

Adoption News and Views

November 2008

2008/3

This is the third 2008 edition of *Adoption News and Views* a newsletter which aims to provide information about adoption of children and about any legal and policy developments affecting adoptees, birth parents or adopters. It will also provide progress reports on efforts by individuals and groups pressing the government to give a higher priority to enacting new legislation to replace the out of date Adoption Act 1955.

Newsletters will be sent out at three monthly intervals or more frequently if important issues arise. Back issues will be sent by email on request. The main purpose of the newsletter is to provide up to date and accurate information for people with an interest in adoption on current law and policy and any proposed changes. It is hoped that it will also provide a forum for people to discuss adoption issues. Reviews of books and other publications touching on adoption 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 would like to send in information or views for inclusion in the next newsletter 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 Editors

Election time – Only the Green Party highlights adoption reform as a priority

A quick survey of the websites of the main political parties shows that only the Green Party has included adoption reform as a priority. The Green's policy states that it will:

1. Protect the right of every young person to their name, nationality, and preservation of identity.
2. Create a comprehensive statute covering all child placement options on the spectrum from temporary care to permanent placement. Ensure every option is able to be canvassed as an option for a particular child with an emphasis on the best interests of the child

3. Ensure that legislation relating to adoption meets the Human Rights Act 1993, UNCROC obligations and the Hague Convention on Inter-country Adoption: specifically that adoption laws will
 - a) Require that children of an appropriate age are given information about their prospective adopters and setting an age at which they must consent to their adoption
 - b) Ensure the right of adopted children to access, as far as possible, information about their biological parents; and
 - c) Ensure the right of children, as far as possible, to maintain one of their original first names.

Neither Labour nor National have announced adoption reform as part of their election policies despite the fact that the present government gave an assurance to the UN Committee on the Rights of the Child in 2003 that it was reforming its adoption laws. NZ's next report to the UN Committee is due this year.

It is most disappointing that the Maori Party has not highlighted adoption reform in its election policies. Adoption has often been castigated by Maori as being antithetical to deeply held Maori cultural values.

Who is responsible for the failure of government to move on adoption reform?

The Ministry of Justice is the Ministry with responsibility for adoption legislation and accordingly has responsibility for adoption reform. Child, Youth and Family (a unit within Ministry of Social Development - formerly part of Department of Social Welfare) is the government agency responsible for the administration of the Act. It is interesting to track the performance of successive governments on adoption reform over the past 19 years:

January 1979 *A Review of the Law on Adoption: (Webb Report)*, Justice Department makes a number of recommendations for reform of Adoption Act 1955. Patricia Webb commented that "adoption is a legal fiction and legal fictions, while they may bring about a solution of some problems, inevitably create others. No amount of legal juggling with the facts of the biological relationship can create, though it may serve foster, the sound psychological relationship between adoptive parents and child that is the child's basic need.

1987 *Adoption Act 1955 Review by an Inter-Departmental Working Party* an inter-departmental review of the Act conducted by the Department of Justice. It made a number of proposals for reform.

September 1988 *Puao-te-ata-tu (Day Break)* Report of Ministerial Advisory Committee on a Maori Perspective, Department of Social Welfare comments that adoption as understood by Western countries, is a totally alien concept, contrary to the laws of nature in Maori eyes, for it assumes that the reality of lineage can be expunged, and birth and parental rights irrevocably traded".

August 1990 *Report of Adoption Practices Review Committee* a report commissioned by Department of Social Welfare while not asked to comment on law reform issues made 28 specific recommendations for changes to the Act and adoption practice.

1993 *Review of Adoption Law – Maori Adoption: Social Policy Agency* (a unit within Department of Social Welfare) This review made recommendations for change to adoption law to take into account Maori cultural values.

April 1993 New Zealand ratified the United Nations Convention on the Rights of the Child. Article 21 of the Convention states that countries that allow adoption of children shall ensure that the best interests of the child is the paramount consideration and that parental consent shall be an informed consent given after counselling. The Adoption Act 1955 does not comply in either respect.

1998 The Minister of Justice required the Law Commission to review the Adoption Act 1955 and the Adult Adoption Information Act 1985 and to make recommendations on how the legislative framework should be modified to address contemporary social needs.

October 1999 The Law Commission, after a careful review of the Act, published a comprehensive discussion paper *Adoption: Options for Reform* and sought comments from a wide range of individuals and organisations.

September 2000 The Law Commission issued a report *Adoption and its Alternatives* which provided an excellent blueprint for adoption reform, placing strong emphasis of the rights and interests of children and proposing additional protections for birth mothers to avoid their being pressured to give consent to the adoption of their child. The report contains over 100 recommendations for reform of adoption law.

December 2000 New Zealand's 2nd report to the UN Committee on the Rights of the Child Children in New Zealand annexes the Law Commission report and indicates that adoption law will be reformed after a Parliamentary Select Committee has considered the options.

August 2001 The Parliamentary Government Administration Select Committee in its interim report *Inquiry into Adoption Laws* gave general support to the Law Commission recommendations although there was disagreement between members on some of the proposed reforms.

2003 Associate Minister of Justice, Hon Lianne Dalziel, indicated that an Adoption Bill giving effect to the Law Commission's recommendations would be introduced later that year

October 2003 The UN Committee on the Rights of the Child in considering NZ's 2nd report welcomes the government's expressed intention of reforming adoption legislation and recommends that children of a certain age should have to give their consent to adoption and that adopted children should as far as possible have access to information about their biological parents.

February 2005 After widespread consultation the Human Rights Commission published a *National Plan of Action on Human Rights*. The Action Plan identifies as a priorities for action the need to ensure that children's voice is given due weight in court proceedings and that the consent of children from the age of 12 onwards be required before any order is made for their adoption. The Adoption Act 1955 does not meet either of these recommendations.

2006 The Ministry of Justice *Statement of Intent* for 2006/07 advises that the Ministry ensures that laws remain acceptable and relevant to changing societal needs by providing research and supporting the government's legislative reform. It further states that it works to ensure that laws within its area of responsibility are aligned with New Zealand's international obligations.

May 11 2006 a group of professionals with a special interest in adoption met with the then Minister of Justice, Hon Mark Burton, to express their concern at the lack of action in relation to adoption law reform. Several members of the group were critical of 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. The Minister expressed support for the need for reform and said he would try to get adoption reform included in the 2006/07 Ministry of Justice Work Plan. He assured the group that as long as he was the Minister communication would improve. Adoption reform was put back on the Work Plan but there have been no public statements as to progress or as to the nature of reform. No Bill has been introduced nor any draft Bill circulated for comment.

June 2007 The Ministry of Justice *Statement of Intent* lists as one of the major initiatives to be progressed in 2007/08 "Reforming adoption laws to create a single, coherent piece of legislation to make adoption laws more accessible, eliminate inconsistencies between current legislation and to better reflect current practice and New Zealand's international obligations"

June 2008 Adoption reform does not appear in the Ministry of Justice *Statement of Intent 2008/09* list of priorities nor is there reference to adoption reform in the Ministry's *Annual Report* for 2007/08.

November 2008 The Ministry of Youth Development circulated a draft of New Zealand's combined 4th and 5th reports to the UN Committee on the Rights of the Child. Responding to the recommendations of the UN Committee in relation to adoption reform made more than five years earlier the draft report merely states that

The Government has begun the process for a comprehensive reform of adoption laws with the Ministry of Justice conducting targeted consultation in 2003. A key objective in reviewing adoption legislation is to update the legal frameworks to better align with modern adoption practices, contemporary society structures, and values and obligations contained in international instruments. Due to other work programme priorities, the review was placed on hold for a period. Work on the reform recommenced in 2006. A considered and comprehensive approach is being taken to reviewing these complex issues.

Comment

The Ministry of Justice (formerly Department of Justice) has been aware of the urgent need for reform of the Adoption Act since **January 1979** when it received the report *Review of the Law on Adoption* which it commissioned from its former senior chief legal adviser Patricia Webb.

The need for reform was again highlighted in **1987** with the *Inter-Departmental Working Party Review of the Adoption Act 1955* undertaken by the Department of Justice. In **1998** The Ministry of Justice commissioned the Law Commission to undertake a review of the Adoption Act and the Adult Adoption Information Act. The Law Commission issued a discussion paper which commented that social legislation could not be expected to have a life of more than 15 to 20 years in view of the way in which societal needs, expectations and values can change rapidly from one generation to the next. It obviously saw the Adoption Act as in urgent need of reform. The Law Commission completed a comprehensive report *Adoption and its Alternatives* In **September 2000**. The groundwork was in place for major reform of adoption laws but the process of reform then ground to a halt. Despite the Associate Minister of Justice announcing in **November 2003** that a Bill to amend the Adoption Act would be introduced later in the year no Bill has been introduced and no indication has been given when one can be expected. Adoption reform was quietly taken off the Ministry's Work Programme in **2004** and was only restored in **2006/07** after a deputation of professionals with a special interest in adoption met with the then Minister Hon Mark Burton. He was replaced as Minister by Hon Annette King but adoption reform has continued to languish in government priorities.

It is now 29 years since the Department (now Ministry) of Justice was alerted to the need to amend the Adoption Act 1955. The same message has been conveyed by further reviews commissioned or led by the Ministry. There have been huge social changes since 1955 but the Courts and those involved in adoptions are working with a set of rules designed to meet the needs of people living half a century ago. Adoption has been truly described as the Cinderella of family law – languishing in a dusty back room.

Robert Ludbrook

Message from Susan Marks

2008 is coming to an end but our battle to get the adoption laws changed continues.

As another Christmas approaches lets hope this is the last one that passes under the old adoption laws. Adoption is hardly an attractive alternative as signing your child away for life and not having any rights isn't an option for most people. If you really can't parent your child and decide to adopt why should it have to be a lifetime punishment for you and your child. Open adoption tries to remedy this but it is not official law therefore any contract can be withdrawn at any time as once you have signed the adoptive parents are the 'legal guardians'. Making any major decision requires time and careful planning. There is no other contract in law more binding. Most people take months and get advice before making major decisions in their lives, even getting married there is an engagement period to ensure you are doing the right thing, surely signing your child away for life requires as much time, information and advice as possible not just one sided biased advice from baby brokers, social workers, and groups like Adoption Option who have a keen interest in securing your baby.

A child has rights and it has the right to be raised by the natural parent (s) first and foremost. If that is not a reality for any reason the mother must be warned of future dire regret and the child

must be given an opportunity to stay within the family he/she was born into. You are the mother and legal fiction stating a stranger is the mother is part of the lie of adoption.

Adoption becomes topical when a celebrity 'saves' an unwanted child and don't we all want to do that! All children deserve a family and I can't agree more, however they have to sever all ties with their past and become someone else's property and be forever indebted to these people and most end up with solo parents anyway, look at Madonna and Guy Ritchie, Angelina and Brad aren't married either, Sheryl Crow is single, the list goes on.

I hope you all have a safe Xmas and with the election this weekend we may have more of an uphill job ahead to get the law changes to better things for all, it may be your daughter, niece, cousin, sister who falls pregnant over the 'silly season' and gets faced with this 53 year old law that doesn't offer her any solution to what it did us, she will become another victim.

Keep safe!

Arohanui

Susan

Critique of the patchwork nature of NZ family law

The late Dr D B Inglis QC, an astute commentator on New Zealand family law, in his monumental survey of New Zealand family law described our family law as a "patchwork assemblage", explaining that::

"...a problem in identifying any basic family law policy is that New Zealand's family law has been constructed from a series of sometimes unconnected statutes, sometimes inconsistently expressed and with inconsistent emphasis, each of them devised from time to time to deal with different perceived social needs or a particular social change, but never fully rationalised so as to comprise and overall and internally consistent family law code"

D. B Inglis *New Zealand Family Law in the 20th Century* Thomson Brookers (2008).

These comments are particularly apposite to the Adoption Act 1955 which reflects social attitudes and priorities of a bygone era and which has never been integrated with other statutes dealing with the care of children.

New Legislation

Adoption Amendment Act 2008

A minor amendment to the Adoption Act 1955 by the Adoption Amendment Act 2008 will make two changes. The first is that accredited media representatives will be able to attend the hearings of adoption cases but will not be able to publish any identifying information about the parties, the child or the witnesses. Media people have had an equivalent right to attend the hearing of proceedings concerning day-to-day care of or contact with children for some time but rarely attend these hearings, probably because without being able to identify those involved

they consider there is no story worth reporting. Adoption cases are rarely contested and this amendment is likely to make little or no difference in practice.

The second change will allow a party to adoption proceedings to have a support person or persons in Court if the Judge agrees. Again this is unlikely to make any difference in practice.

These changes are part of a raft of changes made to different statutes with the view of opening up the Family Court so that justice will be seen to be done. The changes are likely to come into effect early in 2009.

Births, Deaths, Marriages and Relationships Registration Amendment Act 2008 (in force 24 January 2009)

This Act is likely to have the effect that the consent of the father of a child will more often be required before the child can be placed in adoption. A new s9 will be inserted in the BDMRR Act which will require that, when the birth of a child is registered, both parents will have to jointly sign the birth particulars required to register the birth. Currently any guardian of the child can sign the registration forms and if the mother and the father are not married or in a civil union the father will not usually be a guardian of the child. If the father as well as the mother signs the necessary form his name will appear on the birth certificate and he will be a guardian of the child by reason of s18 Care of Children Act 2004.

A father will not be required to sign the birth registration forms if he is “unavailable” or if requiring him to sign the form “would cause unwarranted distress to either of the parents”. There is likely to be litigation over the meaning of the terms “unavailable” and “unwarranted distress”. Is a man who goes into hiding to avoid his child support obligations “unavailable”? Can the distress of a married man who conceives a child as a result of an extra-marital liaison and is fearful that his wife will find out be accurately described as “unwarranted”?

There is another amendment which will allow adoptees who have reached the age of 18 (or have earlier married or entered into a civil union) to apply to have the words “adoptive parent(s)” inserted against the names of their adoptive parents in any birth certificate that is subsequently issued. The consent of the adoptive parent(s) is not required. Currently an adoptive parent can make such a request but not an adoptee: see s24 BDMRR Act.

Another new provision will allow persons to bar members of the public from obtaining a copy of their birth, marriage or change of name certificate if they can satisfy the Registrar that disclosure of the information would be prejudicial to their personal safety. Such a bar will be known as a “non-disclosure direction” and will remain in force for five years. Birth parents who are searching for a child placed for adoption and adoptees seeking to trace their birth parents sometimes search birth, marriage and change of name records. The fact that a person is searching to trace a child placed for adoption or a birth parent could not of itself be grounds for obtaining a “non-disclosure direction”.

Adoption practice

New Child, Youth and Family complaints process

Child, Youth and Family has inaugurated a new complaints procedure from July 2008. Its aim is to provide a consistent nationwide process that will ensure it is a responsive organisation prepared to listen to complaints, investigate them fairly, learn from any mistakes and continually improve its services. Complaints should initially be made at a local level to the manager of the service against whom the complaint is made. If the complaint cannot be resolved in this manner a written complaint should be addressed to a new Advisory Panel chaired by former Ombudsman Mel Smith. In giving notice of the new complaints process Minister Ruth Dyson commented that "It is important that children and their families are told of their rights and reassured that social workers will treat them with care and respect":
Media release Child, Youth and Family 17 June 2008.

The Child, Youth and Family website gives details of the new procedure:

Making a complaint

The easiest way to sort out a problem is usually to contact your local office. Either talk to the person you've been dealing with or ask for the manager.

If we can't sort the problem out straight away you can make a formal complaint by:

- calling us free on 0508 FAMILY (0508 326 459)
- filling in a complaint form which can be downloaded from

www.cyf.govt.nz/documents/complaints.pdf

- emailing us at complaints@cyf.govt.nz
- faxing us on 0-4-916 0222

We'll contact you within one week of receiving your complaint to talk with you about how we'll manage it. We try to resolve any formal complaint within four weeks of receiving it - if it'll take longer, we'll let you know.

If you're not satisfied with the outcome of your formal complaint, you can ask for a review by the Chief Executive of the Ministry of Social Development's Advisory Panel. To apply for a review, you can write to the National Manager, Review Secretariat, Ministry of Social Development, PO Box 1556, Wellington.

Statistical information on adoption

Statistical data on adoption orders 1972 to 2008

NZ adoption orders	1972	1973	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991
Strangers	2136	2000	1821	1581	1347	1062	1067	845	715	556	478	462	399	331	322	289	254	191	223	197
Step-parent*			390	571	388	434	322	246	196	217	764	301	210	180	192	196	138	226	210	110
Step-parent†	801	770	903	877	913	792	782	773	894	763	782	670	688	600	481	437	372	285	299	319
Relatives/friends	343	318	252	293	294	272	281	336	348	328	322	412	372	327	235	289	241	187	187	180
TOTAL			3366	3322	2942	2550	2452	2200	2153	1864	2346	1845	1670	1438	1230	1211	1005	889	919	806
Total step-parent									1090	980	1546	971	898	780	673	633	510	511	509	429
Total step-parent/relative									1438	1308	1868	1383	1271	1107	908	922	751	698	696	609
* DSW not involved																				
† DSW involved																				

NZ adoption orders	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
Non-relatives	196	113	183	124	114	131	125	122	87	78	104
Parent and spouse	280	129	221	240	169	179	174	122	120	119	89
Relatives	180	85	159	171	195	163	125	111	117	104	96
Foster parents	38	15	24	12	6	28	13	15	8	9	9
Intercountry adoption under NZ legislation						70	102	53	106	64	55
Total NZ adoptions†	694	360	683	640	540	661	645	562	486	472	380
Adoption of foreign children by NZ citizens				476	497	436	358	350	274	344	325
* After 1996 information on adoption by friends not collected.											
† Total includes adoptions where type not recorded.											

NZ adoption orders	2002/ 03	2003/ 04	2004/ 05	2005/ 06	2006/ 07	2007/ 08
Non-relatives	81	108	113	87	60	77
Parent and spouse	71	54	56	73	69	36
Relatives *	71	65	71	65	70	53
Foster parents	2	8	8	4	3	-
Intercountry adoption under NZ legislation	51	48	53	61	53	12
Adoption type not recorded	98	40	66	65	11	93
Total NZ adoptions†	374	323	367	355	266	271
Adoption of foreign children in overseas court	265	339	209	356	406	333
TOTAL ADOPTIONS GRANTED OR RECOGNISED BY NZ	639	662	576	711	672	604

Data provided by Adoption Services of Child, Youth and Family.

In 2007-08, there were 422 Assessments written on adoptive applicants. There were 52 Placement Approvals issued for children to be placed with non-relatives for the purposes of adoption. This latter figure does not equal the number of adoption reports written in the equivalent period as the actual placement with the prospective adoptive parents and formal adoption Court hearing may occur in different fiscal years.

In 2007-2008, applications were received from 81 adult adopted people for copies of their personal information held on their adoption file.

A further 260 requests were made for non-identifying information from adoption files under the provisions of the Official Information Act.

ACCESS TO ADOPTION INFORMATION 1995 to 2008

	1993 /94	1994 /95	1995 /96	1996 /97	1997 /98	1998 /99	1999 /00	2000 /01	2001 /02	2002 /03
Original birth certificates issued to adoptees	1849	1597	1580	1925	1446	1356	1230	1030	943	902
Original vetoes from adopted people	26	36	17	30	22	8	1	4	0	7
Renewal vetoes from adopted people	0	0	51	13	4	5	6	8	1	9
Cancelled vetoes from adopted people	14	8	17	0	2	3	5	1	2	3
Birthparent applications for identifying information (section 8)	717	610	650	534	450	392	325	303	262	265
Original vetoes from birthparents	34	69	126	60	22	15	4	2	1	5
Renewal vetoes from birthparents	0	0	351	77	19	11	13	13	10	10
Cancelled vetoes from birthparents	15	14	10	2	6	1	1	1	3	0

	2003 /04	2004 /05	2005 /06	2006 /07	2007 /08
Original birth certificates issued to adoptees	878	797	717	739	604
Original vetoes from adopted people	6	0	4	0	—
Renewal vetoes from adopted people	1	1	5	15	10
Cancelled vetoes from adopted people	0	1	0	0	—
Birthparent applications for identifying information (section 8)	232	188	143	101	76
Original vetoes from birthparents	5	6	26	0	—
Renewal vetoes from birthparents	9	44	67	55	15
Cancelled vetoes from birthparents	2	1	1	0	—

Data provided by Adoption Services of Child, Youth and Family, and the Office of the Registrar General of Births, Deaths and Marriages

Advertising babies for adoption

An item in the Sunday Star Times 12/10/08 gives details of a New Zealand website that publishes classified ads and which has carried at least a dozen ads offering babies for adoption. One of the ads contains an unauthorised photo of New Zealand actor Keisha Castle-Hughes of *Whale Rider* fame. Ministry of Consumer Affairs spokesperson, Liz Stretton, makes the point that

the ads are in poor English and surmises that they are an attempt to collect email addresses with a view eventually to extract money from persons desperate to be parents. Advertising children for adoption and advertising by people seeking a child to adopt is a criminal offence in New Zealand under s26 Adoption Act 1955 and carries a maximum penalty of three months imprisonment or a fine of \$15,000. Prosecutions are rare, Child, Youth and Family states that it is investigating the advertisements.

International News

Queensland updating its adoption laws

Queensland has completed a comprehensive review of its adoption laws after widespread consultation: see *Report on Public Consultation on the Review of the Adoption Act 1964* (April 2003) and a separate consultation on access to adoption information: *Balancing Privacy and Access; Adoption Consultation Paper* (July 2008). The Queensland government has announced its intention to introduce amending legislation and has given notice of the proposed changes in a policy paper *Future adoption laws for Queensland - policy paper*. The proposed new laws will focus on the wellbeing and best interests of the child. The reforms will:

- Make the wellbeing and interests of the child through childhood and for the rest of the child's life paramount in all aspects of adoption law and policy;
- Recognise that it may be in a child's best interests to maintain a relationship with his or her birth family. Parties to an adoption may enter into a binding agreement in relation to exchange of information and/or contact;
 - Allow de facto couples to register as prospective adoptive parents;
 - Ensure that each parent's consent is fully informed and voluntary. Standard information on alternatives to adoption and the emotional effects of adoption must be provided to birth parents. They must receive counselling and the counsellor must swear an affidavit that they understand the effect of giving consent and the effect of adoption. A parent who is not an adult must be assessed by a qualified person to determine whether s/he has the capacity to give an informed consent;
 - Require that all birth fathers, whether married to the mother of the child or not, are able to give or refuse their consent to the adoption of their child. A government agency will be required to take all reasonable steps to identify and locate the father so that he will have the opportunity to participate in decisions about the child;
 - Entitle birth parents to express views as to the type of family they would like their child to grow up in.

For further details see www.childsafety.qld.gov.au/legislation

Samoan Adoption Scam

There have been scams around adoption for as long as there has been adoption but these have multiplied since the supply of babies available for adoption in industrialised countries has dried up. People in the United States and Europe have been willing to pay large sums of money for a

child to adopt and poor parents in undeveloped countries have been pressured and deceived into handing over their children. Not only poor families have been targeted. The kidnapping of Madeleine from her hotel room while her parents were holidaying in Portugal raises suspicions that she was to be offered for adoption in the lucrative European or American adoption market.

A feature article by Xavier La Canna in *Dominion Post* 18 October 2008 describes a scam by which at least 37 Samoan children were handed over by their parents to a group *Focus on Children* on the assurance that the children would get a good education in the United States and then be returned to their families. Before being taken to the US the children were kept in a “nanny house” supervised by *Focus on Children* staff. There have been allegations that they were mistreated there. The children were legally adopted in the US by adoptive parents who allegedly paid an equivalent of NZ\$21,000 each to *Focus on Children*. Seven people associated with *Focus on Children* have been arrested in the United States and face charges of alien smuggling, visa fraud, and money laundering..

While the US is a party to the Hague Convention on Intercountry Adoption, Samoa is not. It is unclear from the feature article whether the adoption orders were made in Samoa or the United States. Samoan adoption orders have the same effect as NZ adoption orders and it would be possible for Samoan children to be shipped through New Zealand to a foreign destination although it is more likely that they were moved to the United States through American Samoa.

The main reason why New Zealand has not ratified the Optional Protocol to the Convention on the Rights of the Child on Sale and Trafficking of Children is the failure of successive New Zealand governments to make changes to s17 Adoption Act 1955 which is the basis for recognition of overseas adoptions. The Ministry of Justice recognises that s17 in its present form could be used to facilitate the trafficking of children.

Adoption and International Surrogacy

Surrogacy arrangements (where a woman bears a child with the intention that the child will be handed over to other people to care for shortly after birth) are becoming more popular in New Zealand and overseas. Because the commissioning parent(s) will not usually be the legal parents of the child (even though one or both may be a biological parent) they may seek to adopt the child. There are several reported cases where adoption orders have been made in such situations including a case where a woman in New Zealand bore a child for her sister in Australia.

International surrogacy arrangements where the commissioning parents and the biological parents live in different countries are becoming more common and can create problems under adoption laws. A case where a baby girl was caught between surrogacy and adoption laws was described by Anthony Blackburn Starza in *Bio News* 26 August 2008. It is an illustration of the legal conundrums and confusion that can arise in such situations.

BABY GIRL CAUGHT IN BETWEEN SURROGACY AND ADOPTION LAWS:

By Anthony Blackburn-Starza:

A baby born to an Indian surrogate mother for a Japanese couple has found herself in the middle of a legal battle over

her nationality, the legal status of her parents and immigration rights. Moving towards a closure of the saga, the Indian Supreme Court last week granted custody to the girl's grandmother, Emiko Yamada. Manyi Yamada, little over one month old, was born after donated eggs were fertilised using the sperm of Ikufum Yamada, of Japanese nationality, which were subsequently implanted into the womb of an Indian surrogate mother. Since the pregnancy the Japanese couple have divorced and the wife has withdrawn her consent to adopt the child. It is understood Mr Yamada still wants the child, although the legal implications in Indian law are unclear and as him being a single-father it proved unlikely his application for adoption would be recognised. Satya, an Indian child welfare charity, issued a petition to the courts to claim custody of Manyi, which was unsuccessful. 'They have violated Indian laws by not signing a surrogacy agreement and taking custody of a child abandoned by its mother,' said Satya's chairman Sanjay Agarwal.

The Japanese Justice Minister, Okiharu Yasuoka, has indicated to reporters that he would consider granting Manyi a visa but that the legality of the birth was something that would need to be addressed in the near future. 'Whether to permit surrogate pregnancy is a matter to be discussed by respective institutions,' he said, adding that, 'The ministry will study the possibilities under the law out of consideration for the child's future.'

Japan's first surrogate birth, announced in 2001, led to the Health Ministry calling for an immediate ban. Although this was blocked, the Society of Obstetrics and Gynaecology successfully managed to prohibit surrogate births in 2003, citing the mental and physical burden to the surrogate mother and the fear that surrogacy could confuse familial relationships.

Clinics are permitted to perform surrogacy procedures, although few actually do. The Health Ministry does not keep official statistics on the number of surrogate births in the country but it is believed to be low. India legalised surrogacy in 2002, although many critics cite the lack of regulation including the absence of a ban on paying surrogates as potentially exploiting poor women. CNN reports that surrogacy arrangements in India can attract surrogate fees of between \$12,000 to \$30,000, with the industry being worth around \$445m.

Research request

School of Psychology
Te Kura Hinengaro Tangata
Private Bag 11 222 Palmerston North
www.massey.ac.nz

Kia ora koutou,

My name is Valerie Maruru Perkins and I am researching Māori adoptive mothers who legally adopted children in the 'closed stranger' adoption period from 1945-1995. The aim of this research is to investigate the experiences of these women, to contribute to an appreciation of how secret adoption has impacted on them and to accentuate this silent and undervalued population in our society. There has been much written about the effects of secret adoption on adoptees and birth mothers and rightly so. There has however, been less on adoptive families, parents and mothers and so far I have not found any literature on Māori adoptive mothers.

The issues I will investigate are: What motivated these women to adopt and why not whāngai; if their child reunited with their birth mother / whānau how was that experience; are these women, like some others of the closed adoption period, overcome with shame in their roles as adoptive mothers because of stigma; if they have interests in Māori land, how do they and their whānau feel about their adopted child succeeding to that land; and to what extent does this experience compromise a person's cultural identity?

My interest in this topic stems from my own experience as a Māori adoptive mother in the 'closed adoption'

system. My research also looks at whāngai or traditional Māori adoption where children were given to other members of the whānau to bring up for various reasons, and there was no necessity for this action to be legalized. It was common for instance that grandparents would whāngai their oldest grandchild. Today's practice of open adoption is more in line with the practice of whāngai in that there is no secrecy involved.

If you know of any Māori women who adopted in the 'closed stranger' adoption period, please contact me for an information sheet at:

06 3543161

0211127544

valerieperk@gmail.com