ADOPTION ACTION INC

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Adoption News and Views May 2017

Adoption News and Views is an occasional e-newsletter produced on behalf of Adoption Action Inc. It 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 also provides progress reports on any proposed changes to adoption law, and on efforts by individuals and groups pressing the government to give a higher priority to enacting new legislation. Adoption developments overseas are also covered. It is hoped the newsletter will provide a forum for people to discuss adoption issues.

Adoption News and Views is sent out several times each year. It is sent to you because you are believed to be a person interested in adoption. If you do not wish to receive further issues, please email Robert Ludbrook at: r_ludbrook@hotmail.com

Contributions are invited, including reviews of books, films, and so on touching on adoption. While the aim is to provide an open forum, the editors reserve the right to decline or abridge any contributions submitted. Feedback is encouraged.

Back issues can be viewed on the Adoption Action website: www.adoptionaction.co.nz

If you would like to become a member of Adoption Action Inc, please complete and return the application for membership at the end of this Newsletter.

The Annual General Meeting of Adoption Action Inc is to be held on Thursday 25 May 2017 at 12.30pm at Level 17 State Insurance Tower, 1 Willis St, Wellington. Members, prospective members and interested persons are invited to attend. A light lunch will be served.

Robert Ludbrook and Dr Anne Else – Editors
r_ludbrook@hotmail.com
Fiona Donoghue -Formatter

Late inserted item

In a recently published book *A Constitution for New Zealand* the authors Sir Geoffrey Palmer and Dr Andrew Butler put forward a strong case for a New Zealand Constitution giving as an example of that need the decision of the Human Rights Review Tribunal in Adoption Action's successful claim that NZ adoption laws are discriminatory in several respects.

A Wellington lawyer, Joss Opie, has published an article *Adoption Laws and the Case for a Written Constitution* which highlights the fragility of NZ's human rights framework. The author comments that "Despite fundamental human rights being at stake, there is no requirement for the House of Representatives to vote on what should be done [about the provisions held by the Human Rights Review Tribunal to be discriminatory] or even debate it."

The article can be downloaded from
http://constitutionaotearoa.org.nz/the-conversation/adoption-rights

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EDITORIAL

The present National-led government has steadfastly refused to give adoption reform any priority during its three terms in government since 2008. It has ignored recommendations of the Law Commission (2000), the UN Committee on the Rights of the Child (in 2003, 2011, and 2016), and the Human Rights Commission (in its National Plans of Action on Human Rights (2005 and 2010). It has refused to act on the findings of the independent Human Rights Review Tribunal in the case brought by Adoption Action (2016).

This is election year. As the first article below notes, it provides an opportunity for members of Adoption Action and the many groups pressing for adoption reform to impress upon political parties and their local candidates the urgent need for rewriting our adoption laws, in order to eliminate the discriminatory provisions and to bring the laws up to date, and in harmony with current attitudes and values. It is still the position that 11 days after giving birth to a child a woman can, without counselling or independent legal advice, sign a consent form which will have the effect not only of irrevocably severing her parental relationship with the child, but also of extinguishing the child's relationship with grandparents, uncles, aunts, siblings and half-siblings, without those relatives being given any opportunity to be informed or heard on the matter. Our adoption laws deny adopted persons any information about their biological parents until they are 20 years old.

ADOPTION ACTION NEWS

Making adoption reform an issue with all political parties

Adoption reform seems to have dropped off the political agenda, with the current government stonewalling on the issue by repeating the mantra "adoption reform is not a current priority", without giving any reasons.

Under the 2005-2008 Labour Government, the Ministry of Justice put a huge amount of time and effort into consulting widely and outlining the changes that needed to be made to our adoption laws; but its proposals were never approved by Cabinet, for reasons that have not been disclosed. The Ministry got as far as having Parliamentary Counsel Office draft an Adoption Bill, which mysteriously disappeared from sight after Labour lost power in 2008.

Jacinda Ardern MP, now deputy leader of the Labour Party, has assiduously promoted the need for adoption reform and has asked questions in Parliament, but this was not among Labour's priorities in the 2014 election.

Green MP Kevin Hague was a major supporter of reform and drafted detailed new legislation; but he has now left Parliament and his Bill has disappeared from sight. The Greens have since shown ambivalence towards the idea of including adoption reform in their 2017 election manifesto.

National and international human right bodies have criticised New Zealand's reluctance to move on adoption reform over the last 14 years. Last year, the Human Rights Review Tribunal made a finding that our adoption laws discriminate on the grounds of sex, sexuality, marital status, disability and age. It is a serious indictment that the current government implacably refuses to take any action to repeal the discriminatory provisions.

It is hard to understand the continuing resistance to according priority to adoption reform. Most of the groundwork has been done, two draft Bills have been developed, and there are excellent precedents for enlightened reform in the Adoption Acts of New South Wales, Queensland and Victoria. Obstacles such as the resistance to gay and lesbian couples adopting children have already been overcome, and adoption orders are being made on applications by such couples.

A symposium is being organised by Adoption Action later this year to highlight adoption issues. It is hoped that this will raise awareness and promote the need for reform. Now is the time for those favouring major reform of adoption laws to make their voices heard, and to press their local Members of Parliament and political parties to make adoption law reform an urgent priority.

Adoption Action to file complaint with UN Committee on the Rights of Persons with Disabilities

One of the grounds on which the Human Rights Review Tribunal (HRRT) in March 2016 found that the Adoption Act 1955 discriminated unlawfully was s 8(1)(b) of the Adoption Act 1955. This states that the Family Court can dispense with the consent of a parent or guardian of a child to the adoption of his or her child, if satisfied that he or she is unfit to have care of the child by reason of any physical or mental incapacity. This provision has been criticised by disability groups, by Judges, by the Law Commission in 2000 and by the Ministry of Justice (the Ministry responsible for the Act) in July 2007, yet it remains in place. .

The HRRT referred to Article 4 of the Convention on the Rights of Persons with Disabilities:

> "States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. In no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents."

The Tribunal quoted extensively from Adoption Action's submission filed in support of its claim:

> [179.1] Many natural parents can, and do, parent or co-parent a child despite having some physical or mental disability or impairment. Blind or partially-sighted parents, deaf or hearing-impaired parents, and parents with artificial limbs or who are dependent on a wheelchair often parent their children quite adequately (sometimes with family help or outside assistance). Parents with a mental disability can provide adequate parenting, sometimes with the assistance of medication to control their condition.
>
> [179.2] Even though a parent or guardian is restricted by reason of some disability or impairment in assuming a fully "hands-on" role in relation to the parenting of a child, he or she may still be able to play an important role in relation to the child's care, development and upbringing.
>
> [179.3] The rights and responsibilities of parents and guardians as now set out in s 16 of COCA include:
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> [179.3.1] Contributing to the child's intellectual, emotional, physical, social, cultural and other personal development.
>
> [179.3.2] Determining for or with the child or helping the child to determine questions about important matters affecting the child such as the child's name, place of residence, education, medical treatment and culture, language and religion. That is, the responsibilities of a parent go beyond being able to attend to the physical needs of the child.
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> [179.4] A parent with a disability might require assistance with some of the physical tasks of parenting but may be uniquely placed to provide for the child's education and emotional, social and cultural development.
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> [179.5] To deny a parent or guardian the right to refuse consent to the adoption of a child on the basis of disability places the focus on the disability and how that disability might affect their ability to provide care and control for the child. It does not take into account other qualities or strengths that the parent may have. The grounds in s 8(1)(a) involve a degree of parental neglect or failure to carry out the responsibilities of parenthood and the parent concerned is seen to have forfeited his or her parental rights. The ground in s 8(1)(b), on the other hand, does not require proof of any

such failure, but is premised on assumptions about the effect on a person's parenting ability based on the presence of a physical or mental disability.

[179.6] Adoption Action does not dispute the disability of a parent may, in some cases, be a relevant consideration in deciding whether or not a birth parent has the ability to provide adequate care for the child. However, it will be only one of many factors. Section 8(1)(b) unfairly shifts the focus from a broad assessment of the ability of a parent to provide the child with adequate care to the disability affecting the individual claimant.

After careful analysis, the Tribunal found that s 8(1) is inconsistent with the right to be free from discrimination based on disability.

The Optional Protocol to the Convention on the Rights of Persons with Disabilities, which New Zealand acceded to in October 2016, allows complaints to be made to the UN Committee on the Rights of Persons with Disabilities, provided they have exhausted all domestic remedies. In the light of the Minister of Justice's negative response to the Tribunal decision, Adoption Action intends to make a complaint under the Optional Protocol. It will be the first complaint made under that Protocol and we will be breaking new ground. Support has been given by the Donald Beasley Institute and IHC. Victoria University law students are assisting with the drafting of the Petition and liaising with disability groups to seek their support.

ADOPTION RECORDS

Records: the bottom line - paper by Dr Anne Else

I was invited to give this paper at the Workshop on Rights to Records for Children in Out of Home Care, Auckland, 24 February 2017. It was convened by Belinda Battley, who is writing her PhD on the way communities use records in maintaining their collective memories, examining existing archival models against community needs. Held at Auckland University Law School's Human Rights Centre, it was chaired by the Centre director, former Chief Human Rights Commissioner, Rosslyn Noonan. The care leavers who spoke gave very moving and often harrowing accounts of their childhood and teenage experiences, and their difficulties searching for their records. The issues they raised would resonate with adopted people seeking their family histories.

I am here today as an adopted person, a historian of closed stranger adoption in New Zealand, and an activist for reform of adoption law. It is from these perspectives that I will consider some persistent challenges related to records.

The focus today is on children, the most powerless group, so I'm not going to talk about the experiences and need for records of birth and adoptive parents. But we need to bear in mind that records can be of vital importance for parents and other family members too.

Reading of the experiences of children in institutions and the way records were or were not kept or made available – thank you, Belinda, for sending those - strongly reminded me of the experiences of adopted people.

I want to make four points about the crucial importance of records for **all** those who, as children, become separated long-term or permanently from their birth families in some way. None of these are new; they all represent persistent challenges.

1. Records and Maori heritage

In the recent case taken by Adoption Action (Adoption Action Inc. v Attorney-General), the only claim which the Human Rights Tribunal did not accept was the one relating to the particular impact of adoption on Maori. One of the key aspects of that claim relates to records.

Knowing their whanau connections is of vital importance for Maori. These connections form the basis of their identity and standing in Te Ao Maori, the Maori world. Their needs are intensified instances of all children's needs. A Maori woman adopted as a child explains the importance of knowledge of whakapapa. Knowing your lineage gives you, she says:

> "…a whole infrastructure, you're on the map of your own country – you're placed in relation to everyone else and everything else that's happening. … Other Maori people can relate to you because they can *place* you. It's the network or grid of your existence, both physically and spiritually." (Else, 1991, p.194.)

The lack of detailed records of past adoptions is at its worst with regard to Maori. The Pakeha concept of "Maoriness" in relation to children placed for adoption was for many years based on skin colour and "degree of Maori blood". A Pakeha social worker recalled that:

> "We never enquired as to the tribe. I have never seen it written down in relation to babies … We were all operating from a Pakeha nuclear perspective. We gave no special advice to Pakeha adopting Maori children." (Quoted in Else, 1991, p.191)

This lack of knowledge has had very far-reaching consequences for adopted Maori who are unable to establish their lineage. Here is how the woman quoted earlier puts it:

> "If it was just for me, I could say tough luck – but it doesn't end with my life. It denies you own children, which I think is the worst thing…How can you have a future, or a present, if you don't have a past? If you don't get your whakapapa right in this generation, it's going to go on and on, it just gets worse." (Else, 1991, p.195)

At the adoption research conference in Auckland last year (ICAR5, 2016), a group of younger Maori adopted women strongly endorsed this perspective, and spoke of the ongoing difficulties they were having in terms of their relations with Maori communities, because of not knowing where or who they came from.

2. The deficiencies of the Adoption Act 1955

The inadequate records for adopted Maori are the clearest instance of the deficiencies of past adoption records. My own court records of my 1945 adoption identify me only as "unnamed female Hawkins" and give my birth mother's first name, middle initial and surname - nothing more. I was lucky, because I was able to find her before the Adult Adoption Information Act was passed in 1985. So she could tell me why I was unnamed: she was never told that she had the legal right to name me.

The Adoption Act 1955 still governs adoptions and the records which must be kept, and indeed not kept, in relation to adoptions. Practices have certainly improved, but they are simply that, practices, with no firm legal basis. There is no legal requirement to establish or record the whakapapa of any child who becomes subject to this Act, or to record anything beyond the most basic information about the birth parents, who are not required to appear in court when the order is made.

3. Records matter for every child separated from their birth family by the state

While there is, understandably, a heavy emphasis on the importance of records for victims and survivors of institutional state care and foster care, the third point I want to stress is that the records kept by the state matter most for all those who are separated in any long-term way from their birth family, regardless of how this is done, how they are cared for, or what kind of childhood they have.

For decades, in terms of non-birth-family care, adopted children were seen as the lucky ones. They exchanged the stigma of being born to a single mother for an entirely new identity, with the supposedly normal status and security provided by becoming the child of a married mother and father.

Legally, adoption severed all their original family relationships. The state emphasised the significance of this severance by providing new birth certificates which made it appear that the child had actually been born to the adoptive parents. These new certificates continue to be supplied today.

The point made repeatedly by adopted people during the seven year debate over the Adult Adoption Information Act is that no matter how secure and loving their childhood was, it does not do away with the need to know their origins. However, the 1985 Act itself is now seriously outdated. Many people involved with adoption, as judges, lawyers, human rights experts, or those

personally involved, have been insisting for well over twenty years that comprehensive reform of adoption legislation is urgently needed. Records issues are central to any such reform. Yet over at least the last two decades, there has been a remarkably persistent reluctance by successive governments to address this major issue.

4. New contexts in which records matter

Today the most rapidly growing use of adoption is related to surrogacy. The surrogate mother may have gestated an embryo provided by the intending parents. She is nevertheless the birth mother, and they must therefore adopt any resulting child. In other cases she also provides the egg, so she is the child's genetic mother. The adoption requirement at least ensures that her existence is recorded. But donors and their offspring have more extensive rights regarding information and contact – provided the records are meticulously kept by the fertility clinics concerned.

Clinics are currently expressing concerns about long-term record-keeping, and also about the requirement to adopt. There is also growing pressure to free up New Zealanders' ability to use overseas fertility services involving donation or surrogacy or both. Yet there seems to be very little discussion about long-term records issues in terms of the children themselves. There also seems to be a persistent lack of concern for what the people born through all such arrangements will in future want and need to know about their origins.

In conclusion

It seems that the lessons of the era of closed stranger adoption – which is still legally with us through the 1955 Act – have not been learnt. No child comes into the world unconnected, and knowing your connections matters. But those who have never experienced significant lack of knowledge rarely understand this, relying instead on simplistic notions of protecting children from difficult facts and giving them completely new starts – when there is no such thing.

My own experience and research have led me to believe that regardless of how we arrange having and raising children, or how well or badly we do these things, good, detailed, accessible records are the absolute bottom line. As we continue to devise new ways of creating and caring for children which involve separation from their human origins, the records play a vitally important role. They allow the most powerless of those involved, first as children and later as adults, to at least begin to find out what they need to know.

References

Adoption Action Inc. v Attorney-General [2016] NZHRRT 9.
Else, Anne. *A Question of Adoption: Closed Stranger Adoption in New Zealand 1944-1974.* Bridget Williams Books, Wellington, 1991.

CHILD, YOUTH AND FAMILY

Child, Youth and Family and open adoption?

Child, Youth and Family (and the Minister of Social Development) regularly state that despite there being no provision for open adoption in the Adoption Act, "there is open adoption in practice". This is misleading, because:

- CYF does not encourage or assist relinquishing mothers and their families to enter into written open adoption agreements with adoptive parents, and often there is no more than a loose verbal arrangement;
- in the case of privately arranged adoptions (and even in CYF-arranged adoptions) CYF cannot compel a prospective adoptive parent to attend its *Ways to Care* programme;
- while it is correct that an open adoption agreement "is not enforceable in law", it is open to a parent

or family member (particularly where there is a written open adoption agreement) to apply to the Family Court for a contact order, and contact orders have been made in such situations.

The Law Commission, in its report *Adoption and Its Alternatives*; *A Different Approach and a New Framework* (2000), proposed that, before an adoption order is made, the prospective adoptive parents and the natural parent should enter into a parenting plan which would state the name by which the child should be known and future contact between the child and the natural parents and members of their wider family (see paras 106-108). In New South Wales, a parenting plan along these lines is compulsory under Part 4 of the Adoption Act 2000. The plan must be filed with the application for an adoption order, and can be varied post-adoption by the court on the application of any party to the plan. There are similar provisions in Part 8 of the Adoption Act 2009 (Queensland) and in s 72 of the Adoption Act 1994 (Western Australia).

In December 2006, the Ministry of Justice prepared a paper for Cabinet headed *Reform of Adoption Laws.* The paper proposed a change to the Adoption Act 1955, so that every application for an adoption order should be accompanied by "a written plan agreed to by the birth parents and adoptive parents covering matters such as contact, genealogy/whakapapa, religion, and ways of fostering the child's cultural heritage": para 51. It recognised that such plan would not be enforceable by the courts. Cabinet considered the report, and noted that work on the reforms had been delayed by the Ministry "because of other priorities". A revised version of the paper dated 2 July 2007 added that "it is appropriate for Child, Youth and Family to help the parties to an adoption maintain an ongoing relationship where that was the original intention, as this promotes the best interests of the child" (paras 72-74).

New Ministry to take over government's adoption services role

For years, adoption services were the responsibility of the Department of Social Welfare. They later became the responsibility of a new Ministry of Social Development, falling within a separate adoption section that was part of Child, Youth and Family.

In 2016 government decided to create a new, stand-alone agency that would provide a single point of accountability for services for vulnerable children and young people. The new Ministry is to have a focus on "commissioning and delivering child-centred services that prevent or respond to incidences of vulnerability, supporting vulnerable children and young people to fulfil their potential, and promoting the integration of services across the system". While children who are placed for adoption are not usually perceived as "vulnerable", adoption services that had been the responsibility of Child Youth and Family, (a service agency within the Ministry of Social Development) have from 1 April 2017 been brought under a new Ministry, the Ministry of Vulnerable Children Oranga Tamariki (shortened to MVCOT), Child, Youth and Family no longer exists. It is unclear whether the promised additional funding for the Ministry will extend to adoption services. Also unclear is the status of Child, Youth and Family Adoption Manuals, and whether adoption policies will be changed under the new Ministry. It is too early to assess whether these changes will bring about significant improvement in the government's adoption services. There is likely to be some confusion during the changepover.

Adoption laws and law reform continue to be the responsibility of the Ministry of Justice.

ADOPTION BILLS

Ministry of Justice draft Bill 2006: A great mystery

Great mystery surrounds a Bill drafted by Parliamentary Counsel Office in 2006 (numbered PCO 7385E1). The Bill would have replaced all three adoption statutes - the Adoption Act 1955, the Adult Adoption Information Act 1985 and the Adoption (Intercountry) Act 1998 - and placed adoption law under one Act.

The draft Bill contains 88 sections (the 1955 Act contains only 30). It includes many of 100 recommendations made by the Law Commission in its ground breaking 2000 report on adoption reform: *Adoption and its Alternatives: a Different Approach and a New Framework*. It draws on the comprehensive research and consultation carried out by the Ministry of Justice over the period from 2002 to 2006.

The mystery behind the Bill is that:

- It was not disclosed in the Discovery of Documents process in connection with Adoption Action's claim brought in March 2013, in which the Ministry disclosed 68 documents, but made no mention of the Bill;

- It was (rather shamefacedly) produced by the Crown in January 2014, late in the hearing of Adoption Action's claim, after evidence had been completed and the Crown was making submissions;

- When Adoption Action requested the Ministry's drafting instructions to Parliamentary Counsel Office and other documents relating to the draft Bill, it was told by the Crown and the Ministry that no other documents relating to the drafting of the Bill could be found.

Parliamentary Counsel office would not draft a long and complex Bill without first receiving detailed instructions from Ministry officials who must have spent thousands of hours consulting widely and working on proposals for new adoption legislation. The officials had prepared a 105 page paper for Cabinet that included comments that NZ's adoption legislation "is fragmented, perpetuates discriminatory practices, creates a system which is open to abuse, falls short of our international obligations and does not reflect today's social conditions and public attitudes". The Cabinet paper added that the proposals for reform ""emphasise the paramountcy of the welfare and best interests of the child, and reflect a move to greater openness between those involved in adoption".

How could it be that Ministry staff overlooked this important draft Bill, and the drafting instructions on which it was presumably based, when discovery took place in 2013? Was there a cover up somewhere or was it a serious case of memory lapse?

The other great mystery is why, when so much groundwork had been done in drafting new up to date adoption legislation, the incoming National-led government was, and has continued to be, implacably opposed to proceeding with adoption reform, despite widespread criticism from judges, lawyers, adoption groups, the Human Rights Commission and the UN Committee on the Rights of the Child.

Robert Ludbrook

Kevin Hague's Private Member's Bill: Care of Children (Adoption and Surrogacy Law Reform) Amendment Bill 2015 (revised 2016)

Green MP Kevin Hague, who resigned from Parliament late last year, had a special interest in the reform of adoption law. He formed a cross-bench group of MPs from different parties who shared his view of the urgent need to reform adoption law and to legislate for the growing practice of surrogacy. His interest was shared by National MP Nikki Kaye. With her help, and the help of Adoption Action and other non-government organisations and interested persons, he undertook the daunting task of drafting a Bill, which he placed in the Private Members Ballot in 2015. He was never successful in having the Bill drawn in the Ballot, and it had to be withdrawn when he left Parliament.

The Bill adopted the Law Commission's 2000 recommendation that adoption law should be merged with the law relating to the care of children, now contained in the Care of Children Act 2004. It was entered in the Ballot as the Care of Children (Adoption and Surrogacy) Law Reform Amendment Bill 2015.

The Bill contained 223 sections. The Explanatory Note to the Bill states:

> "New Zealand's current adoption law is archaic and needs to be updated to reflect more modern thinking and other law concerning children and families.
>
> In the 1950s, when the Adoption Act was drafted, New Zealand encouraged single mothers (including some divorced mothers) to give their children up for adoption, reflecting the prevailing view that children were best brought up in a family home with a married couple. Those single mothers who refused to give up their children were stigmatised as selfish or immoral. Single mothers who did give up their children for adoption were seen as being responsible, and also fortunate – they were being given a second chance to forget about their transgression (conceiving a child out of wedlock) and moving on with their life. Single women were often sent away from their homes for the term of their pregnancy, often staying in institutions that specialised in providing accommodation for unmarried mothers. Often these institutions would actively discourage mothers from keeping their child. Very little support was provided publicly or privately to women who wished to keep their child. Fully informed consent was not available for birth mothers. Children were viewed as being under the authority and control of their parents and were not recognised as having individual rights.
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> The Bill ensures that adoption legislation is consistent with other family legislation so that parties to an adoption benefit from the same protections. For example, the Bill requires the appointment of a lawyer for the child unless the appointment would serve no useful purpose. Additionally, the Bill ensures the child's views on the adoption are ascertained and that the court must take those views into account.
>
> This Bill changes the law to ensure that in all future adoptions there will be a parenting plan providing for contact with birth parents or exchange of information between adoptive parent(s) and birth parent(s) unless such arrangements are impracticable or contrary to the child's welfare and best interests."

The Bill gives children the right to their original birth certificate at any age, not 20 years as under the 1955 Act. It provides that an adopted child shall have the same rights to succession and intestacy as a biological child.

A lot of work went into the drafting of this Bill, and it is unfortunate that it was not successful in the Ballot. We must be thankful to Kevin for his work on this issue. Adoption Action has approached the Green Party to see if some other Green MP is willing to place the Bill back in the Ballot. The logical person to do this would be the co-leader Meteria Turei, who is the Greens' Justice spokesperson. A final decision has not been made, but it appears that adoption reform falls outside the leading issues to be pursued by the Party in this election year.

Chief Human Rights Commissioner's commitment to oversee drafting of new Adoption Bill

The Human Rights Commission supported Adoption Action's claim to the Human Rights Review Tribunal. It became an Intervener in the proceedings and instructed a leading human rights lawyer, Frances Joychild QC, to attend all ten days of the hearing, and to cross-examine witnesses and make submissions. Michael White, a senior officer with the Commission, also attended the hearings. Without that assistance Adoption Action would have struggled, and we are extremely grateful to the Commission, Ms Joychild and Mr White for their commitment to the cause.

After the disappointing response to the Tribunal decision from the Minister responsible for the Adoption Act, Hon Amy Adams, members of the Adoption Action Committee met with the Chief Human Rights Commissioner, David Rutherford, to discuss what action Adoption Action and/or the Commission might take to challenge the Minister's report to Parliament, which merely stated the adoption reform is "not a priority".

David Rutherford proposed that the Human Rights Commission would take the initiative, with assistance from Adoption Action and other interested organisations and individuals, to draw up new adoption legislation that avoided the discriminatory provisions highlighted by the Tribunal, and brought New Zealand into line with the UN Convention on the Rights of the Child and other United Nations Conventions.

That meeting took place in December 2016. Although Adoption Action has put forward proposals as to how the massive task of writing new adoption legislation should be managed, no progress has been made to date.

ADOPTION VIEWS

Retying the Broken Bond – article by Cecily McNeill

I looked at the group of nine-year-olds knowing my son was among them. "Which one is he?" she asked. I was dumb and mortified. How could I know. The last time I saw him, he was just five days old yet capable of growing into any of these beautiful boys.

He was 21 when I met him again – living in the south of France, having grown up in New Caledonia. An avowed Kiwi, the first thing he wanted to do when he came to New Zealand was to ask the Social Welfare Department how he came to be adopted outside the country. When I met his mother in Noumea, she said adoption staff had told her it would be impossible for me to find them because they lived in another country.

After his first child was born, he wrote of the importance of knowing where you come from and I knew my years of wandering in a numb wilderness had ended.

In 1976, having carried this growing baby for nine months, I signed a paper, the top half of which was covered so that I could not see the names of the adoptive parents. I believe I would have consented to his being taken out of the country, but this moment quickly became blurred in my memory as my sentient being dealt with the loss.

Adoption law in New Zealand is governed by the Adoption Act 1955 and the Adult Adoption Information Act 1985. In the early 1970s, until the domestic purposes benefit gave sole parents with dependent children a small income in 1973, a large number of children were placed for adoption. A social worker for the past 50 years, Mary Iwanek, says until the early 1970s, colonial New Zealand with its strong religious influences had the highest number of adoptions in the western world.

Then adoption was shrouded in secrecy – adoptive babies were issued with a new birth certificate showing only the names of the adoptive parents, once the final order went through six months after birth.

Mary Iwanek was just 15 when her parents died. Leaving the Netherlands soon after, she took up nursing, where she was shocked to see how badly treated unmarried mothers were. At home, she had helped care for her unmarried sister's child in a much freer society where "unwanted" babies were absorbed into the extended family.

"The literature frequently describes unmarried, pregnant women as immature and unstable; young girls whose pregnancy had occurred through irresponsible behaviour and sexual activity," Mary Iwanek wrote in the December 1997 issue of *Social Work Now*. So it was easy to promulgate the idea that birth mothers did not want the children they bore.

Further, the "complete break theory" held that environment would overcome heredity – "that a child placed into an adoptive family should grow up 'as if born to them'," writes adoption officer Anne Aburn, in a review of the Adult Adoption Information Act, in Issue 26 (4) of *Aotearoa New Zealand Social Work* 2014. Anne Aburn joined the Department of Social Welfare in 1985 as one of 24 new adult adoption information officers.

In the first four months of the Act's jurisdiction, nearly 3,896 original birth certificates were issued to adults wanting to search for their birth mothers — 22,926 more were issued in the following decade. Research shows that most adults had wanted to know about their origins for some time. "Finding out more was not enough, they needed to meet and get to know birth relatives." This vindicates the establishment of a lobby group, Adoption Action, seeking change to the law. The group aims to promote changes to adoption law and practice that will "enhance the rights and wellbeing of children affected by adoption and reduce the risk of sale, trafficking and inhumane treatment of children in intercountry adoption. They also research and disseminate information about adoption.

Many reviews have offered options for change, most notably in 1999 when the Law Commission presented a discussion paper, *Adoption: Options for Reform*. From this, recommendations for change in adoption law and practice were published in *Adoption and its Alternatives*. The Commission recommended openness in departmental and court records to adoptees, adoptive parents and natural parents.

On July 17 2003, Lianne Dalziel argued persuasively in Parliament on the need for change. The Care of Children Act 2004 was passed but still there was no reform of adoption law.

Open Adoption Recommended

Cathy Woods, who works on international adoptions for Child Youth and Family, says adoption is open in practice. "We talk in our education *Ways to Care* programme for adoptive parents about how practice is developed and why . . . so that people come to understand the importance for the child of openness."

The department then seeks an agreement between adoptive parents and the birth mother; to facilitate some sort of contact. This may be an occasional letter or phone call. In some cases contact is more regular. In others, for example if the baby is the result of incest or rape — not at all [*see Editor's Note below*].

The Act doesn't exclude or prevent open adoption. By discussing the idea of contact with the birth family you can develop practice within an Act that can bring about a shift in practice without the law necessarily saying you can. But Cathy stresses that open adoption "is not enforceable in law". It's really important for all parties to understand this.

Adoption and Rights Law

In November this year the United Nations Committee on the Rights of the Child (CRC) agreed with the Human Rights Review Tribunals assessment of New Zealand adoption law as being discriminatory on the grounds of age, sex, marital status, and disability. The CRC recommended a prompt review to align it with the Convention on the Rights of the Child, which New Zealand ratified in 1993. The Justice Minister, Amy Adams, responded that the government's priority was to overhaul the CYF law to improve long-term outcomes for vulnerable children. "Any review of adoption law should be cognisant of this and, accordingly, would need to occur subsequent to that reform. She says for now the government is satisfied the law is being interpreted in a rights-consistent manner and the points the tribunal raises do

not significantly impact on adoptions." **

Joy, Loss and Life

Although I grew up in a sternly legalistic "Jansenist" Church of the 1950s and 60s, I found my life being transformed by my pregnancy and childbirth, as it had been for Mary, another single mother 2000 years ago. The joy of new life growing within me was enhanced by the loving support of my family. The pregnancy was never a sad time. That came later with the loss. I became open to new ideas and through work in social justice and theological studies, I came to know the Church as a way to God and the peace of Christ. Today I find family in the parish and joyful, welcoming parishioners with whom I share music and much more. Though I consider myself blessed, I could never advocate for the secrecy that surrounded my adoption experience. I see a place for adoption where all parties remain connected where, as Cathy Woods says, what is best for the child is paramount , "so they can grow with knowledge and acceptance"..

Cecily McNeill is a Wellington journalist

** ***Editor's Note***
See item above on Child Youth and Family and open adoption for critique of CYF approach to open adoption

INTERNATIONAL NEWS

Review of adoption laws in Australian State of Victoria

Victoria is currently reviewing its Adoption Act 1984, and the Victorian Law Commission has issued a Consultation Paper, focusing on:

- Ensuring that children's best interests and rights are the main consideration
- Eligibility to adopt a child, and the adoption process
- Access to adoption information
- Birth certificates of adopted people.

The Commission has received over 60 submissions. It is not considering past adoption practices, nor extending adoption to allow same-sex couples to adopt. For further information, see www.lawreform.vic.gov.au/all-projects/adoption-act

Victoria was the first State in Australia to introduce open adoption. Section 59A of its Adoption Act 1984 (Vic) allows parents to nominate a preferred frequency of contact, whether in the form of face-to-face meetings, indirect contact or information exchange. With the agreement of the adoptive parents, these arrangements are written into the adoption order by the Court. Contact is generally set at between one to four times per year, but this is seen as a minimum frequency, with additional contact at the discretion of the adopting parents.

Amendments to South Australian adoption laws

South Australia has made changes to its Adoption Act 1988. The Adoption (Review) Amendment Act 2016 inserts a set of objects, which include:

- to emphasise that the welfare, rights and best interests of the child concerned both in childhood and in future life must be the paramount consideration in adoption law and practice;
- to ensure that adoption law and practice assist a child to know and have access to his or her birth family and cultural heritage;
- to endeavour to ensure that adoption law and practice complies with Australia's obligations under treaties and other international agreements; and
- to ensure openness in adoption and to allow access to certain information.

Adoption by New Zealanders of Russian Children

There was an explosion of intercountry adoptions of Russian children by New Zealanders in the two decades beginning in 1992, with more than 650 Russian children being adopted. New adoptions from the Russian Federation were suspended in 2012. Subsequently both countries entered into negotiations with a view to reaching a bilateral agreement, but these negotiations foundered in 2017. Areas of difficulty that derailed the negotiations included:

- the care arrangements for the Russian child on arrival in this country;

- differences in each country's legislative requirements (e.g. under NZ law a single applicant can adopt a child, as can a same-sex couple); and

- problems in granting NZ citizenship to Russian children who are available for adoption (see statement by the Chief Executive of Ministry of Social Development 27 January 2017).

COURT DECISIONS

Family Court cases granting adoption order following family arrangements in other countries

The Courts have recently shown a greater willingness to take into account the cultural attitudes and practices of families other than traditional European families, regardless of whether NZ adoption law has been complied with.

In *Tuioti Appeal By, Re* [1995] NZFLR 773, Justice Tompkins stated that "full recognition should be given to the cultural attitudes of the family concerned", adding that "Thus, an adoption that may be considered inappropriate in a European setting may well promote the welfare and interests of the child in a Polynesian family."

The need to take into account the cultural attitudes of the family is not limited to Pasifika families. In *Application by Wong and Wong* [2016] NZFC 3507, Judge Rogers made an adoption order giving effect to a family agreement entered into before the birth of the child, after the prospective adoptive parents approached the father's sister about adopting her child because the child's mother did not feel she could cope with another child. In another decision of Judge Rogers, *Gauray Mittal and Anor* [2016] NZFC 4683 [3 June 2016], involving an Indian family, the facts were quite similar. The child was a child of the applicant's younger brother and his wife. The mother was struggling to care for two other children with very little support. A post-adoption contact agreement was in force, enabling the natural parents to have regular contact with the child. There was no need to change the child's surname, as the adoptive father's surname was that of the relinquishing father. The child had lived with the adoptive parents since four days after the child's birth. Judge Rogers had no hesitation in granting an adoption order.

APPLICATION FOR MEMBERSHIP OR RENEWAL

ADOPTION ACTION INCORPORATED

Please post the completed form and fee to: **Adoption Action Inc, PO Box 30-397, Lower Hutt**

❑ I wish to apply for membership / renew membership of Adoption Action Incorporated

❑ I have enclosed a cheque made out to Adoption Action Inc (or cash) for the membership fee of $10 for the period ending 31 March 2018

OR

❑ I have made a direct credit to the Adoption Action Inc bank account **12 3140 0410806 00** for the membership fee of $10 for the period ending 31 March 2018

NAME: _____

ADDRESS: _____

_____

_____

EMAIL: _____

PHONE OR MOBILE:

_____

_____

SIGNATURE:

_____

DATE: _____

Optional:
My interest in adoption is as an adopted person / natural parent /adoptive parent / academic / other professional / other (please specify): _____

PLEASE NOTE: Members receive, by email, this newsletter
ADOPTION NEWS AND VIEWS
If you do NOT wish to receive future copies of this newsletter, please tick the box below.

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