ADOPTION NEWS AND VIEWS

FEBRUARY 2010

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Adoption News and Views is a quarterly 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by individuals and groups pressing the government to give a higher priority to enacting new legislation to replace the out of date Adoption Act 1955 and to bring the Adult Adoption Information Act 1985 and the Adoption (Intercountry) Act 1997 into line with the Convention on the Rights of the Child and the anti-discrimination provisions in Human Rights Act 1993 and NZ Bill of Rights Act. 1990.

Newsletters will be sent out four times a year. Back issues can be sent by email on request. The main purpose of the newsletter is to provide up-to-date information on current NZ adoption law and policies and on any proposed changes. Adoption reform initiatives overseas will also be covered. It is hoped that the Newsletter will also provide a forum for people to discuss adoption issues. Reviews of books, films etc touching on adoption are invited.

Adoption News and Views is sent to you because you are believed 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 submit 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

Adoption law

Bill to allow unmarried couples and couples who have entered a civil union to jointly adopt a child

Kevin Hague a Green Party MP has drafted a private member's Bill, the Adoption (Equity) Amendment Bill to extend to couples in civil union and de facto partnerships (including same-sex couples) the right to apply jointly for an adoption order.

Under Adoption Act 1955 only married couples can apply jointly to adopt a child. The current law not only discriminates against prospective adoptive parents on the grounds of their marital status and their sexual orientation - it also creates ridiculous anomalies. A couple in a civil union and couples in a de facto relationship (including same-sex couples) can foster a child

either through an agreement with the child's parents or as a result of a placement by Child, Youth and Family. Such couples can become joint guardians of a child and be jointly responsible for the child's care and upbringing. The present law allows a person in a couple relationship to obtain an adoption order as a sole applicant. The applicant's civil union or de facto partner can acquire a legal status in relation to the child by obtaining a guardianship or parenting order. The adopting parent is deemed to be the parent of the child while his or her partner is not a parent. A couple who have been married for only a few months can adopt a child together but a de facto couple who have lived together for 20 years cannot.

While the Adoption (Equity) Amendment Bill would remove one set of anomalies from the Adoption Act it would do nothing to change the myriad other provisions of the Act which are discriminatory and are damaging to adopted children, birth parents and adoptive parents.

Robert Ludbrook

Recent NZ Cases

Applicants must be fit and proper persons to care for the child

It is rare for an application for adoption to be challenged on the grounds that applicants are not fit and proper persons to care for the child but recently adoption orders have been refused in two cases where there was evidence or sexual impropriety by the male applicant with underage children..

An adoption order was refused on this ground in *Re application by F* 16/5/08, Judge Hikaka, FC Manukau FAM 2007-092-000917. The child was 12 years of age at the time of the application. She had been born in Tonga and at the age of three months had been brought to New Zealand and left in the care of her aunt and the aunt's husband on the understanding that she would be brought up as a member of their family. The aunt and her husband sought to formalise their relationship with the child and applied for an adoption order. The adoption was opposed by Child, Youth and Family on the grounds that the applicants were not fit and proper persons. The mandatory Police check had disclosed that the male applicant had had six convictions in 1996 and 1997 including a conviction for sexual intercourse with a child under his care and protection (his niece) and a conviction for common assault on the niece. The police files indicated that the male applicant had had a consensual sexual relationship with his niece which continued over a period of nine months and which resulted in her pregnancy. The common assault charge related to a hiding given to the niece with a plank of wood as punishment for her allegedly being out with a boy. Judge Hikaka was concerned that the male applicant had not disclosed the convictions in his affidavit and had claimed to be of good character. There was no evidence that he had sought counselling or attended a program in relation to his sexual offending. A further criticism of the applicants was that they had led the child to believe that they were her natural parents.

Other grounds raised by the Child, Youth and Family social worker were the couple's use of corporal punishment in disciplining their children. The parties had given contradictory evidence as to their use of physical punishment. To further complicate matters it emerged in

the course of the hearing that the child was unlawfully in New Zealand and that it would be difficult to obtain immigration status for her unless an adoption order was granted. The Judge refused an adoption order not being satisfied that the applicants were fit and proper persons. He accepted that the child was settled in the applicants' family unit and treated the applicants as her parents. The Judge was satisfied that the welfare and best interests of the child would be promoted by her remaining with the applicants despite their failure to demonstrate that they were fit and proper persons.

This case highlights various aspects of adoption. While parents are under no legal duty to tell children in their care the truth about their parentage, Child, Youth and Family and the Courts today take the view that children have the right to know the true situation from their earliest years. The case also illustrates that official attitudes now strongly oppose the use of physical punishment even though until 2007 such punishment was lawful. A third issue revolved around the dilemma that in the case of a child unlawfully in New Zealand the Court may feel under some pressure to grant an adoption order in order to ensure that a child's settled care arrangements can continue.

The fitness and propriety of the proposed adoptive parents was also an issue in *Re application by V* 15/9/09, Judge Rogers, FC Manukau FAM-2005-092-003171. In that case, an adoption order was made in favour of a wife who was living with her husband after the Court had found that the husband was not a fit and proper person but the wife was. The application was originally a joint application but was opposed by Child, Youth and Family on the grounds of the husband's sexual relationship with his wife's young sister. The relationship had started when the sister was a 15 year old schoolgirl and continued for some years. There was some pressure to make an adoption order because the child who was the subject of the application (aged seven years at the time of the hearing) who had lived in New Zealand for nearly all of her life did not have NZ immigration status and would have to return to her home country unless an adoption order was granted. In amending the application by consent making it a sole application by the wife and making an adoption order Judge Rogers recognised that the child would continue to be part of the household of the husband and wife but considered that the risks in such an arrangement were less serious than the risks of refusing an adoption order with the result that the child would have to return to live in Samoa.

Robert Ludbrook

Adoption practice

Tribute to Dr Murray Ryburn – an international authority on open adoption

Murray Ryburn who died on 10 October 2008 was a social policy analyst and writer who researched, promoted and wrote about adoption issues and particularly about open adoption. He was born in Oamaru and after obtaining an MA in history at Canterbury University and working in the probation services travelled to the UK in 1976. There he worked in the field of residential care at the Cumberlow Lodge in South Norwood. He graduated with an MA in social policy from London School of Economics and gained a Ph D from University of Birmingham. Returning to New Zealand in 1983 he found in this country a much more open approach to planning for children in care and adoption policy and practice. He returned to England and encouraged the use family group meetings (along the lines of New Zealand's

family group conferences) and became the director of social work courses at Birmingham University. He researched and promoted greater openness in adoption and the importance for the adopted child of continuity and connections between the birth and adoptive family. His writing included *Contested Adoptions: Research, Law, Policy and Practice*, *Open Adoption Research theory and practice* and (with Jenny Rockel) *Adoption Today.* Murray also assisted several birth mothers who sought to withdraw the consent they had given under pressure. In one of his reports to the Court he had this to say about New Zealand's antiquated Adoption Act 1955:

> "The primary New Zealand adoption legislation is over forty years old and some of its provisions and requirements now present as artefacts of a different social order and one in which lone parenthood was often regarded with opprobrium. Almost all comparable western jurisdictions have significantly reformed their primary adoption legislation in recent years in line with changes in social mores but more particularly the evidence of research. One of the most clear messages from the research, for example, emerging from studies conducted world-wide since 1955 …is that birth parents in relinquishing adoptions may often be subject to undue pressure and coercion in the period immediately following their child's birth. Research has shaped the legislative provisions in a number of other jurisdictions in relation to consent provisions, and there is a recognition that a much more lengthy period than the ten days provided for in New Zealand is likely to be necessary if an unconstrained choice is to be made. The period before a consent can be signed for example is six weeks in English law and legislation in Australian States generally permits a period of revocation once consent has been signed."

Murray made a great contribution to adoption policy in New Zealand and in the Unit4ed Kingdom. He was very supportive of people who had been adversely affected by their adoption experience.

Robert Ludbrook

International

Australia

New adoption law in Queensland

In August 2009 Queensland passed a new Adoption Act which will come into force in 2010. The new law is the result of widespread community 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 then circulated a policy paper *Future adoption laws for Queensland* which forms the basis of the new Act. The Act 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;
- Enable children to express views and be involved in decision-making according to their age and understanding and entitle them to have their views taken into account;

- 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 before they can give consent to adoption of their child. They must receive counselling and the counsellor will have to swear an affidavit that the parent understands the effect of giving consent and the effect of an adoption order. Parents under the age of 18 years must be assessed by a qualified person to determine that they have the capacity to give an informed consent;
- Ensure that all birth fathers whether married to the mother or not are able to give or refuse 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; and
- Enable birth parents to express their views as to the type of family they would like their child to grow up in.

The Act can be viewed at www.qld.legislation.gov.au

New South Wales removes age limit at which adopted children can access information about their birth parents

Changes to NSW law giving adopted children and their birth parents greater access to information about each other came into effect in on 1 January 2010. Community Services Minister Linda Burney said that under the changes, children would no longer need to be 18 years before identifying information could be released.

> "Worldwide research shows that adopted children benefit enormously from developing a strong sense of identity knowing who they are and where they come from," Ms Burney said yesterday.
>
> "Regardless of how loving and caring the home adoptive parents provide, it's human nature for children to want to know about their history, culture, biological family and possible brothers and sisters. Similarly, birth parents and siblings may want to know about the adopted child."

Ms Burney said there would still be strict controls over the information:.

> "Before information about an adopted person under 18 years is released, a careful assessment will identify any issues. Records will be checked and the adoptive parents consulted."

Lily Arthur, co-ordinator of *Origins* an organisation which reconnects families touched by adoption, welcomed the changes.

> "When a mother loses a child to adoption, it's a death-like experience, where the child seems to disappear into a black hole. Getting to find that child again helps the mental health of the mother," she said.
>
> "For adopted children to find their sense of identity and sense of history can allow them to start being the person they were born to be.

"So any information that they can get to bring them back a sense of history is definitely a good thing." **The Australian 1 January 2010**

Commonwealth government's offer of apology for past adoption practices is rejected

By Emily Wolfinger in a piece published in *Origins* Newsletter entitled *Our Dirty Adoption Secrets* writes:

"The Australian Federal Government wants to give forced adoption victims an apology, but seems very keen to prevent the public finding out exactly what the apology is for.

During a meeting at Minister for Families Jenny Macklin's Canberra office on 27 August 2009, the offer of an apology to an estimated 150,000 women and their children who were "unethically" and "unlawfully" separated between 1950 and 2000 was declined by Origins, the official body representing these women.

Macklin's advisor phoned *Origins* NSW coordinator Lily Arthur the next day, asking whether Origins would reconsider accepting their offer of an apology. They declined a second time. But get this: the apology may still go ahead in November. As if it were an afterthought, the Government plans to tack this apology onto the apology to the 'Forgotten Australians', those half-million Australians abused as children in institutions. The Forgotten Australians are also upset about this, as they want their apology to be their own — and fair enough. However, it seems the Government is determined to kill two birds with one stone.
Far from being a well-meaning gesture, the offer of an apology is an insulting and deeply disappointing outcome for *Origins*, who have waited nearly 10 years for a Government response on this issue. They have been campaigning for a national inquiry for even longer, and not once have they asked for an apology. According to the group, it is only through a national inquiry that Australians will learn of the nationwide extent of the crimes acknowledged as "kidnapping" by Family Court Justice Richard Chisholm in evidence he gave at the NSW Parliamentary Inquiry into past adoption practices in 1999.

That inquiry only served to reveal the extent of criminal and unethical adoption practices committed in NSW. *Origins* fears that until all states are held accountable in a national inquiry, Australians forcibly removed from their unmarried mothers in other states will remain in the dark about the circumstances surrounding their adoption. A national inquiry will also provide an opportunity for mothers from all states to tell their stories. *Origins* says it is very unlikely that any of this will happen if the Government goes ahead with the apology, because such a move would look to many as if some degree of recompense had been made.

It makes no sense at all for the Government to insist on making an apology before Australians even know of the nationwide extent of the crimes to which such an apology would correspond. The Indigenous Stolen Generations had their national inquiry first, and it demonstrated very clearly just what was being apologised for. Why not use the same process for mothers forcibly separated from their children through adoption? Is this offer of an apology an attempt at an easy way out of actually doing something to address the

damage caused by Australia's adoption practices? Perhaps, worse still, it is an attempt at a cover-up of the extent of the crimes perpetrated against these women and their babies.

Lily Arthur believes it is. ‘The reason why they want us to accept an apology is [so that they can] continue to hide the unlawful practices.’ She says that the Government is trying to cover for the states who are afraid of what a national inquiry could reveal, and in turn, how much it could end up costing them in terms of redress and litigation.

It's not hard to see why the many victims of these criminal adoptions are deeply skeptical of government bona fides on this issue. Beyond failing to fully investigate and acknowledge what happened to these women, the federal and state governments are still misinforming people about the bumper adoption era that occurred from the 1950s to the 1980s and even trivialising what happened. The Victorian Government, for one, attributes the decline in adoptions from the mid-70s to ‘... a number of interrelated factors: the introduction of government benefits for single parents, increasingly tolerant community attitudes toward exnuptual births and single parenthood, improved contraception [and] the widespread availability of pregnancy terminations’.

In fact, while the Supporting Mother's Benefit for single mothers was not introduced until 1973 under the Whitlam Government (and it did not extend to fathers until 1977 under the Fraser Government), financial assistance was actually available to single mothers well before the 1970s, as outlined in a 1956 government publication titled *Children in Need* by Donald McLean: ‘To avoid any misunderstanding or any suggestion that the mother was misled or misinformed, District Officers are instructed to explain fully to the mother, before taking the consent, the facilities which are available to help her keep her child. These include...financial assistance to unmarried mothers under section 27 of the Child Welfare Act ...’ However, as documented in the transcripts of the NSW Parliamentary Inquiry this fact was largely concealed from mothers.

While that inquiry has put on the public record much that needs to be better understood, there is still much more that needs to see the light of day. An apology, therefore, would be an irresponsibly premature step on an issue already so marked by institutional culpability. *Origins* want full acknowledgement and accountability first — which they believe a national inquiry would ensure — then suitable redress, and then perhaps an apology.

The other point about government apologies is that they must be done properly, and at the right time — that is, when people want them — otherwise they become devalued. As Arthur also points out, in their eagerness to issue an apology, the Government is reducing the significance of the apology to the Stolen Generations of Indigenous people. ‘If they are prepared to offer an apology to people who don't want one, what kind of substance does the original apology to the Stolen Generations have?’

So, what were some of the unethical and illegal practices perpetrated against these women? Well, as documented in the transcripts of the NSW Parliamentary Inquiry into past adoption practices, they include: the detainment of unmarried women during pregnancy; the

immediate separation of mothers and babies following births (many mothers were not allowed to see their babies until they signed adoption forms and many others never met their babies); the use of coercion to solicit adoption consents from mothers (in some cases, mothers were told the adoption papers were discharge forms); the use of mind altering drugs (not administered to married mothers) following births and preceding consents; promises of a 30-day cooling off period to get mothers to give consents when the rights to revoke consent during this period were rarely observed; the absence of any counselling prior to and following adoptions, and the failure to notify mothers of alternative options to adoption (as noted above, many mothers did not know that financial support was available).

It is not surprising then that these mothers suffer a number of mental health conditions ranging from depression to post-traumatic stress disorder. Half of these mothers *did not* go on to have more children, while the female suicide rate was highest between 1962-72, reaching an all-time high of 13 per 100,000 women in 1967, compared to 4.3 today. This period coincided with the peak in adoptions — nearly 10,000 in 1971-2. Taken together, these facts represent an appalling and poorly understood blemish on our human rights record.

In a press release on the Sunday following the meeting at Jenny Macklin's office, the minister said that she had "begun a dialogue" with mothers separated from their babies. However, when asked whether this means a national inquiry is on the cards, a spokesperson from Macklin's office would not say, sending instead this vague response: ‘This dialogue will explore what sort of acknowledgement of their experiences would assist their healing process.’

Clearly the Federal Government wants this issue to go away, but that isn't about to happen any time soon. Arthur says that mothers like her won't go away until the so-called past adoption practices — or, as she calls them ‘abduction practices’ — are seen for what they were.

2010 will mark 10 years since the Final Report into past adoption practices in NSW, titled *Releasing the Past*, labelled those practices ‘unethical’ and ‘unlawful’. It will also mark 15 years since *Origins* was founded and first started campaigning for a national inquiry. It is time that the Federal Government allowed the country to face the reality of this part of Australian history and set up a national inquiry. National inquiries have been instigated for much less serious reasons than the theft of over 100,000 children.

These mothers want their children to know the full truth. They are not asking for much.“

United Kingdom

UK law allows adoption by unmarried couples

The Adoption and Children Act 2002 which came into force on 30 December 2005,gives married couples, civil partners, and two people of the same or opposite sex who are living together in ‘ an enduring family relationship ’ the right to jointly apply for an adoption order. Opposite-sex and same-sex couples are subject to exactly the same assessment criteria. Other countries which allow same-sex couples to adopt children are Andorra, Belgium, Denmark, France, Guam, Iceland, Israel, the Netherlands, South Africa and Sweden.

UK registry will allow donor children to trace biological siblings
By MacKenna Roberts 5 October 2009 reproduced from BioNews 528

“New disclosure laws for donor-conceived individuals and gamete/embryo donors in the UK have come into force, broadening access to donor genetic information. The provisions were enacted together with the vast majority of the new Human Fertilisation & Embryology Act 2008, approved by Parliament last year and aimed at updating its predecessor 1990 statute to be more in line with contemporary liberal attitudes and advances in reproductive technology. In 2005, the disclosure law was controversially relaxed to remove donor anonymity so that donor-conceived individuals upon reaching the age of majority can request names and contact information for their genetic donor parent(s).

The new provisions now extend access further to allow donor-conceived individuals, from the age of 18, to be able to trace any existing half-siblings who might also have been conceived through fertility treatment involving the same donor, provided all siblings consent by registering their details with a voluntary sibling contact register launched by the Human Fertilisation & Embryology Authority (HFEA).

Laura Witjens, chairwoman of the National Gamete Donation Trust, welcomed the regulations: 'People are curious about where they belong and identifying your siblings is just as much a part of belonging as knowing who your genetic parents are.' Professor Lisa Jardine, chairwoman of the HFEA, characterised the amended regulations as a 'real step forward', adding: 'It is vitally important that donor-conceived people can access information about their own, personal genetic origins if they wish to do so. The new act enshrines their right to this information and the HFEA has put systems in place to ensure that applicants know what information they can obtain and how to go about accessing it.'

The first donor-conceived children will not reach majority until this March, but the amended regulations have now reduced the age to 16-years-old to be able to request certain non-identifying information about their donors - including height, eye colour and hair colour - and receive any message the donor may wish communicated to them, as well as about any potential donor-conceived half-siblings - including the number, sex and birth year. Donor-conceived children from 16 may also request confirmation that someone they wish to be physically intimate with is not related to them. Reciprocally, donors have a right to find non-identifying information about the results, if any, of their donation - including the number, sex and year of resulting birth(s).

The provisions do contain safeguards limiting their scope. First, donor-conceived individuals may not obtain contact information for the legal children of a donor (even if donor-conceived

through fertility treatment), thereby protecting the privacy of the donor's intended family. Secondly, the HFEA has a discretionary power to withhold information 'in special circumstances' should the disclosure in effect cause the identification of a non-consenting party. Lastly, identity information is only provided to 18-year-olds when either the donor or donor-conceived half-sibling have voluntarily registered their details with the HFEA or are donors who donated after April 2005. Therefore, disclosure is predicated on donor-conceived children being aware of their assisted conception. However, under the new legislation parents are not obliged to tell their children about their genetic origins.

If known, these children would have to value this genetic knowledge enough to provide their details on the HFEA's voluntary sibling database. Olivia Montuschi, co-founder of the Donor Conception Network, commented, 'It's important to have the choice.' Sarah Norcross, director of the Progress Educational Trust, supports balanced legislation and '...looks forward to the day when everybody knows this information but nobody cares.'

Comment: New Zealand's Adult Adoption Information Act1985 does not give adoptees any right to obtain information about their biological siblings. The Human Assisted Reproductive Technology Act 2004 (NZ) gives offspring born as a result of assisted human reproduction procedures rights in respect of the gamete donor whose genes they carry but no right to identify and trace their biological siblings.

Robert Ludbrook

Current issue

The scale of the death and destruction resulting from the major earthquake in Haiti on January 12th has shocked the world. Children are particularly vulnerable in such situations with countless numbers of children killed or maimed and others orphaned or separated from their parents and families.

The social dislocation resulting from a human tragedy of this magnitude is immense and the violence and looting and the squabbles between aid agencies make depressing reading. Another disturbing facet of the devastation caused by the earthquake has been reports of local people and overseas nationals using the opportunity to remove children from the country for the purpose of placing them for adoption with couples in the United States and Europe. Shortly after the earthquake there were reports of French planes taking many children to France for the purpose of adoption and the *Dominion Post* on 1 February 2010 carried a Reuters report which indicated that Haiti police had arrested ten US Citizens in respect of a suspected illegal adoption scheme. It referred to fears held by the Haiti authorities that child traffickers could try to exploit the chaos and turmoil and take children out of the country to be sold in adoption. The suspects were detained at the border with the Dominican Republic and were said to have no documentary evidence that the children had been cleared for adoption. Haiti is not a party to the Hague Convention on International Adoption and so it would be possible for New Zealand resident intending

adoptive parents to adopt a Haitian child in an overseas country and have that adoption recognised in New Zealand via s17 Adoption Act 1955. It is doubtful whether the New Zealand authorities would have any power to prevent the child being brought into this country.

Robert Ludbrook

Personal experiences

Anguish felt by the community when a child disappears

When Aisling Symes disappeared, the nation anxiously awaited the news reports and mourned with her frantic parents. Who had taken her? What had happened to her? Day after day the media portrayed the parents' and family's anguish. Aisling's parents received support from the whole community; flowers, cards, offers of rewards etc. We all know the tragic outcome but there was closure.

The tens of thousands of mothers who signed adoption papers for over half a century there was no closure until a law change in 1988 promoted by Jonathan Hunt MP allowed them and their children to seek each other out.

You do not need a degree in humanity to understand the trauma adoption placed on a teen barely able to comprehend what had happened let alone why society, parents, social workers, doctors, lawyers etc would treat her like a criminal. This was an unending sentence as she lost not just her baby but all the future generations of her family. There was no information on who had her child, where they were, was she being well cared for, what they looked like. Mother and child missed all the important milestones which are part of parent/child relationships.. She was left wondering if her child would remember her, was the sacrifice of her happiness so her child could have a 'better life' necessary. She went home from the hospital empty armed, society shunned her and her penance began. Awash with anguish, despair, loss, pain, suffering, grief she was expected carry on with life and "forget" she just given away her first born. There was no comfort, flowers, cards or baby gifts or any of the rites afforded mothers giving birth to a child; no acknowledgement of her loss. Nobody warned her of future dire regret or offered any other practical solution to help her.

The 1955 Adoption Act permanently separates families, treats children as commodities, changes identities, issues false birth certificates, protects only the rights of adopters, inflicts unnecessary pain and anguish, destroys family lineage and forces all parties to live a lie. All these factors create a myriad of complications both psychological and physical for both parents and children.

Susan Marks

Adoption research

Planned Research on intercountry adoption

Rhoda Scherman (Auckland University of Technology) and Wendy Hawke (Director of ICANZ) are embarking on a project that will investigate the degree and types of "openness" that exist in intercountry adoption by NZ adoptive parents. They are looking at measuring openness as (1) contact with birth family, (2) obtaining and sharing with the child identifying information about the child and birth family, and (3) communication styles between adoptive parents and birth parents. They are also gathering data from both adoptive mothers and fathers as part of a study of gender differences in adoptive parenthood. For further information contact Rhoda Scherman at: rhoda.scherman@aut.ac.nz

Australian Institute of Family Studies research into effect of past adoption practices

The Australian Institute of Family Studies has been commissioned by the Commonwealth Department of Families, Housing, Community Services and Indigenous Affairs to review existing literature and research about past adoption practices. This work will provide the Government with a strong evidence base to better understand historical adoption practices.

The institute is to gather information from a range of documentary sources to develop an evidence base which will be formed into a report in early 2010. The research will explore the impacts of past adoption practices on mothers, fathers, children, family members and future generations.

Adoption by gay and lesbian couples

There has been much public debate in New Zealand and overseas about whether lesbian and gay couples should be able to adopt a child jointly

John Tobin of Melbourne Law School and Ruth Mc Nair of the Faculty of Medicine, Melbourne –based University recently contributed an in-depth research-based article on gay and lesbian adoptions to the *International Journal on Law, Policy and the Family*. They point out that discussion of the topic has seldom been accompanied by reference to obligations taken on by counties which are parties to the UN Convention on the Rights of the Child, referring particularly to the rights of a child to know and be cared for by his or her parents and the principle that, in adoption matters, the best interests of the child shall be the paramount consideration. They note the tendency of lobby groups to appropriate the 'best interests' principle as a tool to serve the political and moral agendas of adults. The authors also discuss whether there is any right under public international law for every child to have a father as well as a mother.

The article refers to the research evidence on children brought up by same-sex parents. They ask (and answer in the negative) the questions:

Do lesbian parenting relationships deprive children of appropriate gender role models?
Do lesbian parenting relationships harm children's development?

Tobin and McNair assert that there is no credible evidence that children living in lesbian parented families suffer any harm. They acknowledge the lack of research about the

experiences of children who have two male partners as their primary caregivers and analyse what evidence there is.

The authors cite and approve a decision of the South African Constitutional Court in *Dutoit v Minister of Welfare* (2003) 4 CHRLD para 22 where the Court concluded that:

> "Excluding partners in same sex life partnerships from adopting children jointly when they would otherwise be suitable to do so is in conflict with the principle enshrined in s28(2) of the Convention [that a child's best interests are of paramount importance in every matter concerning the child]." .

Public International Law and the Regulation of Private Spaces: Does the Convention on the Rights of the Child Impose an Obligation on States to Allow Gay and Lesbian Couples to Adopt? International Journal of Law, Policy and the Family 23, (2009), 110-131

John Tobin is also the author of another article which looks at the legal position in England, Wales and Ireland of same sex couples in relation to the adoption of children: *Same Sex Couples and Joint Adoption in England and Ireland* International Journal of Law, Policy and the Family 23, (2009), 309–330

Robert Ludbrook

Contact with family members lost through adoption

A plea for help in tracing name of grandfather

Kia ora katoa,
I am hoping you are still willing to see if you can help me in gaining access to my grandfather's name. In brief, my mother was adopted as a baby (mum was born in 1948). My grandmother (Pakeha and now deceased) did not give a name for mum's birth certificate but on mum's child welfare certificate a one word name was written in the space provided for father. Because it was only one name, surname, Child Youth and Families will not release it, there reason being that the person would not be traceable to ascertain if they were alive or deceased. They also stated that had it been a Maori name then they could have traced iwi for us but as it is not a Maori name then they were not able to do this.

I have attached all correspondence that I have from when my mum started seeking information about her adoption. I'm hoping you might see a way that we can get this name.

Please feel free to contact me anytime if you are able to assist.
Aku mihi nui ki a koe.
Erica Newman
e.newman@xtra.co.nz

Books and reviews

In the footsteps of Ethel Benjamin: New Zealand's first woman lawyer

Janet November Victoria University Press for Law Foundation of New Zealand 2009

Ethel Benjamin was this country's first woman lawyer. She graduated from Otago University in 1897. Until October 1896 only men were permitted to practise law but at a second attempt the Female Law Practitioners Bill was passed by a slim majority in 1886 and Ethel was able to establish a sole practice in central Dunedin. Janet November's biography *In the Footsteps of Ethel Benjamin* shows that Ethel acted for many women whose husbands failed to support them whether from drunkenness or desertion. She also acted for unmarried mothers who placed their child for adoption. In those days the natural mother was expected to pay the not insubstantial cost of obtaining an adoption order and, in addition, was expected to pay a premium to the adoptive parents – a lump sum (sometimes as much as 40 pounds) to cover the cost of the child's maintenance. It was the responsibility of lawyers of the time to negotiate on behalf of natural mothers who were often not in a position to pay other than a modest premium. Ethel would arrange a loan for mothers to enable them to pay the necessary premium. She would keep in touch with the adoptive parents and pass information about the children back to the natural mothers. The payment of premiums was only made illegal in 1906.

Ethel Benjamin's biography gives a vivid picture of adoption practice in the 1890s. Many of the features of the Adoption and Children Amendment Act 1895 can still be found in the current Adoption Act 1955.

> "Any individual or married couple could make an application for adoption. Pursuant to the 1895 Act, an applicant had to be of 'good repute' and, if single, of the same sex as the child. The birth parent's or guardian's consent was essential, as was the consent of the husband of a married woman applicant. The court had to be satisfied that the adopting parents had sufficient means to bring up the child and that the interests of the child would be promoted by adoption."

Robert Ludbrook

A Piece of my Heart TV1 5 April 2009
This television feature was scripted by Fiona Samuel and based on a novel *Does this Make Sense to You* by Renee. It highlights the plight of girls in the 1960s who become pregnant and could not get the father to marry them. Seventeen year old Flora (Emily Barclay) is packed off to a mother and baby home where the girls are isolated and required to do heavy work in the laundry. She makes friends with a Maori girl Kat (Keisha Castel-Hughes). Their babies are removed from them immediately after birth and their consents to adoption are obtained by trickery. The home depicted is said to be based on St Mary's in Otahuhu.

This is a powerful feature brilliantly acted by the young women and by Annie Whittle and Rena Owen who play the parts of the two friends many years later.. It is available on DVD.

A Gate at the Stairs Lorrie Moore Faber and Faber
Described by the Listener Reviewer Jolisa Greenwood as a "dark social comedy" this novel portrays life as viewed by a 20 year old who works as a nanny for an older couple who

adopted a biracial child. The nanny finds herself taking on a maternal role and is “increasingly intrigued and appalled by the machinery of adoption: the fallen women and girls, the bossy social workers and the bereft foster mothers”.
NZ Listener Oct 31 2009 p39.

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