

Submission to the Standing Committee on Social Policy on Bill 183: The Adoption Information Disclosure Act, 2005

May 16, 2005

Anne Stokes
Clerk
Standing Committee on Social Policy
Room 1405, Whitney Block
Queen's Park
Toronto, Ontario
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Dear Ms. Stokes:

Thank you for providing the Office of the Information and Privacy Commissioner/Ontario (the Office) with the opportunity to comment on Bill 183, the *Adoption Information Disclosure Act, 2005* (the Bill).

It is important to note that pursuant to section 165 of the *Child and Family Services Act* and section 28(2) of the *Vital Statistics Act*, records relating to adoptions do not fall within the scope of the *Freedom of Information and Protection of Privacy Act (FIPPA)*. The reason for this exclusion highlights the confidential treatment of these records to date. When *FIPPA* was introduced, the legislature decided that certain confidentiality provisions in other statutes should prevail over the access provisions of *FIPPA*, including the records at issue. Part of my Office's mandate under section 59(a) of *FIPPA* is to comment on the privacy implications of proposed legislative schemes. As a result, my Office was consulted by the Ministry of Community and Social Services before the Bill was introduced. In my view, the Bill raises some important privacy issues which I would like to address.

First, let me state that I am pleased to hear of the many positive reunions between birth parents and adopted persons where both parties have consented to the exchange of identifying information and have expressed a desire to meet. I am generally in favour of promoting openness in relation to adoption information, and I am not objecting to the application of the proposed amendments for adoptions that occur **after** the legislation takes effect, as long as clear, prior notice of non-confidentiality is provided and parties have a right to file a notice to prevent unwanted contact, a "contact veto."

However, in my view, it would be inherently unfair to provide birth parents and adopted persons with unqualified access to identifying information **retroactively**, where such disclosure may profoundly affect those who relied on past assurances of confidentiality.

The **solution** I propose – that of a "disclosure veto" which would prevent the release of personally identifying information with respect to past adoptions – will improve the circumstances of the vast majority of individuals by allowing greater access while protecting the privacy rights of a minority. As I will demonstrate, the current Bill has the potential to negatively impact the lives of parties to adoptions

who have lived with legitimate expectations of privacy. A disclosure veto for past adoptions is an appropriate mechanism with which to ease the transition to openness by protecting these expectations.

Retroactive Application and Assurances of Confidentiality

As noted above, my primary concern is with the retroactive application of the law and its potential impact on the privacy of individuals who entered into the adoption process in an era when confidentiality was the norm.

While addressing a previous adoption information disclosure Bill, the Ontario Association of Children's Aid Societies submitted that "...from the time of the *Adoption Act of 1927* until 1979, adoption records were sealed and all parties in the adoption process were guaranteed secrecy."¹ I note that even since the introduction of the Adoption Disclosure Register in 1979, identifying information could only be disclosed with consent of the parties² or in exceptional circumstances.³ Under the current law, original birth registrations are sealed as well as all documents relating to adoption applications.⁴ The original adoption order is provided to adoptive parents by the Court, and a copy may only be disclosed to an adopted person by the Registrar of Adoption Information in exceptional circumstances.⁵

Accordingly, it is entirely reasonable for parties to adoption to have relied upon this statutory framework of confidentiality. Moreover, many were personally assured that their identities would remain private, with no expectation of that changing.

There has been considerable discussion lately about whether parties to adoption were in fact promised confidentiality. Some contend that there were no written guarantees of anonymity; others have advised that they were never promised confidentiality, and one birth mother informed us that she was given assurances that contact would be possible once her child turned 18 years of age.

Contrary to these comments, there is evidence based on the correspondence, e-mails and telephone calls we have received, that many birth parents **were** in fact promised confidentiality. I would like to take this opportunity to quote from correspondence we received from one birth mother to this effect:

...I made the hardest decision of my life 20 years ago alone with no family knowledge of my pregnancy or adoption. These proposed changes could completely upset my life as it stands today. My family know of nothing...I was told 20 years ago that my file was sealed and would not be opened without both consents...I am feeling completely overwhelmed at what I may be facing in 18 months...

And from another:

When I signed the adoption papers some 35 years ago, I was promised in a courtroom that my identity would be protected and that no identifying information about me would ever be released. **I feel betrayed by the system.**

And another:

In my case – which happened in the 1950's, we birth mothers were promised complete confidentiality upon adoption. They (the government) assured me, that adoption records were sealed with no possibility

of them being opened any time...Is it fair that after 50 years, I am faced with a disclosure that would shock and affect my whole family and create great difficulties?

And another:

I based my life on being told my file would always be sealed.

...

It is affecting many lives, causing much hardship and concern.

I am a birth mother from 1946. It is unbelievable they would go that far back to turn families upside down.

Several adopted persons also contacted our Office to object to the Bill based on their expectations of confidentiality. One writes that she has given considerable thought to revealing her identity to her birth parents, but decided to keep her identity confidential. She argues that implicit in her adoption was a promise by the Government of Ontario that her birth identity would be replaced by her new identity. Another adopted person stated that it should be her right to expect that promises made to her through the adoption order would be upheld.

Several adopted persons also contacted our Office to object to the Bill based on their expectations of confidentiality. One writes that she has given considerable thought to revealing her identity to her birth parents, but decided to keep her identity confidential. She argues that implicit in her adoption was a promise by the Government of Ontario that her birth identity would be replaced by her new identity. Another adopted person stated that it should be her right to expect that promises made to her through the adoption order would be upheld.

Another adopted person informed us:

I found out about adoption records being made public and I almost died! I can't believe that the government would go out of their way to take away our right to privacy.
... we didn't have a right to have a say in our adoptions, and now we won't have a right to save our families from being hunted down from the very people who sent us away to begin with. I believe that an adoptee should be able to VETO their records, and they stay that way until the adoptee decides differently.

From another adopted person:

... there are a significant number of adult adoptees who would also have their right to privacy violated with this proposed *Act*.

Adoptive parents have also informed us they were told by the courts and children's aid societies that these documents would be permanently sealed.

It is apparent that the messages given to parties to adoption in Ontario may have varied over the years. But there is clear evidence that many birth parents **were** indeed given assurances of confidentiality and these assurances governed their lives – they relied on these promises. It has also become evident to me that

some adopted persons have lived with expectations of confidentiality and privacy that they also wish to preserve.

In these circumstances, it is highly unfair to apply the new rule of openness retroactively, breaking what to many was a sacred covenant. As stated by Law Professor Ruth Sullivan in *Sullivan and Driedger on the Construction of Statutes*:⁶

It is obvious that reaching into the past and declaring the law to be different from what it was is a serious violation of rule of law ... [T]he fundamental principle on which rule of law is built is advance knowledge of the law. No matter how reasonable or benevolent retroactive legislation may be, it is inherently arbitrary for those who could not know its content when acting or making their plans. And when retroactive legislation results in a loss or disadvantage for those who relied on the previous law, it is unfair as well as arbitrary. Even for persons who are not directly affected, the stability and security of the law are diminished by the frequent or unwarranted enactment of retroactive legislation.

Ultimately, this is not an issue of whether a legally-binding contract was entered into by the Government and birth parents at the time of adoption. Rather, it is about recognizing that there was, at a minimum, an understanding or social contract that created an expectation of privacy and confidentiality that should not be retroactively revoked.

The Potential for Harm

I understand and completely accept that the current system of secrecy has had negative emotional and psychological impacts on some of those seeking information about birth relatives, which is why I support the trend toward **future** openness. However, it is imperative that the Standing Committee on Social Policy (the Committee) also be made aware of, and seriously consider, the potential emotional and psychological harm that may follow from the retroactive application of the law. Senses of being overwhelmed, horrified, shocked and betrayed are just a few of the emotions that have been expressed by individuals who will be affected by this Bill. Many have contacted us in tears at the prospect of the disclosure of identifying information. One dismayed caller expressed her fear of committing suicide:

... I was raped at the age of 17 and ... I became pregnant after that and gave up the child for adoption ... it would be a nightmare for me to have to face this whole situation ...

I've been suffering from depression my whole life, having to hide this from my family and ... I'm afraid that I would just simply go in the garage and shut the garage door and block the exhaust in my car and end my life over this.

A birth mother writes:

I too am terrified that what I thought was a promise of privacy many years ago may be broken and my world altered, possibly irreparably.

And from a birth mother, who conceived as a result of a sexual assault:

I was told that my records and file would be sealed ... I do not want to relive the horror.

It is essential that the Committee recognize the potential for harm that may result from the retroactive application of the law.

Silent Stakeholders

One of the most fundamental values in Canadian society is that all persons and minorities are “recognized at law as human beings equally deserving of concern, respect and consideration.”⁷

The Committee will no doubt hear from individuals who support unqualified, retroactive access to adoption information. However, it must also be emphasized that those who have been living in reliance on past assurances of confidentiality and who oppose this Bill are very hesitant to come forward to speak in a similar manner. They cannot speak out for fear of being identified.

One birth mother writes:

I am writing on behalf of birth mothers and adoptees who are against retroactive adoption disclosure, and mostly for myself, a birth mother of [the] 1940s.

...

Retroactive is wrong. I do hope someone will speak for we who do not want it. We cannot go public because we will expose our privacy.

And from another:

...This legislation, if passed, will have such an impact on so many families but those of us who have concealed [our] pregnancies are powerless to write letters to the editor or speak out at meetings I understand they intend to hold.

...

I do so appreciate your speaking out for those of us who can't [emphasis added].

We have also heard from adopted persons in this respect. One adopted person states:

Unlike those who lobby for complete openness, such as Parent Finders, we have no organized voice. We were living our lives, unaware that such a potential life changing debate was going on.

In my view, it is hard to escape the conclusion that the current Bill is *already* having the effect of *re-stigmatizing* a significant minority of birth mothers and adoptees as unworthy of equal concern, respect and consideration. Pressed apart and stereotyped, as many of them were, in an era where out of wedlock births were met with shame, the Bill would now pronounce that “openness” is the only “good.” The Bill accords no consideration to those birth parents who want or desperately need to assert the right to privacy

they have relied on for so long. Similarly, it accords little consideration to adult adopted persons seeking to maintain their privacy.

In this regard, the mechanisms in the current Bill that attempt to address the problems of indiscriminate disclosure and contact that would be created by the retroactive application of the legislation are inadequate. The suggested process set out in the Bill for withholding the identity of an adopted adult in order to prevent significant harm is not a satisfactory solution. Its application is limited and the need to demonstrate “significant” harm too onerous. (I will make specific comments about this provision at the conclusion of this submission).

Furthermore, I am not convinced that contact vetoes will be effective despite attempts by the Bill to build in deterrents for violation of these notices. In New South Wales, for example, there have been some complaints that contact vetoes have been breached.⁸ With over twice the number of adoption files in Ontario – approximately 250,000 – the impact in Ontario will likely be more profound.

It is also not possible to draw conclusions about the effectiveness of contact vetoes from experiences in the Canadian context. First of all, contact preferences may only be filed in Alberta for adoptions occurring after January 1, 2005 and no such preferences have yet been filed. British Columbia does not have a formal mechanism to track violations of contact vetoes and Newfoundland only has an extremely limited number of contact vetoes filed.

I have also been made aware that the sole option of a contact veto, in respect to past adoptions, could have a profound effect on individuals who live in small communities in Ontario. For example, one adopted person living in a smaller community whose birth mother had been searching for her, worries about being watched. She points out that:

... [one] can do a lot of things without having ‘contact’, such as driving past my house and watching me from a distance. I shouldn’t have to look over my shoulder for the rest of my life.

In summary, I submit that the retroactive application of the proposed law would unfairly break promises of confidentiality that were in fact given in Ontario to parties to adoption over the years. These promises were part of the social fabric of the time, and were codified in adoption legislation. This could have a devastating impact on the privacy of both birth parents and adopted persons, altering their lives in ways that were not foreseen.

It will also erode trust in government. If a government does not keep the promises made by another, what faith can there be in the promises being made by the present government?

Addressing Retroactivity Through a Disclosure Veto

It is my position that where adoptions occurred prior to the enactment of the legislation, adopted persons and birth parents should have the opportunity to prevent the disclosure of any personally identifying information about them by exercising a disclosure veto.

No other province in Canada has adoption disclosure laws that provide the kind of retroactive access that Ontario is now proposing. Quebec, Nova Scotia, Prince Edward Island and New Brunswick have laws

where disclosure of adoption information is based on consent. In Manitoba and Saskatchewan, consent is required for disclosure relating to adoptions that took place before new adoption disclosure laws were implemented, and disclosure vetoes may be filed where adoptions take place after the new law was introduced.

British Columbia, Alberta and Newfoundland are the only provinces in Canada where open adoption legislation was applied retroactively. **However**, even in these provinces, disclosure vetoes are available for parties who entered into the adoption process before the introduction of these laws.

In Alberta, approximately five per cent of those eligible to file disclosure vetoes have done so to date.⁹ In British Columbia, even fewer – only approximately three per cent of potential applicants have filed disclosure vetoes.¹⁰

Based on the experience in these provinces, the vast majority of birth parents and adopted persons in Ontario would not file such vetoes. In fact – in practical terms, the low rate of vetoes in other provinces is strong evidence that the vast majority of Ontario birth parents and adopted persons would, in actuality, be able to **fully** access their birth registrations and adoption orders if desired. But the small yet significant minority who may be at risk or may oppose such potentially life-changing disclosure of their records would be protected.

I wish to emphasize that I fully support the provision of non-identifying medical, genetic and family history information where disclosure vetoes are filed, and all individuals should be strongly encouraged to provide this information.

I have attached in [Appendix A](#) a proposed amendment to Bill 183 which addresses disclosure vetoes. The proposed amendment permits birth parents and adopted persons to register a written veto prohibiting disclosure of a birth registration or adoption order for those adoptions that came into effect prior to the coming into force of the *Adoption Information Disclosure Act, 2005*.

The proposed amendment also permits a birth parent who registers a disclosure veto to file a statement that includes: the reasons for wishing not to disclose identifying information, a summary of any available information about the medical and social history of the birth parents and their families, and any other relevant non-identifying information. Adopted persons may similarly provide reasons for wishing not to disclose identifying information as well as any other relevant non-identifying information. When a disclosure veto has been filed, the Registrar General is required to provide the non-identifying information to the applicant. The draft amendment also permits the cancellation of a disclosure veto and preserves the rights of birth parents and adopted adults to file contact notices.

In summary, the retroactive application of the disclosure provisions in this Bill is an unacceptable and unfair encroachment on the privacy rights of those parties to adoptions who were assured that identifying information would remain confidential. Consequently, I urge the Committee to introduce the option of a disclosure veto for those adoptions occurring before the introduction of the law.

It is important that the Committee clearly understand my position on retroactivity. I am not opposing the retroactive provisions of this Bill. I am opposing the blanket application of this Bill retroactively to every past adoption. If a disclosure veto is added to the Bill, the vast majority of birth parents and adopted

persons will still enjoy full access to their adoption records. Evidence from other Canadian jurisdictions shows that only a small minority of individuals will exercise their disclosure veto rights. However, the introduction of a disclosure veto will protect these individuals while ensuring that the goal of greater openness is achieved.

Non-Disclosure Orders

I also object to two aspects of the limited non-disclosure process contemplated in section 48.4 of the current Bill. Although the Bill sets out a process for withholding the identity of an adopted person in order to prevent significant harm, the provision does not provide the same protection for birth parents. This is unconscionable. It is entirely conceivable that there may be birth parents who would be subject to the risk of significant harm upon disclosure of identifying information. Is the government saying that it would be acceptable for a birth parent to experience significant harm? The provision should be amended accordingly.¹¹

In addition, we have heard from adoptive parents that this provision does not provide a viable avenue for those adopted persons who were apprehended from birth parents because their safety and well-being were at risk. We have been advised that it would be extremely traumatic for a young adult to appear before a tribunal in these circumstances, having to recount or relive painful past events. Furthermore, a contact veto would not offer protection from a birth parent who is potentially unstable or dangerous. Adoptive parents have advocated protective measures for these adopted persons, which include placing an automatic disclosure veto on their file. I encourage the Committee to consider additional protections for adopted persons in these circumstances.

Notification

Finally, there must be clear, prior notification to all parties to an adoption, particularly biological parents, that their identities will **not** remain confidential. This notice is extremely important so that there is no misunderstanding and no expectation of confidentiality, implicit or otherwise. Given the varied messages parties to past adoptions were given in this respect, a clear statutory provision mandating such notice is warranted to ensure uniform delivery of this message.

Conclusion

In sum, the introduction of an open adoption disclosure system will profoundly affect individuals in the adoption community in Ontario. For many, these changes will be welcomed. However, there are individuals who have governed their lives based on assurances of confidentiality and who will undoubtedly suffer from the retroactive nature of this Bill. The goal of greater openness of adoption records can be achieved without trampling on the rights of these individuals and potentially destroying their lives. A disclosure veto for past adoptions is imperative to protect those who were assured that their confidentiality would be protected. To do less would be tantamount to turning your collective backs on birth parents and adopted persons who were promised privacy, regardless of the consequences.

Original,

Ann Cavoukian, Ph.D.
Commissioner

Letter from David Loukadelis, Information & Privacy Commissioner for British Columbia
Letter from Jennifer Stoddart, Privacy Commissioner of Canada

Notes

- [1.](#) *Submission to the Standing Committee on General Government Regarding Bill 77: Adoption Disclosure Law Amendment Act, 2001* by the Ontario Association of Children's Aid Societies dated November 7, 2001. See page 1.
- [2.](#) Pursuant to a match or a search conducted on behalf of an adopted person.
- [3.](#) Under section 168 of the *Child and Family Services Act*, R.S.O. 1990, c.C.11 (*CFSA*) the Registrar may disclose identifying or non-identifying information to protect a person's health, safety or welfare.
- [4.](#) Section 28(2) of the *Vital Statistics Act* and section 162(2) of the *CFSA*.
- [5.](#) Sections 162(3) and 165(2)(g) of the *CFSA*.
- [6.](#) Ruth Sullivan, *Sullivan and Driedger on the Construction of Statutes*, Fourth Edition, Butterworths Canada Ltd. 2002 at page 553.
- [7.](#) Supreme Court Justice McIntyre in *Andrews* as quoted in *Law v. Canada (Minister of Employment and Immigration)* [1999] 1 S.C.R. 497 at paragraph 42.
- [8.](#) New South Wales Law Reform Commission, *Report 69 (1992) – Review of the Adoption Information Act 1990: Summary Report*, paragraph 4.14, reported one breach of a contact veto. My staff were also advised that there have been some informal complaints that contact vetoes have been violated.
- [9.](#) This estimate was arrived at by dividing the number of requests for disclosure vetoes to date, approximately 2,700, by 51,000. The latter figure was calculated by Alberta's Post Adoption Services to be the eligible pool of requesters at the time the legislation took effect. The Alberta Post Adoption Services roughly estimated this figure by multiplying 84,000 adoptions by three to account for potential requesters, factoring out older files as well as birth fathers from the equation, and by reducing that number again by one-third. It is arguable that if the potential pool of requesters were to be augmented by including birth fathers as in British Columbia's calculations, below, then the rate of filing disclosure vetoes to date would be slightly lower due to the larger potential pool of requesters.
- [10.](#) British Columbia's Vital Statistics Agency advised us that in 1996, when the legislation took effect, approximately 70,000 adoptions were on file. Those adoptions with adopted persons under the age of majority or files too old to be of major interest were eliminated from the equation. This left an active pool for potential release purposes at 30,000 adoptions with 90,000 potential applicants (both birth parents and

adoptees). As of February 2005, there have been 3,085 disclosure vetos filed to date, with 3,000 having been filed within the first six months of the legislation (September 1996-March 1997).

The proportion of disclosure vetoes filed in Alberta and British Columbia is generally consistent with the rate of filing in New Zealand, where, according to one source, 6 per cent of birth parents filed information vetoes. (This statistic is cited in an article by Sandi Jowett, Parent Finders Kawartha, Canadopt entitled “Letter to Ontario MPPs: Adoption Facts and Fiction and Canadian & International Law” at www.canadopt.ca/ONMPPsLetter.htm.)

11. New South Wales has a similar provision which accords birth parents the right to request that personally identifying information be withheld to prevent serious harm to a party. *Adoption Act 2000, No. 75*, section 141 (New South Wales, Australia).

Appendix A

ONTARIO

Proposed Amendment to Bill 183 to include a Disclosure Veto.

The proposed amendments are **highlighted**.

Bill 183:

6. The Act is amended by adding the following sections:

DISCLOSURE RE ADOPTED PERSONS

Disclosure to an adopted person

48.1 (1) An adopted person may apply to the Registrar General for an uncertified copy of the original registration, if any, of the adopted person’s birth and an uncertified copy of any registered adoption order respecting the adopted person.

Age restriction

(2) The adopted person is not entitled to apply for the uncertified copies until he or she is at least 18 years old.

Disclosure

(3) Subject to subsections **(3.1) through (4)**, the applicant may obtain the uncertified copies from the Registrar General upon application and upon payment of the required fee, but only if the applicant produces evidence satisfactory to the Registrar General of the applicant’s identity and age.

Disclosure veto

(3.1) Subsections (3.2) through (3.8) apply only to adoptions that came into effect prior to the date the *Adoption Information Disclosure Act, 2005* came into force.

(3.2) A birth parent may apply to the Registrar General to register a written veto prohibiting disclosure of a birth registration or adoption order under this section.

(3.3) When a birth parent pays the required fee and produces evidence satisfactory to the Registrar General of the birth parent's identity, the Registrar General must register the disclosure veto.

(3.4) A birth parent who registers a disclosure veto may file with it a written statement that includes any of the following:

(a) the reasons for wishing not to disclose any identifying information;

(b) a brief summary of any available information about the medical and social history of the birth parents and their families; and

(c) any other relevant non-identifying information.

(3.5) When an applicant is informed that a disclosure veto has been filed, the Registrar General must give the applicant the non-identifying information in any written statement filed with the disclosure veto.

(3.6) A birth parent who files a disclosure veto may cancel the veto at any time by notifying, in writing, the Registrar General.

(3.7) Unless cancelled under subsection (3.6), a disclosure veto continues in effect until two years after the death of the birth parent.

(3.8) If a disclosure veto registered by a birth parent under subsections (3.2) and (3.3) is in effect, the Registrar General shall not give the uncertified copies to the applicant.

Notice of wish not to be contacted

(4) If a notice registered by a birth parent under subsection 48.3(3) is in effect, the Registrar General shall not give the uncertified copies to the applicant unless the applicant agrees in writing not to contact or attempt to contact the birth parent, either directly or indirectly.

Same

(5) The Registrar General shall give the applicant a copy of the notice when the Registrar General gives the applicant the uncertified copies.

Disclosure to a birth parent

48.2 (1) A birth parent of an adopted person may apply to the Registrar General for all the information contained in the following documents, with the exception of information about persons other than the applicant and the adopted person:

1. The original registration, if any, of the adopted person's birth.
2. Any birth registration respecting the adopted person that was substituted in accordance with subsection 28 (2).
3. Any registered adoption order respecting the adopted person.

Age restriction

(2) The birth parent is not entitled to apply for the information described in subsection (1) until the adopted person is at least 19 years old.

Disclosure

(3) Subject to subsections (3.1) through (3.8), (4), (6) and (7), the applicant may obtain the information described in subsection (1) from the Registrar General upon application and upon payment of the required fee, but only if the applicant produces evidence satisfactory to the Registrar General of the applicant's identity and the adopted person's age.

Disclosure veto

(3.1) Subsections (3.2) through (3.8) apply only to adoptions that came into effect prior to the date the *Adoption Information Disclosure Act, 2005* came into force.

(3.2) An adopted person may apply to the Registrar General to register a written veto prohibiting disclosure of a birth registration or adoption order under this section.

(3.3) When an adopted person pays the required fee and produces evidence satisfactory to the Registrar General of the adopted person's identity, the Registrar General must register the disclosure veto.

(3.4) An adopted person who registers a disclosure veto may file with it a written statement that includes any of the following:

- (a) the reasons for wishing not to disclose any identifying information; and
- (b) any other relevant non-identifying information.

(3.5) When an applicant is informed that a disclosure veto has been filed, the Registrar General must give the applicant the non-identifying information in any written statement filed with the disclosure veto.

(3.6) An adopted person who files a disclosure veto may cancel the veto at any time by notifying, in writing, the Registrar General.

(3.7) Unless cancelled under subsection (3.6), a disclosure veto continues in effect until two years after the death of the adopted person.

(3.8) If a disclosure veto registered by an adopted person under subsections (3.2) and (3.3) is in effect, the Registrar General shall not give the uncertified copies to the applicant.

Notice of wish not to be contacted

(4) If a notice registered by the adopted person under subsection 48.3 (1) is in effect, the Registrar General shall not give the information described in subsection (1) to the applicant unless the applicant agrees in writing not to contact or attempt to contact the adopted person, either directly or indirectly.

Same

(5) The Registrar General shall give the applicant a copy of the notice when the Registrar General gives the applicant the information described in subsection (1).

Order prohibiting disclosure

(6) If the Registrar General receives notice of an application under section 48.4 for an order directing him or her not to give the information described in subsection (1) to the applicant, the Registrar General shall not give the information to the applicant before the application for the order is finally determined.

Same

(7) If the Child and Family Services Review Board orders the Registrar General not to give the information described in subsection (1) to the applicant, the Registrar General shall not give the information to the applicant.

Same

(8) Subsection (7) does not apply if the order has been rescinded.

7. The Act is amended by adding the following section:

Notice, wish not to be contacted

Adopted person

48.3 (1) Upon application, an adopted person who is at least 18 years old may register a notice that he or she wishes not to be contacted by a birth parent.

Same

(2) A notice described in subsection (1) shall not be registered until the applicant produces evidence satisfactory to the Registrar General of the applicant's age.

Birth parent

(3) Upon application, a birth parent may register a notice that he or she wishes not to be contacted by the adopted person.

Additional information

(4) The notice may include a brief statement concerning the person's reasons for not wishing to be contacted and a brief statement of any available information about the person's medical and family history.

When notice is in effect

(5) A notice is registered and in effect when the Registrar General has matched it with the original registration, if any, of the adopted person's birth or, if there is no original registration, when the Registrar General has matched it with the registered adoption order.

Exception

(6) Despite subsection (5), a notice registered by an adopted person with respect to a birth parent does not come into effect if, before the match is made, the Registrar General has already given that birth parent the information described in subsection 48.2 (1).

Same

(7) Despite subsection (5), a notice registered by a birth parent does not come into effect if, before the match is made, the Registrar General has already given the adopted person the uncertified copies of registered documents described in subsection 48.1 (1).

Withdrawal of notice

(8) Upon application, the adopted person or birth parent, as the case may be, may withdraw the notice.

When withdrawal takes effect

(9) If a notice is withdrawn, the notice ceases to be in effect when the Registrar General has matched the application for withdrawal with the notice itself.

Administration

(10) Subsections 2 (2) to (4) do not apply to notices registered under this section.

8. The Act is amended by adding the following section:

Order prohibiting disclosure to birth parent

*48.3.1 Section 48.4 applies only to adoptions that came into effect on or after the date the *Adoption Information Disclosure Act, 2005* came into force.*

48.4 (1) Any of the following persons may apply to the Child and Family Services Review Board, in accordance with the regulations, for an order directing the Registrar General not to give a birth parent the information described in subsection 48.2 (1) with respect to an adopted person:

1. The adopted person, if he or she is at least 18 years old.
2. An adoptive parent of the adopted person, if the adopted person has a sibling who is less than 18 years old.
3. A person acting on behalf of the adopted person, if the adopted person is incapable and is at least 18 years old.

Notice of application

(2) An applicant for an order shall give written notice of the application to the Registrar General in accordance with the regulations.

Order

(3) The Board shall make the order if the Board is satisfied that, because of exceptional circumstances, the order is appropriate in order to prevent significant harm to the adopted person or to his or her sibling, if any, who is less than 18 years old.

Decision re capacity

(4) If the application is made by a person described in paragraph 3 of subsection (1), the issue of the adopted person's capacity shall be determined in accordance with the regulations using such criteria as may be prescribed.

Reconsideration of order

(5) A person described in paragraph 1, 2 or 3 of subsection (1) may apply to the Board, in accordance with the regulations, to reconsider an order and, in the absence of the public, the Board may confirm the order or rescind it.

Same

(6) If the Board rescinds the order, the Board shall give written notice to the Registrar General in accordance with the regulations.

Finality of order, etc.

(7) An order or decision of the Board under this section, and any decision under subsection (4) respecting an adopted person's capacity, is not subject to appeal or review by any court.

Confidentiality of Board records

(8) The Board file respecting an application shall be sealed and is not open for inspection by any person.

Definition

(9) In this section,

“sibling” means, in relation to an adopted person, a sibling who is both a biological child of the adopted person's birth parent and a child of the adopted person's adoptive parent.

or comparison purposes, similar provisions in existing legislation in British Columbia, Alberta and Newfoundland are provided below:

BRITISH COLUMBIA

Adoption Act [RSBC 1996] Chapter 5

Disclosure to adopted person 19 or over

63 (1) An adopted person 19 years of age or over may apply to the chief executive officer for a copy of the following:

(a) the adopted person's original birth registration;

(b) the adoption order.

(2) When an applicant complies with section 67, the chief executive officer must give the applicant a copy of the requested records unless

(a) a disclosure veto has been filed under section 65, or

(b) a no-contact declaration has been filed under section 66 and the applicant has not signed the undertaking referred to in that section.

Disclosure to birth parent when adopted person is 19 or over

64 (1) If an adopted person is 19 years of age or over, a birth parent named on the adopted person's original birth registration may apply to the chief executive officer for a copy of one or more of the following:

- (a) the original birth registration with a notation of the adoption and any change of name consequent to the adoption;
- (b) the birth registration that under section 12 of the Vital Statistics Act was substituted for the adopted person's original birth registration;
- (c) the adoption order.

(2) When an applicant complies with section 67, the chief executive officer must give the applicant a copy of the requested records unless

- (a) a disclosure veto has been filed under section 65, or
- (b) a no-contact declaration has been filed under section 66 and the applicant has not signed the undertaking referred to in that section.

(3) Before giving the applicant a copy of the requested record, the chief executive officer must delete the adoptive parents' identifying information.

Disclosure veto and statement

65 (1) Either of the following may apply to the chief executive officer to file a written veto prohibiting the disclosure of a birth registration or other record under section 63 or 64:

- (a) an adopted person who is 18 years of age or over and was adopted under any predecessor to this Act;
- (b) a birth parent named on the original birth registration of an adopted person referred to in paragraph (a).

(2) When an applicant complies with section 67 (a), the chief executive officer must file the disclosure veto.

(3) A person who files a disclosure veto may file with it a written statement that includes any of the following:

- (a) the reasons for wishing not to disclose any identifying information;
- (b) in the case of a birth parent, a brief summary of any available information about the medical and social history of the birth parents and their families;
- (c) any other relevant non-identifying information.

(4) When a person applying for a copy of a record is informed that a disclosure veto has been filed, the chief executive officer must give the person the non-identifying information in any written statement filed with the disclosure veto.

(5) A person who files a disclosure veto may cancel the veto at any time by notifying, in writing, the chief executive officer.

(6) Unless cancelled under subsection (5), a disclosure veto continues in effect until 2 years after the death of the person who filed the veto.

(7) While a disclosure veto is in effect, the chief executive officer must not disclose any information that is in a record applied for under section 63 or 64 and that relates to the person who filed the veto.

No-contact declaration and statement

66 (1) A birth parent who is named in an original birth registration and who wishes not to be contacted by the person named as the child in the registration may apply to the chief executive officer to file a written no-contact declaration.

(2) An adopted person 18 years of age or over who wishes not to be contacted by a birth parent named on a birth registration may apply to the chief executive officer to file a written no-contact declaration.

(3) When an applicant under subsection (1) or (2) complies with section 67 (a), the chief executive officer must file the no-contact declaration.

(4) The chief executive officer must not give a person to whom a no-contact declaration relates a copy of a birth registration or other record naming the person who filed the declaration unless the person applying has signed an undertaking in the prescribed form.

(5) A person who is named in a no-contact declaration and has signed an undertaking under subsection (4) must not

(a) knowingly contact or attempt to contact the person who filed the declaration,

(b) procure another person to contact the person who filed the declaration,

(c) use information obtained under this Act to intimidate or harass the person who filed the declaration, or

(d) procure another person to intimidate or harass, by the use of information obtained under this Act, the person who filed the declaration.

(6) A person who files a no-contact declaration may file with it a written statement that includes any of the following:

(a) the reasons for wishing not to be contacted;

(b) in the case of a birth parent, a brief summary of any available information about the medical and social history of the birth parents and their families;

(c) any other relevant non-identifying information.

(7) When a person to whom a no-contact declaration relates is given a copy of a birth registration under section 63 or 64, the chief executive officer must give the person applying the information in any written statement filed with the declaration.

(8) A person who files a no-contact declaration may cancel the declaration at any time by notifying, in writing, the chief executive officer.

ALBERTA

Child, Youth and Family Enhancement Act, RSA 2000, c.C-12

Division 2

Adoption Information

Sealed information

74.1(1) The clerk of the Court must seal all documents possessed by the Court that relate to an adoption, and those documents are not available for inspection by any person except on order of the Court or with the consent in writing of the Minister.

(2) Despite the Freedom of Information and Protection of Privacy Act, the Minister must seal adoption orders, all documents required by section 63 of this Act to be filed in support of adoption petitions, adopted children's original registrations of birth and other documents required to be sealed by the regulations that are in the possession of the Minister, and they are not available for inspection by any person except on order of the Court or pursuant to this Division.

2003 c16 s80; 2004 c16 s19

Right to disclosure, pre-2005 adoptions

74.2(1) In this section,

(a) "adopted person" means a person who is adopted under an adoption order made prior to January 1, 2005;

(b) "parent" means a biological parent and an adoptive parent under a previous adoption order.

(2) Subject to subsection (3), on receiving a written request from an adopted person who is 18 years of age or older, a descendant of a deceased adopted person or a parent of an adopted person, the Minister may

release to the person making the request the information in the orders, registrations and documents sealed under section 74.1(2) other than personal information about an individual who is neither the adopted person nor a parent of the adopted person.

(3) The Minister shall not accept a request under subsection (2) from a parent of an adopted person unless the adopted person is 18 years and 6 months of age or older.

(4) Despite subsection (2), if an adopted person who is 18 years of age or older or a parent of the adopted person has, prior to the date of the request under subsection (2), registered with the Minister a veto in a form satisfactory to the Minister prohibiting the release of personal information in the orders, registrations and documents sealed under section 74.1(2), the Minister shall not release the personal information unless the veto is revoked.

(5) A person who registers a veto under subsection (4) may revoke the veto by providing written notice of the revocation to the Minister.

(6) A veto registered under subsection (4) is revoked when the person who registered the veto is deceased.

(7) Despite subsections (2) and (4), the Minister may disclose to

(a) an adopted person who is 18 years of age or older,

(b) a descendant of a deceased adopted person, and

(c) an adopted child who is 16 years of age or older who is, in the opinion of the Minister, living independently from the child's guardian, the birth surname of the adopted person if the adoption order relating to that person did not disclose it.

(8) Despite subsection (2), if the Minister receives proof, satisfactory to the Minister, that all the parents of an adopted person are deceased, the Minister may release to the adopted person or a descendant of the adopted person all the personal information in the orders, registrations and documents sealed under section 74.1(2), including personal information about individuals who are neither the adopted person nor a parent.

(9) Despite subsection (2), if the Minister is satisfied, based on information provided to the Minister by the adoptive parents, that

(a) the adopted person who is 18 years of age or older is not aware of the adoption, and

(b) the release of the personal information would be extremely detrimental to the adopted person, the Minister may deem that a veto has been registered under subsection (4) by that adopted person, in which case the Minister shall not release the personal information in the orders, registrations and documents sealed under section 74.1(2).

(10) A deemed veto under subsection (9) is revoked on the request of an adopted person who is 18 years of age or older.

2003 c16 s80;2004 c16 s19

Adoptions on or after January 1, 2005

74.3(1) In this section,

(a) "adopted person" means a person who is adopted under an adoption order made on or after January 1, 2005;

(b) "parent" means a biological parent and an adoptive parent under a previous adoption order.

(2) Subject to subsection (3), on receiving a written request from an adopted person who is 18 years of age or older, a descendant of a deceased adopted person or a parent of an adopted person, the Minister may release to the person making the request personal information in the orders, registrations and documents sealed under section 74.1(2).

(3) The Minister shall not accept a request under subsection (2) from a parent unless the adopted person is 18 years and 6 months of age or older.

(4) An adopted person, a parent or any person whose personal information may be in orders, registrations or documents sealed under section 74.1(2) may register a contact preference with the Minister that indicates the person's preferences concerning contact with a person who makes a request under subsection (2).

(5) The Minister shall advise a person making a request under subsection (2) of any contact preference registered with respect to the requested information.

2003 c16 s80;2004 c16 s19

NEWFOUNDLAND

Adoption Act, 1999 c. A-2.1

PART VII

OPENNESS AND DISCLOSURE

Disclosure to adopted person 19 or over

48. (1) An adopted person may apply to the registrar for a copy of the following:

(a) the adopted person's original birth registration; and

(b) the adoption order

(2) Where an adopted person applying under subsection (1) complies with section 52, the registrar shall give to him or her the requested copies unless a

(a) disclosure veto has been filed under section 50; or

(b) no-contact declaration has been filed under section 51 and the person applying has not signed the undertaking referred to in that section.

Disclosure to birth parent

49. (1) A birth parent named on an adopted person's original birth registration may, with respect to that adopted person, apply to the registrar for a copy of one or more of the following:

(a) the original birth registration with a notation of the adoption and changes of name consequent to the adoption; and

(b) the birth registration that was substituted for the adopted person's original birth registration; and

(c) the adoption order.

(2) Where a birth parent applying under subsection (1) complies with section 52, the registrar shall give to him or her a copy of the requested records unless a

(a) disclosure veto has been filed under section 50; or

(b) no-contact declaration has been filed under section 51 and the birth parent has not signed the undertaking referred to in that section.

Disclosure veto and statement

50. (1) The following persons may apply to the registrar to file a written veto prohibiting the disclosure of a birth registration or other information applied for under section 48 or 49:

(a) an adopted person who is more than 18 years of age; and

(b) a birth parent named on the original birth registration of an adopted person referred to in paragraph (a).

(2) Where a person applying under subsection (1) complies with paragraph 52(a), the registrar shall file the disclosure veto submitted by that person.

(3) A person who files a disclosure veto under this section may file with it a written statement that includes the following:

(a) the reasons for wishing not to disclose identifying information;

(b) in the case of a birth parent, a brief summary of information available in respect of the medical and social history of the birth parents and their families; and

(c) other relevant non-identifying information.

(4) Where a person applying for information is informed that a disclosure veto has been filed, the registrar shall give to that person the non-identifying information filed with the disclosure veto.

(5) A person who files a disclosure veto may, in writing, request that the registrar cancel that veto and the registrar shall carry out that request.

(6) Unless cancelled under subsection (5), a disclosure veto continues in effect until 2 years after the death of the person who filed the veto.

(7) While a disclosure veto is in effect, the registrar shall not disclose information that is applied for under section 48 or 49 that relates to the person who filed the veto.

(8) Notwithstanding paragraph 2(b), an application made under subsection (1) and a disclosure veto filed under this section may only be made or filed with respect to a birth registration or other information relating to an adoption ordered under a former Act.

No-contact declaration and statement

51. (1) A birth parent who is named in an original birth registration and who wishes not to be contacted by the person named as his or her child in the registration may apply, in writing, to the registrar to file a no-contact declaration.

(2) An adopted person who is 18 years of age or over who wishes not to be contacted by a birth parent named on a birth registration may apply to the registrar to file a written no-contact declaration.

(3) Where a person applying under subsection (1) or (2) complies with paragraph 52(a), the registrar shall file the no-contact declaration.

(4) The registrar shall not give a person to whom a no-contact declaration applies a copy of a birth registration or other record naming the person who filed that declaration unless the person applying for that copy or record has, in the required form, signed an undertaking respecting that registration or record.

(5) A person who is named in a no-contact declaration filed under this section and has signed an undertaking under subsection (4) shall not

(a) knowingly contact or attempt to contact the person who filed the declaration;

(b) procure another person to contact the person who filed the declaration;

(c) use information obtained under this Act to intimidate or harass the person who filed the declaration; and

(d) procure another person to intimidate or harass, by the use of information obtained under this Act, the person who filed the declaration.

(6) A person who files a no-contact declaration may file with it a written statement that includes the following:

(a) the reasons for not wishing to be contacted;

(b) in the case of a birth parent, a brief summary of non-identifying information available with respect to the medical and social history of the birth parents and their families;

(c) in the case of the adopted person, non identifying information that he or she wishes to disclose; and

(d) other relevant non-identifying information.

(7) Where a person to whom a no-contact declaration relates is given a copy of a birth registration under section 48 or 49, the registrar shall give to him or her the information in written statements filed under subsection (6).

(8) A person who files a no-contact declaration may, in writing, to the registrar, cancel the declaration.

(9) Unless cancelled under subsection (8), a no-contact declaration shall continue in effect until 2 years after the death of the person who filed the no-contact declaration.

(10) Notwithstanding paragraph 2(b), an application made under subsection (1) or (2) and a no contact declaration filed under this section may only be made or filed with respect to an adoption ordered under a former *Act*.