



BY FAX

May 17, 2005

Dr. Ann Cavoukian
Information and Privacy Commissioner
for Ontario
2 Bloor Street East
Suite 1400
Toronto, Ontario M4W 1A8

Dear Commissioner Cavoukian:

British Columbia Adoption Act—Balancing the Interests of Adoptees and Birth Parents—OIPC File Nos. 3958, 14174 & F05-25296

This letter outlines British Columbia's approach to balancing the interests of adopted persons with the privacy interests of birth parents respecting disclosure of birth registration information. It also affirms my strongly-held position that birth parents and adopted persons in British Columbia should continue to have the right to choose to preserve their privacy as now provided in British Columbia's *Adoption Act*.

1.0 SUMMARY

Our office has consistently argued since 1995 that a birth parent or adopted person who chooses to do so should be able to protect her or his privacy. An individual should have the right to decide whether to permit her or his identity to be available to an adoptee or birth parent as the case may be. This has been the law in British Columbia for almost ten years and I would vigorously oppose any attempt to change it. To open adoption records completely by removing an individual's right to choose whether to protect her or his privacy would be unacceptable. It would also be a profound breach of the government's promise of confidentiality to birth parents.

Such a profound policy change would in any case be unnecessary. Statistics show that the overwhelming majority of British Columbia's birth parents have chosen to allow their personal information to be disclosed, thus giving adopted children the openness many of them understandably seek. The fact that relatively few birth parents have chosen to preserve their privacy is not a reason to deny all birth parents that choice. By giving all birth parents the choice to preserve their privacy, the government has stood by its privacy promise to them and continues to demonstrate an appropriately balanced approach to privacy and other important interests.

2.0 DISCUSSION

Before 1996, British Columbia law protected the identity of birth parents. Part 5 (Openness and Disclosure) of the 1996 *Adoption Act* changed this. Here are the main features of the 1996 amendments:

- An adopted person over 19 years of age ("adult adopted person") now has a right to a copy of his or her original birth registration and adoption order (ss. 63 & 67). Similarly, a birth parent can obtain a copy of the original birth registration (ss. 64 & 67).
- Disclosure is not permitted where a birth parent or adopted person has registered a disclosure veto (s. 65) or a no-contact declaration (s. 66).
- If a disclosure veto has not been registered but a no-contact declaration has, the original birth registration and adoption order can be obtained if the applicant gives an undertaking to honour the no-contact declaration.
- A disclosure veto lapses two years after the registering birth parent has died (s. 65(6)).
- If both a birth parent and an adult adopted person have registered with the provincial government to exchange identifying information, the government must exchange that information between them (s. 69).
- The provincial government may disclose identifying information to a person if necessary for the safety, health or well-being of a child or to allow the child to receive a benefit (s. 61). In the case of an adult adopted person, the government may, in compelling circumstances affecting anyone's health or safety, contact a birth parent, a relative of a birth parent who is not available or an adult adopted person to share with or obtain from them any necessary information (s. 68).

This last paragraph illustrates that British Columbia law now permits our government to share information, without consent, for health, safety and other important reasons affecting adopted children, adult adopted persons and birth parents. I support this specific authority and note that, in my view, it undercuts any argument that everyone's individual choice around privacy must be overridden across the board to protect health or safety.

My predecessor, Commissioner David Flaherty, publicly commented in June of 1995 on the privacy implications of these changes (at the time found in Bill 51 (1995), which became the 1996 *Adoption Act*). He opposed the above-described disclosure provisions of Part 5 of the *Adoption Act* as being "the exact reverse of what they should be from a privacy perspective". He argued the default position should be that a birth parent's privacy is preserved unless the parent actively chooses to opt into, and thus permit, disclosure. This argument did not prevail. As discussed above, the default position under our *Adoption Act* is that information can be disclosed unless it is protected by a disclosure veto.

In making the transition to this approach, the British Columbia government publicized the changes to give individuals a chance to choose disclosure or privacy. It advertised the change in daily and weekly newspapers around the province and in specialty publications for aboriginal peoples, seniors and women. An information package was mailed to numerous organizations and agencies, including libraries, community service organizations, adoption and related family agencies, health clinics and aboriginal centres. In response to requests through toll-free telephone information lines, hundreds of information packages were sent to individuals.

Our Vital Statistics Agency advises that, in 1996, it had some 70,000 adoptions on file and concluded that some 30,000 adoptions might lead to disclosure applications. As of February 2005, only some 3,085 individuals had registered a disclosure veto and as of last week only approximately 334 no-contact declarations had been registered.

These figures demonstrate that a very small percentage of those eligible to do so have vetoed disclosure or contact. This means the British Columbia system is, as a practical matter, very open. It is nonetheless extremely important that individuals should continue to have the right to preserve the privacy that our provincial government promised them before 1996. While our law has in practice created openness for adopted persons and birth parents, it also protects privacy for those who wish to protect their fundamental, *Charter*-protected, right to privacy.

I would vigorously oppose any effort to change the existing law in British Columbia.

Please feel free, of course, to use this letter as you wish.

Yours sincerely,



David Loukidelis
Information and Privacy Commissioner
for British Columbia

cc: Hon. Stan Hagen
Minister of Children & Family Development

Alison MacPhail
Deputy Minister, Ministry of Children & Family Development