resistance to the new values but also that there is not yet a widely accepted social narrative for translating the idea of openness into practice. Culturally speaking, there is a gap between the desire to talk openly about donor conception and the practice of doing this in families.”¹¹ The authors conclude that the practical implementation of the idea of openness is not an easy task. They point to a number of issues that they found to be very relevant in this context: disclosure is not a one-time event; the cultural move towards disclosure impacts the boundaries between the private and public lives of the families involved; all families are different; and not all families have existing patterns of open communication that facilitate disclosure.

“Relating to Donors” concerns the position of the donor in the family context. The interviews show that the donor, whether he or she is known or unknown, is a continuing presence in the family (although

¹⁰ 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990).

¹¹ Nordqvist & Smart, *supra* note 1 at 88.

this may obviously be a completely different presence from family to family). The identity-release donor is unknown during the child's minority but may become known later on. The child may even develop a relationship with the donor during adulthood. Even though the donor is not present during the child's minority, "an imaginary relationship clearly exists for most receiving parents and, for some, the donor is present as a kind of ghost discernable in the child or lurking in the future."¹² If a known donor, possibly a family member, has been involved, he or she will be present during childhood and the family has to navigate the difference between genetic ties and kinship ties based on everyday parental care in a much more complex context.

"(Not) One of Us" explores the meaning of genetic connections in donor-conceived families. Issues discussed are the role of pregnancy in cases of egg or embryo donation, the bonding between parent or grandparent and child through everyday parenting, the role of family resemblances or the lack thereof, and the grief of not being able to conceive a genetic child combined with the joys of parenthood. Most of the families struggle in one way or another with the disruption of the genetic link. Moreover, the interviews show how strongly "genetic and bodily connectedness feature in the contemporary cultural framework of what makes parents, family and kinship, and also what shapes the ideas about family belonging."¹³

The final chapter of the book, "Paradoxes of Genetic Kinship," explores the relationship between genetic thinking and kinship thinking on the basis of three concepts from the interviews: What is the relevance of genes in the lives of these families? What is the relevance of caring in the lives of these families? How do parents and grandparents navigate these issues? What is clear throughout the book is that the experiences of lesbian families and heterosexual families differ in many respects, from their experiences surrounding the

¹² *Ibid* at 123.

¹³ *Ibid* at 143.

decision to conceive children through donor conception, the way they involve their families in this process, the acceptance of the child by their wider network and the possible involvement of the donor in the child's life to the difficulties parents face or not in telling their children they are donor conceived. The authors find that different families created their own stories of their connectedness with the children they raise and love who are not their full genetic kin. Their kinship finds its basis in the daily care and loving, not in genetics. Moreover, all the families wanted to do was what was right in relation to their children, "it is just that it was not always clear what this was."¹⁴

How thinking about the role of genetics in families will develop cannot be foreseen. We may find that the importance it is accorded in contemporary life will diminish or that it may develop further, or become even more complicated. The decision of the UK House of Commons in February 2015 to allow a form of reproduction that involves genetic material from three people is a development that will fuel discussion about the meaning of genetics in family life.¹⁵ The genetic contribution of the third person is very minimal, but that may not be relevant in this discussion or to the child's right to be able to trace its genetic history.

Relative Strangers is a very interesting and readable source of information for anyone involved in issues relating to donor conception. From the perspective of a legal professional, the study is of great value because it provides insight into the lives of donor-conceived families and the role donor conception plays in their lives, in particular since the shift towards openness about donor conception and donor identity in the UK. In my home country, the Netherlands, the right of children to know their genetic origins was recognized by the Dutch Supreme

¹⁴ *Ibid* at 162.

¹⁵ UK, HL, *Parliamentary Debates*, vol 759, col 1569–1676 (24 February 2015), online: <<http://www.publications.parliament.uk/pa/ld201415/ldhansrd/lhan106.pdf>>.

Court in the early 1990s, and since 2004, a law has been in place that bans anonymous egg and sperm donation and gives donor-conceived children access to donor-identifying information once they are sixteen years old.¹⁶ There is, however, continued discussion about the role this right should play in the legal recognition of donor-conceived families. Developments in the past few years have moved toward increased recognition of the child's factual family, be it a heterosexual or a lesbian family, while at the same time safeguarding the child's right to know its origins by storing donor-identifying information.¹⁷ Currently a law commission is investigating possibilities for a more inclusive family law that may result in the recognition of families with more than two parents.¹⁸

In Canada, openness about the identity of gamete donors is not the norm.¹⁹ As recently as 2012, the British Columbia Court of Appeal in *Pratten v. British Columbia* concluded that it was not convinced that articles 7 and 8 of the UN *Convention on the Rights of the Child* include the right for donor-conceived children to know the identity of their biological parents akin to the right granted by these articles to adoptive

¹⁶ PM Janssens et al, "A New Dutch Law Regulating Provision of Identifying Information of Donors to Offspring: Background, Content and Impact" (2006) 21(4) *Human Reproduction* 852.

¹⁷ Ian Curry-Sumner & Machteld Vonk, "Dutch Co-motherhood in 2014" in B Atkin, ed, *The International Survey of Family Law: 2014 Edition* (Bristol: Jordan Publishing, 2014) 361.

¹⁸ Machteld Vonk, "Dutch Committee of State to Recalibrate Parenthood: A Broad and Challenging Task!" (28 February 2014), *Leiden Law Blog*, online: <<http://leidenlawblog.nl/articles/dutch-committee-of-state-to-recalibrate-parenthood-a-broad-and-challenging>>.

¹⁹ For more information on this topic in Canada see Juliet R Guichon, Ian Mitchell & Michelle Giroux, eds, *The Right to Know One's Origins: Assisted Human Reproduction and the Best Interests of Children* (Brussels: Academic & Scientific Publishers, 2012)

children to know their original parents.²⁰ This conclusion was based on the wording used by the Committee on the Rights of the Child (hereafter referred to as “the Committee”) in its *Concluding Observations* in response to the report submitted by the UK in 2002.²¹ In these observations the Committee *recommended* that the UK “take all necessary measures to allow all children, irrespective of the circumstances of their birth, and adopted children, to obtain information on the identity of their parents, to the extent possible.”²² According to the Court “the language of the recommendation does not reflect the view that access to information regarding biological origin is guaranteed by the Convention.”²³ By the time the *Pratten* case came before the BC Court of Appeal, the UK had introduced legislation to regulate the right of donor offspring to know the identity of their egg or sperm donor. Besides reaching the aforementioned conclusion on articles 7 and 8 of the *CRC*, the BC Court of Appeal concluded in this judgment that the province of British Columbia is not bound by the *CRC*, despite the fact that Canada ratified it on December 13, 1991.²⁴

²⁰ *Pratten v British Columbia (Attorney General)*, 2012 BCCA 480 in particular paras 53–62, 37 BCLR (5th) 269 [*Pratten*].

²¹ Committee on the Rights of the Child, *Concluding observations: United Kingdom of Great Britain and Northern Ireland*, UNCRCOR, 31st Sess, UN Doc C/15/Add 188 (2002).

²² *Ibid* at 8.

²³ *Pratten*, *supra* note 20 at para 61.

²⁴ The Committee on the Rights of the Child expresses its concern about the absence of consistent application of the *CRC* in Canada in its *Concluding Observations* published on December 6, 2012, and “recommends that the State party find the appropriate constitutional path that will allow it to have in the whole territory of the State party, including its provinces and territories, a comprehensive legal framework which fully incorporates the provisions of the Convention and its Optional Protocols and provides clear guidelines for their consistent application.”: *Concluding Observations on the Combined Third and Fourth Periodic Reports of Canada*, UNCRCOR, 61st Sess, UN Doc C/CAN/CO/3-4,(2012) at para 11.

On May 30, 2013, Olivia Pratten's request for leave to appeal to the Supreme Court of Canada was dismissed.²⁵

It may be that article 8 of the *CRC* was not written with artificial reproduction in mind, but as Doek argues in his leading commentary on article 8, in this context “the obligation to respect the child's right to preservation of his or her identity requires states to undertake all legislative, administrative and other measures (art 4 *CRC*) to implement that right, interpreting it in a dynamic manner with present day conditions in mind.”²⁶ Interpretation of articles 7 and 8 of the *CRC* with present day conditions in mind is also the approach that the Committee takes with regard to the question of the rights of children to know their biological origins. Between 2006 and 2012, four EU countries received recommendations to fully enforce the child's right to know its biological parents.²⁷ In 2013, the Committee published a *General Comment* on article 3 of the *CRC* concerning the best interests of the child.²⁸ In this *Comment* the Committee states that “due consideration of the child's best interests implies that children

²⁵ *Olivia Pratten v Attorney General of British Columbia et al* (30 May 2013), Ottawa, SCC 35191 (motion to dismiss).

²⁶ JE Doek, “Article 8: The Right to Preservation of Identity, and Article 9: The Right Not to Be Separated from His or Her Parents”, in A Allen et al, eds, *A Commentary on the United Nations Convention on the Rights of the Child* (Leide, the Netherlands: Martinus Nijhoff Publishers, 2006) at 13.

²⁷ Austria, Belgium, Czech Republic and France; see ChildONEurope Secretariat, *Survey on the CRC Committee Concluding Observations on the last EU Countries' Reports: Updating of the 2006 ChildONEurope Report* (Firenze: Istituto degli Innocenti di Firenze, 2014) at 42, online at: <<http://www.childoneurope.org/issues/publications/COESeries9-Coccludingobs.pdf>>.

²⁸ Committee on the Rights of the Child, *General Comment No. 14 (2013) on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration (art. 3, para. 1)*, UNCRCOR, 62 Sess, UN Doc C/GC/14 (2013).

have access to the culture (and language, if possible) of their country and family of origin, and the opportunity to access information about their biological family, in accordance with the legal and professional regulations of the given country.”²⁹ Furthermore, in June 2013, the Committee recommended the following with regard to the practice of surrogacy in Israel: “in the regulation of assisted reproduction technologies, particularly with the involvement of surrogate mothers, the State party ensure respect for the rights of children to have their best interests taken as a primary consideration and to have access to information about their origins.”³⁰ All in all, it can be argued that the case for recognition of the child’s right to know the identity of its biological parents in the context of donor conception continues to grow stronger.

It is interesting, in the context of the right of children to know their origins on the one hand and the acceptance of donor-conceived families by the law on the other hand, to take a brief look at the parentage section in the British Columbia *Family Law Act (FLA)* that entered into force in March 2013.³¹ There is explicit recognition of both same-sex and different-sex donor-conceived families, with either two parents or, if a pre-conception agreement is made to that effect, with three or possibly four parents.³² However, in line with the *Pratten* judgment, there is no regulation in the *FLA*, or in specific regulation to this effect, that provides for the storage of donor data or the possibility for the child to receive donor-identifying information at a later stage in its life. In the public consultation preceding the introduction of the *FLA*

²⁹ *Ibid* at para 56.

³⁰ Committee on the Rights of the Child, *Concluding Observations on the Second to Fourth Periodic Reports of Israel*, UNCRCOR, 63rd Sess, UN Doc C/ISR/CO/2-4 (2013) at para 34.

³¹ SBC 2011, c 25.

³² *Ibid* at ss 27, 29–30. See for a further analysis Susan B Boyd, “Equality: An Uncomfortable Fit in Parenting Law” in Robert Leckey, ed, *After Legal Equality: Family, Sex, Kinship* (Abingdon, UK: Routledge, 2014) at 42.

one of the questions addressed the child's information rights: should the child have access to information about the sperm or egg donor? A majority of the respondents felt that medical information about the donor should be made available, but none of the respondents favoured disclosing the identity of a donor without his or her consent.³³ However, given the UN Committee's increasing attention on the implementation of children's right to have access to information about their biological parents, the approach taken in the *FLA* and more generally in Canada to this issue may turn out to be problematic in the next reporting session.

The legal debate about openness does well to be informed by the experiences of the families navigating kinship after donor conception, in particular how they deal with the current UK norm towards openness. Requiring openness from parents also requires understanding about the fact that openness in real life is not an issue between parents and children only, as it is in the legal arena, but is an issue that concerns the wider family and makes sexuality and conception, issues which are usually private, into public ones. Nordqvist and Smart state in this context that the complex pattern of relationships must always be taken into account when trying to understand how people deal with the new phenomenon of donor conception. How and when families discuss these issues with their children is a private matter, though it may help if the discourse in society on non-genetic parenthood and kinship is more understanding of the issues donor-conceived families are confronted with. Some time ago I had the pleasure of attending a lecture by an American human rights lawyer, Bryan Stevenson, who stressed the importance of proximity for understanding others and of changing the predominant

³³ British Columbia, Civil and Family Law Office, *Family Relations Act Review: Report of Public Consultation* (Victoria: Ministry of Attorney General, 2009) at 50.

narrative in a changing society.³⁴ Nordqvist and Smart's study of donor-conceived families yields very relevant insights into their experiences and, in that way, increases understanding. Moreover, these families and their children help to change the narrative told about the "proper family" into a narrative that is more inclusive of other types of families, based on the *doing* of family life instead of focusing on genetics only.

³⁴ Bryan A Stevenson, "Confronting Injustice: Protecting Human Rights in a Complex Era" (Sackler Distinguished Lecture Series on Human Rights delivered at Leiden University Law School, 10 December 2014), [unpublished].