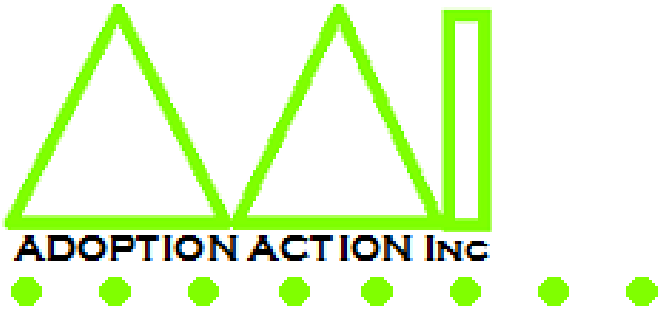

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ADOPTION NEWS AND VIEWS

AUGUST 2012 **2012-2**

Adoption News and Views is a quarterly e-newsletter which aims to provide information about adoption of children and about any legal and policy developments affecting adopted children, parents who surrender a child for adoption, and people who adopt a child. 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by individuals and groups pressing the government to give a higher priority to enacting new legislation to replace the out-of-date Adoption Act 1955 and other adoption laws to bring them into line with the Convention on the Rights of the Child and the anti-discrimination provisions in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 three or four times a year. Back issues can be sent by email on request. The main purpose of the newsletter is to provide information on current NZ adoption laws, policies and practices and on any proposed changes. Adoption reform developments overseas will also be covered. It is hoped that the newsletter will also provide a forum for people to discuss adoption issues. Contributions are invited including reviews of books, films etc touching on adoption.

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 news 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 and Anne Else Editors email rh.ludbrook@gmail.com

Editorial

There has been much media interest in lesbian and gay marriage and adoption since the last issue of *Adoption News and Views*. This was brought to a head by the Labour MP Louisa Wall succeeding in a ballot allowing her to introduce a Bill to amend the Marriage Act 1955 by defining marriage as the "union of 2 people, regardless of their sex, sexual orientation, or gender identity" (see below for details). The Bill has received broad support and it has generally been assumed that it would open the way for same-sex couples jointly to adopt a child.

It is far from certain that amending the Marriage Act in this way would automatically allow all same-sex couples to jointly adopt a child. At best it would allow married same-sex couples to adopt but it would not allow those same-sex couples who have entered a civil union or those who are in a long-term committed relationship to do so. Nor would it allow heterosexual couples who have entered a civil union to adopt. This could be achieved by a consequential amendment to section 3(2) Adoption Act which only allows only "2 spouses" to jointly adopt a child. The High Court in *AMM* decided that opposite-sex couples who were in a committed long-term relationship could jointly adopt a child. It took the view that same-sex couples who had entered a civil union did not qualify as "two spouses". The Louisa Wall Bill in its present form would remove discriminatory aspects of the Marriage Act but would not remove the provisions of the Adoption Act that discriminate on the grounds of sexual orientation and marital status. These issues are likely to be addressed at Select Committee stage.

The Select Committee will also need to look at what other changes to the Marriage Act and Regulations are necessary as a result of the proposed change. For example:
- Section 31 Marriage Act which requires that, at the marriage ceremony, each party say to the other "I take you to be my legal wife (or husband);
- Schedule 2 of the Act which lists 40 situations in which marriage is prohibited because the of the relationship between the partners uses the term "wife" or "husband" 16 times;
- The Regulations which set the requirements for obtaining a marriage licence refer to information being provided about the "bride" and "bridegroom".

While the Marriage (Definition of Marriage) Amendment Bill if passed into law would remove one area of discrimination it would not, as currently drafted, open up adoption to lesbian and gay couples. There is a concern that piecemeal changes may be used as a pretext to further delay comprehensive revision of New Zealand's outdated and discriminatory adoption laws. The Law Commission 12 years ago, after broad consultation and research, proposed more than 100 changes to the Adoption Act. The Ministry of Justice in a Cabinet Paper in 2007 supported nearly all of these recommendations. Most of the background work necessary for root and branch reform of the Act has been done, but successive governments have failed to complete the task by authorising the drafting of a Bill to make the necessary legislative changes.

There are two other Bills to amend the Adoption Act waiting in the wings. Labour MP, Jacinda Ardern, has prepared a Bill calling on the government to refer the issue of adoption reform back to the Law Commission. The Bill cannot be introduced unless it is drawn in the ballot. Even if the Bill is successful in the ballot, it would put adoption reform on hold for at least three years with little to be gained. It is far more realistic for Cabinet to instruct the Ministry of Justice to draft a new Adoption Act (or amendments to the Care of Children Act) based on the recommendations of the Law Commission and the Ministry's own work.

The most heartening development is that Green MP, Kevin Hague, and National MP, Nikki Kaye, have taken on the daunting task of drafting a Private Members Bill to amend the Care of Children Act based on the Law Commission's 2000 report on adoption reform. They have described it as a complex piece of work requiring some 40 policy decisions, including the age at which a child can be placed for adoption, Maori adoption practices and issues relating to adoption of children born as a result of surrogacy arrangements. It is unlikely that the drafting of the Bill will be completed before the end of 2012 and it will then have to await success in the ballot before it can progress.

Despite the growing clamour for adoption reform both inside and outside Parliament, the government continues to accord it low priority. While Prime Minister, John Key, is not ruling out reforms that would allow some same-sex couples to adopt, he stated recently that it “is not the biggest issue facing the government”. During a closed-door session on Saturday 21 July, delegates at the National Party's annual conference in Auckland passed a remit, backed by the party's youth wing, for the 1955 Adoption Act to be extended to include a right for civil union partners to adopt a child. Mr Key told reporters that, although the remit could be adopted as a government Bill, it would need to be considered against the rest of the government's work programme. "You have to think through the amount of parliamentary time that would be chewed up on that issue." Mr Key added that the remit showed the National Party was modernising, adding that "realistically it's just not the biggest issue that we face. I know it's important to those people, but they are a very small group. We have a limited amount of house time that we can work through a limited number of issues." (NZ Newswire 22 July 2012).

Robert Ludbrook

New Zealand News

Private Members Bill to allow same-sex couples to marry

Labour MP Louisa Wall has introduced a Bill into Parliament which, if passed, would allow gay and lesbian couples to marry. The Marriage (Definition of Marriage) Amendment Bill has been introduced as a private members Bill. The Explanatory Note to the Bill states:

> “This Bill will make it clear that a marriage is a union of 2 people regardless of their sex, sexual orientation, or gender identity. It will ensure that all people, regardless of their sex, sexual orientation, or gender identity will have the opportunity to marry if they so choose. Marriage, as a social institution, is a fundamental human right and limiting that human right to one group in society only does not allow for equality. This Bill will ensure that there is equality for people wishing to marry regardless of their sex, sexual orientation, or gender identity and will be in accordance with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.”

The only change to be made by the Bill involves the insertion of a definition of marriage

> “marriage means the union of 2 people, regardless of their sex, sexual orientation, or gender identity.”

The Bill has the support of the Labour party, the Greens, and the Maori party co-leader Pita Sharples. New Zealand First proposes a referendum on the issue. The leader of the Conservative Party (which is not represented in Parliament) has advised that his party is planning a campaign against the Bill. National MPs appear to be divided on the issue, with some supporting it, others opposing, and several declining to take a position. They are likely to be pressed to support the Bill by the Young Nationals who strongly support marriage equality.

Prime Minister John Key has stated that he will vote in favour of the Bill being referred to a Select Committee. He went further when interviewed on *Radio Live* on 30 July 2012, indicating that, if the Bill was decided on a conscience vote, he would support it. It is up to the government to determine whether the Bill will be decided on a conscience vote. John Key conceded that there would be many members of the National caucus who would be deeply opposed to the change. The Bill will be referred to a Select Committee after its first reading and there will be an opportunity for submissions. The Committee will examine whether the Bill may have some unintended consequences which will require changes to the Marriage Act or other statutes or regulations.

Sources: Audrey Young NZ Herald APN Holdings NZ Limited, Dominion Post

Ministry of Justice Review of Family Court

In April 2011 the former Minister of Justice, Hon Simon Power, advised that the Ministry was to undertake a major review of the Family Court. New Justice Minister, Hon Judith Collins, announced the outcome of the review and the proposed reforms on 2 August 2012, stating that:

> "The reforms will focus the Courts on the needs of children, rather than on couples with relationship problems. The proposals are the most significant changes to the family justice system since the establishment of the Family Court in 1981 and respond to concerns that
> - the Family Court is not able to focus enough on the most serious cases;
> - its processes are difficult to understand; and
> - its costs have greatly increased in recent years…."

There is no reference in the announcement (or in the 66 page Cabinet Paper released at the same time) to cases under the Adoption Act, even though that Act does not treat the best interests of the child as the first and paramount consideration and is more focussed on the rights of adults than on the needs and rights of children. The comprehensive submission made to the review by Adoption Action Inc has been ignored. The focus of the reforms is exclusively on the Care of Children Act, the Domestic Violence Act and the Property (Relationships) Act. Clearly the Minister and the Ministry of Justice have a blind spot when it comes to our outdated adoption laws. In the words of William Blake "There is none so blind as those who will not see"

Despite the insistence that the *Family Court Review* is to bring our family law up to date, its primary focus has been on cost-cutting. It will drastically cut ancillary services currently provided by lawyers, counsellors and psychologists. Adoption reform may have been left out in the cold because, in adoption matters, there is currently no ability for the Court to appoint a lawyer to represent the child (who may be a young adult aged 18 or 19 years), and no power to refer the parties to counselling or to obtain a psychologist's report on the needs of the child. If adoption reform had been considered, changes would have been needed to bring adoption laws into line with United Nations human rights conventions and this would have meant additional spending.

Robert Ludbrook

Another judge refers to deficiencies in NZ's adoption laws

Another Family Court judge, Judge Coyle, has added his voice to the mounting chorus of concern about the deficiencies of New Zealand's adoption laws. He went further and raised questions about the need for adoption in today's world. In *Application by KUM & TM* FC Dunedin FAM-2011-012-358, 27 January 2012 Judge Coyle commented:

> "The Court's ability to make an adoption order is set out in s 11 of the [Adoption] Act. It is …. a 1955 Act and is reflective of social mores and realities within Aotearoa/New Zealand at that time. There has, in latter years, been much debate as to whether adoption as a concept is indeed something that should be perpetuated in society, given the change in social mores and values and, in particular, the different nature of families and of parenting. The reality, however, is that the Act remains in force, but I agree … that its interpretation needs to occur in recognition of the changes in society and constructs of parenting need to be seen in light of societal practices and norms today, rather as [those] in 1955.

Changes in Child, Youth and Family policy re unmarried applicants for adoption order

The important High Court decision in *Re AMM* (June 2010) opened the way for unmarried opposite sex couples in a stable committed relationship to adopt a child jointly. In response to that decision, Child, Youth and Family issued a Memorandum *Joint Adoption – Definition of Spouses* dated 9 August 2010, This states that, as a result of the *Re AMM* decision, applications for assessment with a view to inclusion in the domestic adoption pool are now being accepted from couples regardless of their marital status. Profiles prepared by couples approved for inclusion in the pool will describe the nature of their relationship so that birth parents will be fully informed about the circumstances of the prospective adoptive parents before giving their consent to the adoption of their child.

The Memorandum contains no guidance for social workers in their assessment of whether the relationship of unmarried partners can be classified as "stable" and "committed', nor does it deal with the issue (which was not decided in *Re AMM*) of unmarried couples who have entered into a civil union.

Proposed changes to Guidelines on Surrogacy Arrangements

The Advisory Committee on Assisted Human Reproduction has initiated a review of its Guidelines on Surrogacy Arrangements. The Review was prompted by a complaint to the Human Rights Commission that the current guidelines discriminate on the grounds of sex and sexual orientation in that they restrict surrogacy arrangements, where a provider of fertility services is involved, to cases where there is an “intending mother”. Currently, single men and male couples cannot apply to enter a surrogacy arrangement and are therefore excluded from using eggs donated by a family member.

While single women and lesbian couples can currently apply to use sperm donated by a family member, they must have a medical justification for doing so. If the proposed changes are made, women will be able to apply to conceive using sperm donated by a family member without needing to demonstrate a medical need.

A consultation document published by ACART is available from ACART Secretariat, PO Box 5013, Wellington, Submissions are invited with the closing date set at 24 August 2012.

Legal aid changes re adoption proceedings

Legal aid is available for parties to adoption proceedings who meet the income and resources means test. Few applicants for an adoption order seek legal aid to cover their legal fees. This is probably because they have to satisfy the Court that they are able to maintain the child before an adoption order will be granted and they are worried that if they have insufficient means to pay legal costs they may be unsuccessful in obtaining an adoption order because of their financial position.

New Fixed Fee Schedules for family law proceedings, introduced by the Ministry of Justice from 23 July 2012, have the effect that lawyers on legal aid, instead of receiving an hourly rate for their work will be paid fixed amounts for completing specific steps in some types of proceedings, for example:

Obtaining an interim adoption order:	$360 fixed fee
Obtaining a final adoption order	$120 fixed fee

For preparation for a defended hearing, and representation of a client at the hearing, the lawyer will receive payment of $53 per half-hour. No court filing fee is payable for Family Court adoption cases.

Overseas News

Europe

UN expresses concern at 'mediaeval' hatches which deny babies their right to parental care

The Guardian reports that the United Nations is increasingly concerned at the spread in Europe of "baby boxes" where infants can be secretly abandoned by parents, warning that the practice "contravenes the right of the child to be known and cared for by his or her parents".

The UN Committee on the Rights of the Child is alarmed at the prevalence of the hatches - usually situated outside a hospital - that allow unwanted newborns to be left. An alarm or bell can be activated to summon a carer. The Committee states that while "foundling wheels" and baby hatches disappeared from Europe in the last century, almost 200 have been installed across the continent in the past decade in nations as diverse as Germany, Austria, Switzerland, Poland, the Czech Republic and Latvia. Since 2000, more than 400 children have been abandoned in the hatches, with faith groups and right-wing politicians spearheading the revival of the controversial practice.

Their proponents draw on the language of the pro-life lobby and claim that the baby boxes "protect a child's right to life" and have saved "hundreds of newborns". However, UN officials argue that baby hatches

violate key parts of the Convention on the Rights of the Child (UNCROC), which says children must be able to identify their parents and, even if they are separated from them, the state has a "duty to respect the child's right to maintain personal relations with his or her parent".

Maria Herczog, of the UNCROC committee, told *The Guardian* that the arguments from critics were a throwback to the past. "Just like mediaeval times in many countries we see people claiming that baby boxes prevent infanticide … there is no evidence for this." Ms Herczog said baby boxes should be replaced by better state provision of family planning, counselling for women and support for unplanned pregnancies.

Randeep Ramesh, Guardian News and Media 12 June 2012

Australia

Australian Commonwealth Government

Apology for past adoption practices
The Australian Attorney-General, Nicola Roxon, announced on 23 June 2012 that the Australian Government will make a formal apology to people affected by forced adoption practices. No date has been set.

Closure of Australia's Intercountry Adoption Program with Ethiopia
In June 2012 Australia closed its intercountry adoption programme with Ethiopia, following its suspension of all adoptions from that country in 2009. The announcement refers to long waits and uncertainties which have left Australian prospective adoptive parents in limbo for years. The Commonwealth government emphasised that the best interests and rights of children are the most important consideration for intercountry adoption programmes and gave an assurance that it would continue to support Ethiopia in ensuring that the rights of Ethiopian children adopted by Australians are protected.

Australia Government Media Release, 28 June 2012

Australian Capital Territory (ACT)

The ACT government has announced that it will apologise to the victims of forced adoption practices at a sitting of its Legislative Assembly in Canberra on Tuesday 14 August. Community Services Minister Joy Burch, in making the announcement, stated that it is estimated that between 150,000 and a quarter of a million Australian women were forced to give up their children for adoption between the 1940s and the 1980s. Many were young and unmarried, and women who resisted were often pressured or threatened by hospital or church officials. The apology was supported by the ACT Greens and by the Canberra Liberal Party.

The apology is to be given despite the fact that the controversial practices occurred before ACT became self-governing in 1988. It was formerly part of New South Wales. The Minister believed it was important to acknowledge the impact the policies supporting forced adoption had, irrespective of which government was responsible.

South Australia

The South Australia government has made a formal apology to mothers, fathers, children and others affected by forced adoptions. The Premier Jay Weatherill told a special sitting of the state parliament on 18 July 2012 that his government accepted with "profound sorrow" that many mothers did not give informed consent to the adoption of their children. It is estimated that more than 17,000 children in SA were adopted before 1980 and some of these were forced adoptions. The Premier in announcing the apology said:

> "To all those hurt we say sorry. We apologise for the lies, the fear, the silence, the deceptions. We hear you now, we acknowledge your pain and we offer you our unreserved, sincere regret and sorrow for those injustices."

He added that women were blamed for getting pregnant, blamed for wanting to keep their children, and then blamed for succumbing to pressure to give them up.

Opposition Leader Isobel Redmond described what was done by governments, churches and other groups as inhumane at best, and barbaric at worst:

> "For me as a mother what is unimaginable is the pain and suffering for the mothers who were made to feel ashamed and often tricked or bullied into signing adoption papers."

The Adelaide *Advertiser* newspaper had earlier commented on past adoption practices:
“Australia has accepted there were Stolen Generations and Forgotten Australians, and is now starting to accept that there are the Lost Australians - the parents and children forced apart by well-intentioned carers before the state intervened and created a single mothers' pension in 1973 and almost overnight wiped out the domestic adoption industry.”

Grant Tubb, an adoptee whose adoption had been arranged by the Uniting Church, is reported as saying:
"It is not about whether your adoption experience was a good or bad one. It is more about cruel and inhuman acts perpetrated on our young single mothers, to steal their children and assimilate them into middle-class, white, married, Australian church parishioners. I have nothing against the adoptive parents, more the parents of our mothers who were ashamed of their daughters for being pregnant and unwed. Surely there are much worse things than bringing a child on to this planet, and the churches who had a well-oiled system for farming us out."

Source: The *Advertiser,* 3 December 2011

Tasmania

Premier Lara Giddings has said that Tasmania will follow South Australia in making an apology to mothers and children who were forcibly separated. She told delegates at the Labor party’s state conference on 4 August 2012 that:

> "There is an obvious amount of pain and distress that remains with those people today and I believe that a formal apology by the parliament will go some way to helping to address that pain."

A date for the apology will be set during the next session of the Tasmanian parliament.

Source: David Beniuk *AAP,* 5 August 2012

Victoria

The Victorian Parliament's Law Reform Committee, a joint committee with members taken from both the Legislative Assembly and Legislative Council, has recommended that the Victorian Government introduce legislation to allow all donor-conceived people, including those conceived with gametes donated before 1988, to obtain identifying information about their donors. While the Committee recognises that donors who donated their gametes before 1988 did so on the basis of anonymity, it considered that donor-conceived people have a right to know the identity of the person who contributed half of their biological makeup. The Committee was convinced that this right must be given precedence, even over the wishes of those donors who would like to remain anonymous.

Some doctors have criticised the decision, warning that the proposal could compromise patient confidentiality and may be in breach of privacy guarantees previously offered to donors. Their view was that disregarding such assurances of anonymity could seriously undermine the public's trust in the medical profession. It recommended that donors be given the option of placing a 'contact veto' should a pre-1988 donor conceived person lodge an application for information. The veto would prohibit contact between the donor and the donor-conceived person and would be backed by penalties for a breach. If not renewed, a veto would expire after five years and could be revoked by the donor at any time.

The Committee called on the Victorian Government to introduce measures to ensure medical information about the donor is passed on to donor-conceived persons, and is shared with half-siblings, if there is a genetic or hereditary health risk. It also recommended that non-identifying information about half-siblings should be available to prevent people unknowingly starting a relationship with someone related to them. Counselling and support services should also be provided to donors, donor-conceived people and anyone affected by donor-conception. The Victorian Government has six months to respond.

Australian Association of Social Workers

The Australian Association of Social Workers (AASW) in June 2012 made a formal acknowledgment that unmarried women who had given birth to a child between the 1940s and 1980s had been made to feel inadequate, disempowered, isolated and shamed by health and welfare staff including social workers. It further acknowledged that many women were not given the necessary assistance, and in some cases were deliberately denied access to counselling services prior to giving consent and were not informed of their legal rights.

The formal acknowledgment states:

> "Notwithstanding that some workers may not have been trained and accredited social workers, the AASW acknowledges that the historical actions of some social workers, as government agents and instruments of governmental health and welfare policies, have contributed to the significant and increasing pain and loss experienced by birth parents, adoptees and their families. Instead of challenging and seeking to change oppressive, judgmental, and inequitable policies and/or practices, some social workers in the health and welfare sectors may have been co-opted to uphold and enact unjust practices. These actions were in contravention of core values of social work such as human dignity and worth, social justice and self-determination. These actions may have been outside and in contravention of Commonwealth and State policies."

The AASW acknowledges and regrets that these policies and practices reflected the values and attitudes of the times and, for unmarried pregnant women, adoption was assumed to be one of very few possible options because of lack of financial and other support and the stigma associated with illegitimacy and motherhood out of wedlock.

The AASW acknowledges that, decades later, many of these parents, adopted people and their families continue to grapple with the long-lasting effects of forced or coerced adoptions. The AASW also acknowledges that as time passes the grief and pain of such separation has not diminished as may have been advised at the time, rather this grief has worsened with the passage of time not unlike any other incident of post-traumatic stress. Through our present-day work with women affected by past adoption practices, we understand and acknowledge the deep grief that many mothers, fathers, adopted people and their extended families have experienced after the loss of a child to adoption.

People's Republic of China (PRC*)*

In China, the main sources of adoption laws include the *Adoption Law 1992* amended in 1999. In addition, the Ministry of Civil Affairs of the PRC promulgated *Measures for the Registration of the Adoption of Children by Chinese Citizens in 1999*. In general, this legislation contains the basic principles of adoption law. It also contains the conditions and procedures for establishing an adoption, along with the means to terminate an adoptive relationship, either by an agreement or with a judgment.

There are provisions that require improvement for such legislation to be oriented to safeguarding the best interests of adopted minors. The basic principle in the PRC concerning the safeguarding of the adopter and adoptee is inconsistent with the best interests doctrine. Although, on its face, the principle indicates equal legal protection for both parties in situations of conflict, this may not be the case. Because adopted minors are dependent on their adopter, the adoptee is inherently in a disadvantageous position. Furthermore, the conditions prescribed for establishing an adoption are too strict and do not conform to the best interests doctrine. A child over 14 years of age cannot be adopted. This is contrary to the doctrine, and precludes

those aged from 14 to 18 from being adopted. The criteria for determining whether adopters have the ability to adopt a child are based upon their age. Refusing to allow a person to adopt on the grounds of age, irrespective of whether they have the necessary abilities to rear children and are willing to adopt, is contrary to the doctrine of the child's best interests.

Moreover, the present adoption legislation does not include a probationary period. This concept is widely used in other jurisdictions and acts as a mechanism to ease the transition of living together whilst serving the important function of allowing transparency in relation to how the adoptee is being treated. Surveillance over the adoption after it is established and during any subsequent termination remains weak.

Adoption Reform Proposals

Comparing foreign adoption legislation with its counterpart in China, the following suggestions should be considered to remedy the identified shortcomings. The PRC should explicitly state that an adoption is not permissible unless it is in conformity with the adopted child's best interests. In addition, because the consent of a minor under the age of 10 years is not required when terminating an adoptive relationship termination should not be permissible unless it is in conformity with the doctrine. The parties wishing to terminate must file a petition in the court. The court should only issue a termination order if it is in the child's best interests.

Concerning the conditions for establishing an adoption, the law should be amended so that the age limit of the adoptee is increased to those under the age of 18 and so that the maximum age of the adopter is reduced to 28 years. Furthermore, in order to better protect the interests of adopted minors a probationary system should be implemented – stipulating that the adoptee live with the adopter for a minimum period of six months before the adoption is established. To consolidate this, a supervision system should be established. Such a system must require regular visits by supervisors in order to more accurately police violations or maltreatment of minor's rights. The accountability mechanism for violation of the minor's rights should be strengthened by law enforcement agencies intensifying their enforcement operations in cases where the adopter is negligent or infringes upon the child's rights.

Conclusion

It is clear that the traditional concept of adoption for the purpose of creating a family has gradually been replaced by the dominance of the child's interests. It is imperative that the adoption law in China is amended in order to better reflect this shift. If the above-mentioned proposals are incorporated into the adoption law in China it will align current adoption law with international standards, and successfully reflect the trend that has been followed by other leading jurisdictions in the area of family law.

Edited extracts from a paper by Chen Wei & Shi Lei, Southwest University of Political Science and Law, Chongquing, presented at a symposium held at Reggio Emilia, Italy in April 2012 and published in International Survey of Family Law 2012.

South America

Ousted Argentine dictator jailed over theft of babies

Former Argentine dictator Jorge Rafael Videla has been sentenced to 50 years in jail for forcibly removing babies from prisoners taken during the military junta's war on leftist dissenters. Videla, 86, who led the regime from the 1976 takeover until 1981, is already serving a life sentence for other crimes committed under the dictatorship, which remained in power until 1983. Videla defended his actions, saying in court that the children's mothers were active militants in the machinery of terrorism and that they used their children as human shields.

Argentina's last dictator, Reynaldo Bignone, 84, was also convicted and received a 15-year sentence. Videla and the leaders of the junta were determined to remove any trace of the armed leftist guerilla

movement that they felt threatened the country's future. The case was the first prosecution for the systematic abduction of infants and young children under the Argentine dictatorship. Seven other former military and police officials were also convicted.

A group called *Grandmothers of the Plaza de Mayo* used DNA to help 106 people who were stolen from prisoners as babies recover their true identities. The group has fought in court since 1996, demanding restitution for the stolen children. It says 500 children were kidnapped and then raised by families close to the regime as their own.

Debora Rey, Buenos Aires, 7 July 2012

Africa

Intercountry adoption of African children

In an article *Adopting from Africa, Saving the Children?* Elizabeth Harrop has written that, despite global rates of intercountry adoption having fallen to a 15-year low, Africa has experienced a threefold rise in intercountry adoptions of African childreen in the last eight years. She advises that demand outweighs supply with 50 prospective adopters for every available child, and that between 2003 and 2011 more than 41,000 African children were moved overseas. Ethiopia now ranks second only to China in the number of children that leave for intercountry adoption.

Harrop cites Save the Children as reporting that more than 80% of children in orphanages around the world have a living parent and most are there because their parents cannot afford to feed, clothe and educate them. In Ghana, the figure is as high as 90%. In Ethiopia, the government recently attempted to trace the families of 385 children from 45 institutions and the families of all but 15 children were located. Harrop speaks of an “orphan creation industry” with adoption processes in some African countries being riddled with fraud and other criminal activities. She reports that the US Bureau of Consular Affairs advises that some adoption service providers charge prospective parents as much as US$64,000 for processing an intercountry adoption.

Source Elizabeth Wilmot Harrop *Think Africa Press* editor@thinkafricapress.com 8 August 2012

Baby-exchange scam in Nigeria

The English High Court has been told of a baby-exchange scam in which an English woman who sought fertility treatment from a Nigerian clinic was told she was pregnant and after nine months was sedated and told that she had given birth to a child. On her return to England, the local authority was alerted and DNA tests confirmed that the baby was not her child. The local authority removed the child from her care but the High Court found the woman to be credible despite the extraordinary nature of her claims and its decision was upheld on appeal. The child was returned to the woman and her husband, clearing the way for them to adopt the child. Evidence of similar incidents in Nigeria had been placed before the Court.

Daily Telegraph, London 20 April 2012

Adoption Views

A Canadian mother talks of her experiences

We were young, unmarried and pregnant. They forced us to surrender our babies. Now we're older, braver and determined to change an adoption system that still favours the privileged.
Little is known about the handmaids of the Bible, characters like Hagar, Bilhah and Zilpah. We do know that in biblical times the duties of a handmaid might have included bearing a child for the master of a household so he would have an heir if his wife could not bear him one. It was never presented as much of a choice to the handmaid. The truth is that women around the world still bear children for people of privilege. Only today it’s

called adoption, and it's still never presented as much of a choice. Growing numbers of mothers who surrendered their babies at a vulnerable time in their lives are beginning to speak out about the injustice in past and current adoption practices.

I am one of them. I became pregnant in 1975 at the age of 16. I was unmarried and had limited means of support. From the start, it was assumed that I would give up my baby for adoption. But it wasn't an assumption I shared. While I was pregnant, the thought of losing my baby was more than I could bear. Those feelings only grew after he was born. At the same time, it was made clear to me that I would never receive the support I would need to raise him. The system was stacked against unwed mothers. I was told repeatedly about the mature woman who longed for a child and could give my baby what I couldn't. And I was assured that giving up my son was an unselfish act of love. Time and again, I was told that I would get over my loss and move on. Eventually, I surrendered. I was instructed to leave the hospital without seeing my son. I ignored the order on more than one occasion, and I treasure those stolen moments to this day.

In Canada, adoption laws are the responsibility of the provinces or territories, and even though all are based on the principle of acting "in the best interests of the child," they vary widely. Generally, mothers who are considering adoption do not have recourse to independent legal advice. In some provinces, beginning with British Columbia in 1996, adoption records have become more open, allowing for faster exchange of information on matters such as genetic health problems. In places where adoption records are still closed and critical health issues arise, the hoops that must be jumped through are time-consuming and difficult.

From the early 1900s through to the 1980s, many maternity homes, including several run by the United Church, mistreated pregnant unwed women by taking their clothing, banning visitors, controlling their money and presenting a bill for room and board if a mother balked at signing surrender documents. Social work textbooks sanctioned the forced surrender of babies as the price mothers paid for their immoral behaviour. I wonder how far we have really come from those days.

Extracts from *Handmaids No Longer,* by Laurel Walton, published in United Church Observer, Canada. For a copy of the full article email r_ludbrook@hotmail.com

Do adoptive parents have a duty to tell their children the truth about their adoption?

The Adoption Act encourages those parents who do not wish to tell their adopted children about their adoption to practise such deception in that it deems adopted children to be the children of their adoptive parents "as if born to them in lawful wedlock." The Act creates the legal fiction that an adopted child is the biological child of the adoptive parents, and backs this up with the issue of a new birth certificate which shows the adoptive parents as the birth parents. Adopted persons who have found out by chance they were adopted could be extremely distressed, not only by the news itself but by the fact that this information had been withheld from them for decades. Today, there is broad acceptance that children should be told the truth about their origins, but there is evidence that it is still not uncommon for this information to be withheld.

Adoption social workers attached to Child, Youth and Family try to ensure that every adopted person will know that he or she has been adopted. They encourage parents to make this known to their children and support open adoption, so that adoptive parents and relinquishing parents meet and maintain communication. Parents nowadays choose the couple that they would like to have the permanent care of their child. They make this selection on the basis of profiles prepared by prospective adoptive parents. These profiles are vetted by social workers and rarely if ever would they contain information that the adoptive parents do not intend to inform the child about his or her adoption. The adoptive parents will usually have learned about the importance of telling children the truth about their origins in preparation classes organised by Child, Youth and Family.

The official advice to social workers in the Child, Youth and Family Practice Manual states:

> "Where applicants are unwilling for the child to know of the adoption, take the time to explore their attitudes, emphasise the importance of the child's right to know his or her birth parentage and to be able to trust in their honesty. Discuss ways of telling the child what others in the family will already know. Explain that this will be included in the court report, with a recommendation to postpone a decision, if

> necessary, until the matter has been resolved. Counsel to assist the court can be requested for this purpose or as a means to obtain counselling where needed."

However, there is no machinery by which adoptive parents can be required to make a binding commitment to inform a child about his/her adoptive status. It is not open to the Court to make this a condition of an adoption order or to require the prospective adoptive parents to give such an undertaking. Where the adoption is privately arranged or is an in-family adoption, Child, Youth and Family have less influence. Where the adoption is an intercountry adoption from a country other than a party to the Hague Convention neither Child, Youth and Family nor the New Zealand Family Court have any control over whether children are told the truth of their parenthood.

It is obvious from recent reported cases that there are still parents who have not told their adopted children about their origins or boggle at making a commitment to do so in the near future. There are still likely to be some adopted children who reach adulthood without knowing they are adopted.

Child, Youth and Family social workers sometimes express concerns in their report to the Court where applicants already have children in their care and have not told them they are adopted. They may express a reluctance to tell the child until the child starts school or becomes a teenager. The courts, while stressing the importance of telling the child, will not usually refuse an adoption order on this ground: see *Application by PHB* FC Auckland FAM-2010-004-1053, 4 July 2011.

Court decisions

Should a woman in a same-sex relationship be able to adopt her partner's child?

While a woman and her husband or male partner can jointly adopt her child in what is generally known as a step-parent adoption, New Zealand law does not permit a mother and her same-sex partner jointly to adopt her child.

While there is no statutory obstacle preventing *a* woman in a same-sex relationship from applying as a sole applicant to adopt her partner's child, the effect of a final adoption order is that legal parenthood is transferred from the mother of the child to her partner. If the female partner adopts the child, the partner is then deemed to have given birth to that child. On the making of an adoption order, the biological mother ceases to be a parent of the child, and the child's legal relationships with members of the birth family are also severed.

In a case where the female partner of the mother of a child applied to adopt the child, an adoption order was refused by the Family Court and the refusal upheld on appeal in *Re T* [1998] NZFLR 769. The High Court judge said:

> "I think …natural ties of birth are easily understood and accepted by children and indeed the community at large. On the other hand a legal fiction which confuses this basic relationship can of itself be a positive disadvantage to a child in his dealings with the outside world."

Justice Ellis made the point that the real issue in the case was not the sexual orientation of the couple but the provisions of the Adoption Act that prevented same-sex couples from applying jointly for an adoption order.

The European Court of Human Rights was recently asked to rule on a similar situation and came to the same conclusion. In *Gas and Dubois v France* (2012) *(application no 25951/07),* 29 March 2012 the European Court held that the French government did not violate the European Convention on Human Rights and Freedoms by in not allowing a woman in a same-sex relationship to adopt her partner's child. The French court had rejected the application on the grounds that it would leave the biological mother of the child with no parental authority over her own daughter and that such a result was not in the interests of the child.

Siblings and other relatives seeking information about an adoptee

The Adult Adoption Information Act 1985 gives adopted persons who have attained the age of 20 years the right to obtain a copy of their original birth certificate, provided that a birth parent of the child named on the certificate has not placed a veto on the release of the information. There is no equivalent right for siblings or other relatives of an adoptee to obtain such information.

In its report *Adoption and its Alternatives* the Law Commission in 2000 recommended that court adoption records should be made accessible to a wider range of people with a legitimate interest in obtaining the information. It proposed that court records should be open to:

- any person who has the consent of the adoptee;
- any person if it can be established that the adoptee is dead;
- any person who can demonstrate a sufficient and proper interest in inspecting the records.

The New South Wales Adoption Act 2000 permits non-adopted siblings of an adopted person (whether of the half blood or full blood) to access certain specified information about their full or half-brother or sister.

In a recent decision of the New Zealand Family Court, two sisters were granted leave to inspect court adoption records to obtain information about an elder brother who had been placed for adoption by their mother. Their brother had died, as had their mother and father. Before authorising inspection, the Court had to find there was a "special ground" and earlier decisions had ruled that a desire to obtain information about one's natural parents or relatives was not a special ground. The Judge was satisfied that the restriction on access to court adoption records was to protect the privacy of other members of the adoption triad and, as all persons likely to be affected were now deceased, there were no longer privacy issues. The Judge allowed the sisters to inspect the court records but indicated that adoption records of the era when the adoption took place were very basic and there seemed to be nothing in the records that the siblings did not already know: *Re Entwhistle Adoption* [2112] NZFC 3136 (7 May 2012).

Delay in hearing of adoption applications

The United Kingdom Supreme Court in *ANA & Anor v ML* [2012] UKSC 30 (11 July 2012) stressed the importance of urgency in hearing adoption cases. Lord Reed commented:

> "The damaging consequences of delay in the determination of adoption proceedings have long been well-known. The longer the proceedings unfold, the stronger the attachments which the child is likely to form with the prospective adopters and they with the child. The child may identify wholly with the new family. It is profoundly damaging to the child if the Court does not endorse that new identity. The protracted uncertainty may itself be damaging and distressing."

Lord Reed said that in the interests of the child and of common humanity towards all the individuals involved, it was imperative that unnecessary delay should be avoided. He added that an undue delay in the determination of adoption proceedings could have an irreversible effect on the child and could bring about the de facto determination of the issue.

Source: Darise Bennington NZLawyer 189, 27 July 2012

Adoption Action Inc News

The 2012 Annual General Meeting of Adoption Action Inc was held on 18 May 2012. The following officers and committee members were elected for the year to 31 March 2013"

Chairperson Fiona Donoghue, Secretary Alison Hamilton Treasurer Robert Ludbrook Committee Bill Atkin, Anne Else, Mary Iwanek, Charlotte von Dadelszen.

Susan Marks did not stand for re-election and a vote of thanks for her work as Secretary and co-editor of Adoption News and Views was passed. The annual membership subscription remains at $10.

Adoption Action's Part 1A claim is still under mediation and is subject to a confidentiality agreement. The adoption conference planned for this year has been deferred pending the outcome of the mediation process.

Any readers wishing to become members of Adoption Action Inc or to renew their membership can complete and return the membership application form below.

Thanks to Chrissie Hamilton, Evelyn Robinson, Bill Atkin and Tim McGuigan for providing material for this issue.

APPLICATION FOR MEMBERSHIP OF ADOPTION ACTION INCORPORATED

Adoption Action Inc
38 Derwent St
Island Bay
Wellington 6023

I wish to apply for membership/ renewal of membership of Adoption Action Incorporated and attach a cheque for $10 in payment of the membership fee for the period to 31 March 2013.

Name
Address

Email
Phone or mobile no.

Signature

Date