

Adoption News and Views August 2007

This is the second issue of a newsletter which aims to provide information about adoption of children and any new legal and policy developments affecting adoptees, birth parents, and adoptive parents. Future newsletters will be sent out at three monthly intervals or more frequently if important issues arise.

The main purpose of the newsletter is to provide up to date and accurate information on actual and proposed law and policy changes for New Zealanders with an interest in adoption but it is hoped that it will also provide a forum for people to discuss adoption issues which are being debated both in New Zealand and overseas. Reviews of books and other publications touching on adoption and are invited.

Adoption News and Views is sent to you because you are known to be a person interested in adoption. If you do not want to receive further issues you should reply to this email indicating this. If you know of others who would like to receive future issues or you or others wish to submit information or views for inclusion in the next issue you can reply to this email or ask interested others to do so.

While the aim of this newsletter is to provide an open forum for people interested in adoption issues the editors reserve the right to decline or abridge any contributions offered.

Robert Ludbrook
Susan Marks
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Comment: The Need for Adoption Law Reform

Adoption - time for changes

Professor Mark Henaghan, Dean of Law, University of Otago.

The Adoption Act 1955 (the Act) was passed at a time when some Family Court Judges were not even twinkles in their parents' eyes and others were running around in nappies. It was a time when births outside marriage were morally, socially and legally disapproved of. Young mothers disappeared from school. They went into the country or to Australia to have their child and then returned as if nothing had happened. There was little governmental responsibility and financial support for those mothers if they wanted to keep their child. It was a time when children were "seen but not heard". There was no recognition of Maori concepts of family -Maori were expected to fit the western model of the family.

Adoption was seen as the solution for children who would otherwise have struggled in the social mores of the time. The 1959 book *Yours By Choice, A Guide for Adoptive Parents* by Jane Rowe sums up the social aspiration of adoption in the 1950s:1

“It used to be thought that it was the unmarried mother's duty to keep her baby and carry with her the burden and reminder of her sin. Not much thought was given to the welfare of the child. People felt that girls who kept their babies were less likely to become illegitimately pregnant again. These views have largely changed. The emphasis now is on helping the girl make a wise decision about what will be best for the baby. Will she be able to offer him the security that every child needs or will he have a better chance in life if he goes into an adoptive home where he will have two parents who will truly love and want him ... Day by day I see in the future, three fine homes, instead of the possibility of three serious problems for the state.”

As Keith Griffith in his treatise on adoption *New Zealand Adoption: History and Practice, Social and Legal, 1840-1996* points out, New Zealand was the first Commonwealth country to introduce law on adoption in 1881. Adoption proceedings were in open court. Adopted children's birth certificates retained their birth parents' names and the adopted child retained their birth surname which was also hyphenated to the adopted surname. All those involved had access to the other's identity. The idea of open adoption was there in the first legislation. It was always there in Maori society. As was said in *Puao-te-ata-tu (Day Break)*, "There is no property in children. Maori children know many homes but still one whanau. 'Adopted' children knew birth parents and adoptive parents alike and had recourse to many in times of need."

The Act is based on the theory of the "complete break" -a child transplanted into an adoptive family would grow up, in the words of s 2(2)(a) of the Act, "as if the child had born to the adopted parents in lawful wedlock". As Keith Griffith described it a "statutory guillotine ... legally chopped the genetic roots off ... The Registrar-General re-birthed the child by issuing a new birth certificate to prove it and concealed the original."

It took until the Adult Adoption Information Act 1985 (1985 Act) for Parliament to recognise that adopted children had the same needs as everyone else to find out about their genetic past and identity. Yet apart from the 1985 Act there has been very little change to the principal Adoption Act since 1955. There have been lots of reviews (*A Review of the Law on Adoption Webb Report, Justice Department, 1979; Puao-te-ata-tu (Day Break) Report of Ministerial Advisory Committee on a Maori Perspective, Department of Social Welfare, 1988; Adoption Practices Review Committee Report to Minister of Social Welfare, 1990; Review of Adoption Law, Social Policy Agency, 1993; Parliamentary Committee Report Back on Adoption No 2 Bill, 1996; Adoption and Its Alternatives: A Different Approach and a New Framework, New Zealand Law Commission, 2000*), still nothing has happened. Far fewer children are

adopted today than in 1955 (less than 300 a year). That is not a good reason to not change the law if it does not comply with Human Rights provisions, the New Zealand Bill of Rights Act 1990 and international obligations under the 1989 United Nations Convention on the Rights of the Child.

Robert Ludbrook, a tireless child advocate, Keith Griffith, Mary Iwanek and Anne Else, three compassionate researchers who have worked in the field of research on adoption for many years, recently [May 2006], met with the Minister of Justice, Mark Burton, and pointed out, amongst others, the following major breaches of basic rights in the Act:

Provisions of Adoption Act that breach the Human Rights Act 1993

- Section 3(2) -only married couples and single persons can apply to adopt a child (discrimination against unmarried applicants on the grounds of their not being married: s21(1)(b) HRA 1993)
- Section 4(1) -an applicant for an adoption order must have attained the age of 25 years and be at least 20 years older than the child (discrimination on the grounds of age: s21(1)(i) HRA)
- Section 4(2) -a sole male applicant can only adopt a female child if there are special circumstances (discrimination on the grounds of sex and marital status: s21(1)(a) & (b)(i) HRA)
- Section 7(3) -an adoption order can be made without the consent of the child's father if he is or was not married to the mother (discrimination on the grounds of sex and marital status: s21(1)(a) & (b)(i) HRA)
- Section 7 -the consent of the child to be adopted is not required even if the 'child' is 19 (or in some cases 20 years) when the order is made (discrimination on the grounds of age: s21(1)(i) HRA)
- Section 16(2)(a) -the child is deemed to be born to adoptive parent(s) in lawful wedlock(discrimination on the grounds of marital status: s21(1)(b)(i) HRA)
- Section 19 -Maori customary adoptions not recognised (discrimination on the grounds of race:s21(1)(f) HRA)

Provisions of the Adoption Act 1955 which breach the 1989 United Nations Convention on the Rights of the Child

- Section 11(b) -child's wishes to be considered in assessing child's welfare (there is no power to appoint a lawyer to represent the child and no mechanism by which the child's wishes can be ascertained and placed before the Court Art 12 UNCROC)
- Section 11 -the Court is not required to take into account cultural factors affecting the child's relationship with family, whanau or aiga (indigenous and minority children have the right to enjoy their own culture Art 30 UNCROC)
- Section 23 -Court adoption records only available for search on a "special ground" (children separated from their parents have the right to maintain personal relations and direct contact with their parents Art 9.3 UNCROC)

Why the reluctance to carry out reform of the Act? It may be because those affected by adoption are not a large enough political constituency to claim political attention. At the

present time, it is likely that the government may not want to enter into the debate of adoption by same sex couples after the public outcry in some circles over the Civil Union Act 2004. In the last election in the United States for 73 per cent of the voters the major issues were the moral ones such as same sex marriage and same sex adoption.

But the horse has already bolted. The Human Assisted Reproduction Technology Act 2004 (the HART Act) allows for the same sex partner of a woman who uses IVF to have a child to be deemed to be the legal parent. Two gay men who wanted to form a family in a similar way would need to use a surrogate mother but then they would be unable to legally adopt the child

The United States case of *Lofton and Others v Secretary of the Department of Children and Family Services* (358 F 3d 304, 2004 US App Lexis 1387) shows the social cost of not allowing same sex adoption. The case involved six gay men who were raising foster children, some of whom had tested positive for HIV at birth. The gay men were accepted to be model carers for the children. The United States Court of Appeals for the Eleventh Circuit conceded that some homosexual households would provide a better environment for bringing up children than some single parent households. The Court said the question was an empirical one as to whether or not homosexual households were generally as good as heterosexual ones for bringing up children. The Court concluded homosexual households were a recent phenomena and sufficient time had not passed to give conclusive results on how children cope in them. By comparison the heterosexual family structure was said to have established "a proven track record spanning centuries." On that sort of reasoning same sex couples are a few hundred years away from being able to adopt as a couple. By way of comparison the Alberta Court of Queens Bench in *C, Re* (1999 Carswell/Alta 1121) accepted evidence from the Psychologists Association of Alberta that:

"The psychological research generally does not support any scientific basis for discrimination against homosexuals with regard to fitness to parent. The fitness and suitability of gay and lesbian parents or foster parents needs to be considered on a case-by-case basis, as it is for heterosexual parents".

Empirical evidence will not satisfy those who are opposed to same sex adoption on moral grounds. The law in New Zealand has already provided some of the answers through the Bill of Rights Act 1990 and the prohibition of discrimination on the basis of sexual orientation and the HART Act 2004 with the recognition of legal parenthood for same sex female couples using IVF.

The Care of Children Act 2004 is modern legislation that New Zealand can be very proud of with its principled approach to a particular child's best interests. The Adoption Act 1955 is an embarrassment. The Family Law Section and family lawyers generally have a good record in serving the public good by ensuring the law meets the needs of current society. Can you all please write to the Minister of Justice saying it is time the Act was brought up-to-date.

- 1 J Rowe *Yours By Choice, A Guide for Adoptive Parents* (Routledge & Kegan Paul, London, 1959), 45.
- 2 The Maori Perspective Advisory Committee Pua-te-ata-tu (Day Break): The Report of the Ministerial Advisory Committee on a Maori Perspective for the Department of Social Welfare (Department of Social Welfare, Wellington, September 1988), 75.
- 3 K Griffith *New Zealand Adoption: History and Practice, Social and Legal, 1840-1996* (K.C. Griffith, Wellington, 1997), 8.
- 4 R Ludbrook et al, informal submissions to the Minister of Justice on the Adoption Act 1955, (March 2006),
- 5 *Lofton and Others v Secretary of the Department of Children and Family Services* (358 F 3d 304, 2004 US App Lexis 1387, 1392).
- 6 C, Re (1999 Carswell/Alta 1121, 1131).

This editorial by Professor Mark Henaghan of Otago University appeared in New Zealand Family Law Journal (2006) NZFLJ 131 and is reproduced with the kind permission of the author and the publishers Lexis Nexis.

Adoption: the Cinderella of Family Law

The Law Commission proposed in 1999 that adoption and other legislation governing the guardianship and care of children should be brought together under a Care of Children Act. The Commission pointed to the disjunctions between the Adoption Act 1955, the Guardianship Act 1968 (since replaced by the Care of Children Act 2004) and the child protection provisions of the Children, Young Persons and Their Families Act 1989. It saw the advantage of a comprehensive statute as being that child placement issues could be dealt with coherently with each care option on the spectrum from temporary care to permanent placement able to be canvassed as an option for a particular child with its emphasis on the best interests of the child: see *Adoption: Options for Reform: A Discussion Paper* (1999) NZLC PP38 para 38; *Adoption and its Alternatives: A Different Approach and a New Framework* NZLC R65 paras 86 – 89.

There is a pressing need for the different approaches to the care of children evident in the Adoption Act, the child protection provisions of the Children, Young Persons and their Families Act 1989, and the provisions as to the guardianship and day-to-day care of and contact with children in the Care of Children Act 2004 to be synthesised and incorporated in one comprehensive statute. This would require major reform but there is no evidence that the government agencies responsible (particularly Ministry of Social Development and Ministry of Justice) have any enthusiasm for the proposal. It is pertinent to note that the Discussion Paper *Safeguarding Our Children: A Review of the Children, Young Persons and their Families Act* (April 2007) published by Ministry of Social Development is silent on the Law Commission's recommendations and that the Ministry of Justice Discussion Paper *Responsibilities for Children* published as part of the review of the Guardianship Act do not discuss the Law Commission's proposal for the amalgamation of adoption and guardianship, custody and access law in one statute.

Robert Ludbrook

Copy Letter to Minister of Justice

Hon Mark Burton
Minister of Justice
Parliament Buildings
Wellington.

Reform of Adoption Laws

Dear Mark Burton

You will remember I was one of a group of professional people with a special interest in adoption who met with you on May 11 last year to express our concern at the lack of action in relation to adoption law reform. At that meeting, several members of the group expressed concerns at the lack of information being provided by the Ministry as to progress (or lack of progress) with its work on adoption reform or as to the reasons why it had been taken off the Ministry's Work Plan. You assured us that as long as you were the Minister communication would improve.

More than a year has elapsed since that meeting and although we have learned that adoption reform was put back on the Work Plan for 2006/07 we have had no further information from you or your officials as to progress.

You mentioned at the meeting that a good deal of work had already been done by the Ministry on adoption law reform and on the drafting of new legislation. The Law Commission report Adoption and its Alternatives published in 2000 provides a blueprint for reform of adoption law and we can see no reason for further delays. For reasons set out in the Briefing Paper we provided for the meeting current adoption legislation is non compliant with domestic human rights legislation and with New Zealand's obligations under Human Rights Conventions especially the Convention on the Rights of the Child.

I know the hopes of many people who support the urgent need to reform adoption law were raised by your assurance that it would be placed back on the Work Programme but they are disappointed that once again it seems to have been sidelined.

I would greatly appreciate detailed information as to progress on work on this issue and on whether amending legislation is likely to be introduced this year.

Yours sincerely
Robert Ludbrook

New Legislation

Births, Deaths, Marriages, Civil Unions and Relationships Amendment Bill

Introduced November 2006. Government Bill to amend BDMR Act 1995 currently before Select Committee.

Positive changes

Currently a child's *guardians* are responsible for notifying the Registrar of the birth of a child. Not all fathers are guardians of their child. The proposed amendment would place responsibility for notification of the birth on the child's *parents* and they would be required to make the notification jointly unless "requiring the other parent to sign would cause unwarranted distress to either parent". This places a new obligation on the mother of a child to advise the father of the child's birth, unless to do so would cause unwarranted distress to either of them. There is no requirement that the best interests of the child shall be a relevant consideration in deciding whether one parent can notify the birth.

Changes impacting negatively on children

An important change proposed by the Bill would close off the registers of Births, Deaths, Marriages and Civil Unions so that only the person named in a birth, death or marriage certificate and members of his or her immediate family could obtain a copy of the certificate. The reason for this is to discourage "identity theft". This Bill if passed in its present form would impact negatively on adoptees who are seeking to trace their birth parents. Currently, adoptees searching for their birth family usually have the name of their birth mother and are able to check electoral rolls and phone books to find her present place of residence. If the mother has married she may be listed under her husband's surname. This can currently be traced in many cases by searching the register of marriages and obtaining a copy of the mother's marriage certificate. This option will no longer be available if the Bill becomes law.

Keith Griffith, Robert Ludbrook and others have made submissions to the Government Administration Select Committee on the Bill.

Adoption views

Column by Garth George: NZ Herald Thursday July 26, 2007

Let's make the adoption option replace abortions

It comes as no surprise to learn that Child Youth and Family is discouraging New Zealand couples from adopting Russian children.

After all, that same service, in all its various incarnations, has for the past 30 years or so been discouraging non-family adoptions within New Zealand.

Those adoptions reached a peak here in 1969 when there were 2600-odd; by 1980 the figure had dropped to 500-odd; by 1990 to 225; by 2000 to 125; and last year there were about 90.

The 1977 decriminalisation of abortion no doubt had an effect on the number of babies available for adoption.

But undoubtedly the misguided policies of what is now CYF has had its effect also for it seems to have actively discouraged adoptions, for which it is responsible, by not making their availability widely known.

Far easier, I suppose, to encourage abortion (just on 18,000 last year) and to promote the domestic purposes benefit, which together cost the country scores of millions of dollars a year.

What makes it worse is that since 1991 the number of 11 to 14-year-olds having abortions has increased by 144 per cent and the number of abortions for 15 to 19-year-olds has increased by 74 per cent.

Every week almost 80 teenagers have abortions - almost a quarter of all abortions performed. Yet there was a time when a teenage accidental mother's first choice was to have the child adopted.

All this in spite of the fact that since the passing of the Adult Adoption Information Act in 1985 all the old secrecy and stigma surrounding adoption has disappeared and what is known as "open adoption" has become the norm.

It doesn't seem to matter to CYF that New Zealand's adoption system is considered among the best in the world and that studies both here and overseas show that adoption is not harmful to children.

A long-term Christchurch health and development study, for instance, found that adopted children were advantaged throughout childhood in several ways compared with children in biological single-parent families.

These included childhood experiences, standards of health care, family material conditions and stability, including mother-child interaction.

The study found, too, that adopted children had significantly lower rates of behavioural disorders, substance abuse and juvenile offending.

And an American study comparing open and closed adoptions revealed that openness in adoption reduced the negative impact of grief and loss on birth mothers, that adoptive parents felt more secure in their parental role and that children were better adjusted in their middle childhood years.

Which brings me to the good news. Thanks to the activities of two Christchurch mothers, the adoption option could well become once again as mainstream as it was 30-odd years ago.

Letters from birth mothers in response to Garth George Column

I am a birthmother who chose to place my son Jack in an open adoption in 2001 and signed the adoption papers. I too have been wondering why it is taking so long for the Adoption Act to be reformed. I chose open adoption and entrusted the adoptive parents with my child for life. I feel the adoption papers I signed really let me down. Legally they severed all my rights even though I put in writing how many visits and what form of contact I would have liked and the adoptive parents were given these. They said that all I would need to do if I wanted to visit Jack was to make a phone call and arrange a time with them. They also in their own adoption profile wrote that they would never live in England (the adoptive mother is from England). So I have a personal experience of the inability of the current law to make the open adoption legally binding. It has had a HUGE impact on me and also my family.

I note in *Adoption News and Views* the importance of reforming the Adoption Act to protect the child. Yes, this is what is most important, but I also believe any adoption reform must include some protection of the rights of the birthmother and birthfather. These seem to have been overlooked in the proposed reforms. I do not believe it is right to exclude the birthparents from the child's life - isn't that what 'open' adoption is trying to encourage? If so, why are birthparents rights not being addressed?

I got to visit with Jack for two days last year (I had not seen him for two years). It is hard to put into words what this visit meant to me and the impact it has had my life since. It was incredibly healing to be able to see him and at age 5 ½ and to interact with him. As a birthmother there is not a day that goes by that I do not think of him, a place in my heart is just for him only - forever. The love I have for him continues to build up and being able to see him and release this love to him - feels extraordinary. I chose open adoption so I could be a familiar person in his life - so I could celebrate his life.

I certainly had no intention whatsoever of having any sort of co-parenting role or interfering with how he is parented. That is not the place of a birthparent who has given up the right to parent - but has not given up the right to love her child. And this is what the Adoption act currently removes - the right for the birthparent to share their love with their child and, of course, the right for the child to receive the child's love.

I accept that the visit from a birthparent would have to be monitored. I would not care if a Child Youth and Family social worker observed me. The chance to see my son even on an annual - maybe even bi-annual basis would be amazing. Of course, if it started to harm the child emotionally as assessed by the social worker - visits could be stopped and maybe contact continued by photos and letters.

I believe passionately in birthparents rights being addressed in any reform of the Adoption Act reform. If there is anything I can do to contribute please do not hesitate to let me know.

Karen Eagle

**Letters in response to column by Herald's Garth George Susan Marks
published in *NZ Herald* August 2007**

Young women know the choices they have to make when they fall pregnant they don't need any 'help' to make better ones. Nothing has changed legally with adoption. You can draw up a thousand page agreement and get it torn up the minute you sign adoption papers. Be very wary. Many have fallen into the trap of believing that things have changed, the law hasn't and once you have signed you don't have a hope of getting your child back Any 'agreement' can turn to custard once the ink has dried as many will attest to.

People shouldn't be dismayed at the lack of babies to adopt they should be thankful. Breaking up families was the norm back in the dark days when women were deprived of their rights hence the high numbers of adoptions. The lies about moving on and forgetting were just that. Babies don't even realise they are separate entities from their mothers until at least nine months old so a study saying it isn't harmful is incorrect. After giving birth, don't be pressured into making a decision you may regret as there is no going back, a lifetime is a long time to live without your child.

Susan Marks

Garth George extols Adoption Options for wanting to "make adoptions replace abortions". What is Garth George's first-hand experience of having an unplanned pregnancy; of abortion and adoption? Adoption Options is a group of adoptive parents promoting adoption as a way of providing children for childless couples. George did not mention the third and only real option, keeping your child; this option is hard work, joyous, and rewarding.

Losing a child to either adoption or abortion results in ongoing grief for the mother, baby, grandparents and whanua. A woman who takes either option may be in a position where it is the wrong time – but things change. For example, a teenage mother is only a teenage mother until she is twenty. Adoption is a long term solution to a short term problem.

The Adoption Act 1955 still stands and adoptive parents can, and do, close open-adoptions. The Birth Certificate will be reissued to show the child as actually being born to the adoptive parents; all ancestry vanquished – thus baby starts life living a lie.

Merilyn McAuslin

Book Review

Controversial New Book Condemns Adoption

A new book, *Unlearning Adoption: A Guide to Family Preservation and Protection* offers a controversial look at what the author terms, "the sinister side" of American adoption.

DelBalzo's book details legal and ethical issues involving adoptions of the past and present, as well as psychological consequences faced by adopted people and

surrendering parents. In addition to critiquing domestic infant adoption and international adoption, *Unlearning...* presents the sets of problems that are unique to foster care and modern legalized abandonment laws. Overarching themes throughout the book include advice for individuals and professionals working with adoption affected people, ways to prevent adoption, and alternatives for children who require substitute care.

The book has received glowing reviews from authors, activists, and researchers. Joss Shawyer, author of *Death By Adoption*, says *Unlearning* is a “must-read.” Psychotherapist Joe Soll, founder of New York-based Adoption Crossroads, states that the book is, “a thoughtful, well-written expose of adoption.”

DelBalzo, who is neither an adoptee nor a surrendering parent, says that she came to her anti-adoption perspective “from a completely neutral place.” She explains that she began researching adoption as a student and learned of “the atrocities committed against marginalized families” at home and abroad.

The author founded *Adoption: Legalized Lies*, an anti-adoption organization which assists families in keeping their children, in July of 1998. DelBalzo reports that divulging her anti-adoption status has frequently landed her in hot water with people who are uninformed about the movement. “There are so many misunderstandings about who we are and what we believe,” she says. “*Unlearning Adoption* was written as a guide for the average person, dispelling the myths and offering up real alternatives for families in need.”

Unlearning Adoption: A Guide to Family Preservation and Protection, is in paperback form price US\$12.99 and can be ordered from Amazon.com

Film Review

The Italian

Director Andrei Kravchuk Russia 2005 shown at Telecom 36th Wellington Film Festival August 2007

This is the story of a six year old boy Vanya who lives in a St Petersburg orphanage. An Italian couple come to visit the orphanage and after a brief meeting with Vanya tell him they want to become his parents and take him to live with them in Italy. The film exposes the abuses and rackets that abound in a Russian orphanage: the older boys run a protection racket, an older girl earns money as a hooker, the owner and manager of the orphanage are both corrupt and Vanya has been sold to the Italians for \$15,000. Vanya at first agrees to the move to Italy and thereafter becomes known to the other boys in the orphanage as ‘the Italian’. He becomes concerned that his birth mother might come looking for him and will not be able to find him. He is also influenced by a story told by one of his friends that sometimes foreigners adopt children in order to sell off their body parts. Shortly before the court hearing at which the adoption is to be finalised Vanya takes off and with a mix of cunning and good fortune manages to find his way to the house where his birth mother lives. One of the highlights of the film is that in the squalid and corrupt conditions of the orphanage and as he walks the streets there are kindly

individuals who help Vanya along the way as well as street kids and adults who beat him and take his jacket and the small amount of money he has. A poignant film which illustrates how easy it is for children to become a commodity to be sold and traded. It is also a testament to the resilience of young children and the strength of the bond between mother and child.

Robert Ludbrook

New Adoption Support Agency

Adoption Education and Awareness New Zealand – provides adoption education and support in Christchurch. The Trust seeks to

- raise the awareness of the general public, professionals and government of adoption issues
- Provide a forum for education of the general public professionals, and all those affected by adoption
- Support people working through their adoption issues.

The Trust is planning to set up a website providing adoption information.

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Sharing your stories

There are many stories out there and if anyone wants to share a story, or poetry, we will be glad to publish. People have a choice now which is more than we had all those years ago so feel free to write your submission uninhibited by past doctrines and morals. Let the government know the difference it made in your life finding that truth buried in the microfiche of the past. Also your views on official birth records that show that a child was born twice on the same day to two different sets of parents.

Susan Marks