

Adult Adoption Restrictions in British Columbia

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Issue

Age and residency restrictions unfairly limit adult-adoption in British Columbia. Rather than allowing a judge to decide whether or not an adoption order should be granted in specific circumstances, British Columbians do not have the same rights as Canadians in other provinces when it comes to legally recognizing family. The core of this issue is that consenting adults have the freedom to define their personal and familial relationships without unjustified exclusion by the state and its agents. All individuals have the right to enjoy the benefits derived from their selected form of family and government must not discriminate in the allocation of legal benefits based solely on familial structure or personal beliefs and practices. It is conceded that there are some reasons why adult-adoption should be limited to judicial approval; however, there are also very good arguments for adopting adult children. Any debate is effectively silenced in B.C. by overly simplistic restrictions in the *Adoption Act*. The current legislation prevents individuals from having their adoption application heard in certain instances. Furthermore, these provisions could affect a large portion of the population in B.C. and essentially limit or prevent consenting adults from choosing who they wish to recognize as family. This infringes on the autonomy rights of individuals and in specific cases seems contrary to basic human rights.

Complaint – Re-adoption of Biological Child Prohibited

In the complaint we received, a parent wishes to reintegrate a biological child back into the family after having previously given up the child at birth for adoption. The child is presently 26 years old, and had never known his biological parent during childhood – they met one day before the child’s 20th birthday. In this case, the biological parent and child were reunited after the child searched the adoption registry and made contact. The parent invited the child back into the home and they have lived together as a family for two years. The biological parent is unable to readopt the child and the parent-child relationship that would naturally exist is no longer recognized under the law and prohibited because of restrictions in the *Adoption Act* of B.C. Furthermore, when the complainant contacted the provincial government they were told that this issue was simply ‘not a priority’ for legislative reform.

Context - B.C.’s *Adoption Act*

- 44** (1) One adult alone or 2 adults jointly may apply to the court to adopt another adult.
- (2) The court may make the adoption order without the consent of anyone, except the person to be adopted, as long as the court
- (a) is satisfied that that person, as a child, lived with the applicant as a member of the family and was maintained by the applicant until the person became self supporting or became an adult, and
 - (b) considers the reason for the adoption to be acceptable.

(3) An adoption order made with respect to an adult has the same effect as an adoption order made with respect to a child.

In B.C., section 44 of the *Adoption Act* regulates adult adoption and limits the circumstances in which adoption is possible. The relevant clause is s. 44(2)a, which limits adoption to instances where the adult-child lived together with, and was maintained by, the adopting person until they became self-supporting or reached the age of majority. Essentially, this is a residency provision that limits adoption based on the age of the adult-child. In the instance of being reunited with adult-children, this provision stops the natural parent-child relationship that would have otherwise been recognized by birth. It seems illogical and unnatural to deprive a biological parent from being recognized as the legal parent and it would appear that this could be fairly persuasive grounds for a human rights claim.

Right to Define Family

The state has control of defining who can and cannot constitute a family. Not family as used in the traditional notion of a husband, wife and children, but as the domestic relationship typically created among individuals by birth, marriage and adoption. One must note that only birth creates blood relations, whereas marriage and adoption are entirely socially and legally constructed. To preclude debate by arguing that the definition of family is rooted in the biological does not address 'traditional' legal histories. Regardless of form, all of these relationships are monitored and sanctioned by government.

Recently in Canada, same-sex marriage has been legalized, however, not without controversy. Additionally, some argue that prohibitions on family structures such as polygamy could fail a *Charter* challenge on religious grounds. It should be evident then that the legal definition of family evolves with culture and society, yet not necessarily at the same velocity or in parallel directions. At any given time, legislation and procedure directly impact who can constitute a family and what shape that family should take. In the case of adult adoption in British Columbia, legislation restricts the freedom of choice from those who wish to choose their family structure. Adult adoption is in many ways similar to the arguments supporting homosexual marriage, most notably discrimination regarding state-sanctioned legal benefits and the freedom to choose social arrangements. Additionally, formal recognition of both processes is of fundamental importance for the progressive advancement of civil liberties and human rights.

Benefits of Family

Family relationships are hybrid relationships containing a mix of social and legal benefits. Obviously, individuals seek to adopt children or to marry their spouse for personal reasons; however, they are also entering into legally recognized contracts. Parents have the duty to support children and provide the necessities of life¹, and in B.C. adult-children must reasonably support their ailing parents². The benefits that are derived from family under the law are, for the most part economic, including tax benefits, inclusion in health insurance, inheritance, and pension coverage. Nonetheless, it would

¹ *Criminal Code*, s. 215 – duty to provide the necessities of life

² *B.C. Family Relations Act*, s. 90 – obligation to support parent

be difficult not to acknowledge the personal and social benefits gained from any family unit.

Certainly in adult adoption applications, many of the personal and economic benefits could be obtained without formal recognition of parent-child relationships. The first thing that comes to mind, and probably one of the easiest is the changing of one's legal surname. Name changes would be an unsatisfactory way to recognize all types of social relationships including adoption because name changing does nothing to advance substantive equality or the equal treatment of various familial forms. The economic benefits of family can also be created through wills, and individuals can simply bequeath assets to whomever they wish regardless of any relationships; however there is still something special when it comes to a familial relationship in the law.

Restrictions Affect Many Families

Intuitively, many families may want to adopt an adult-child as a way of formalizing their family arrangements. A typical case could involve stepparents wanting to adopt an adult-child from a spouse's previous relationship. Usually the stepparent wishes to include the stepchild into the newly combined family. If the stepchild is under the age of 19, the stepparent can adopt the child. However, if the stepparent did not cohabit with the adult-child while the child was a minor, adult adoption is not possible. As with the present complaint, the applicant may not have ever met the child during the time period. Denying adoption application for those seeking formal recognition status in these circumstances seems unjustified and discriminatory.

National Context

Other provinces in Canada allow adult adoption regardless of age, but all still require judicial approval. Legislation in Alberta, Saskatchewan and Ontario does not contain a residency requirement or age limit in cases of adult adoption. Alberta has a specific *Adult Adoption Act*, and even provides specific information and forms to those who are requesting an adult adoption. Any adoptions that are obtained in these provinces are legally valid and recognized in B.C. however one must reside in these provinces to qualify for adoption. Therefore, if you reside in another Canadian province, adopt an adult and move to B.C., B.C. will recognize the adoption as legal. Some American states also allow adult adoption that is sanctioned by a judge.

Judicial Review in Adult Adoption

Judicial review in adult adoption cases is important to safeguard against possible abuses of the process. While giving a judge the power to decide if an adoption is acceptable may seem overly intrusive and onerous, it may be the best option to balance a variety of competing interests. Because of the legal implications of adoption, there are a variety of legitimate concerns.

An individual may wish to adopt an adult who does not have Canadian citizenship for immigration reasons. Note that individuals may also wish to marry for immigration reasons as well. In child adoption cases, children are declared permanent residents, and are exempt from the usual three-year wait to apply for citizenship. The current Conservative government's Bill 18 – *The Citizenship of Canada Act*, proposes to create instant citizenship for adopted children. Whether adult adoptees would gain similar

rights to citizenship has not yet been determined. However, certain wording in most adoption statutes makes adult adoption recognized as if it were a child adoption.

Unhappy with the state of their family, some individuals want to sever all ties and become adopted into a new family. Not only could adult adoption be used to add someone to a family, it can be used to remove individuals as well. Call this “adopting-out” if you will, the process of legally removing oneself from family members. Where this has been the motive for adoptions, the courts have declined to grant the request, citing the fact that allegations and spiteful removal from a family have serious implications. One of the more interesting legal issues is whether or not adopting out of a family essentially negates the duty of care between parents and child. Looking to child adoption, the adoptees of a child assume all legal obligations in respect to that child, while the biological parents transfer this responsibility. It could be assumed then, that the same transfer of duty could happen in adult adoption cases especially as the Act (s.44(3)) demands that adult adoption has the same effect as an adoption order with respect of a child.

Adopting out of one family could be used to pursue an incestuous relationship with someone related by blood. In at least one case in Ontario, the court rejected an application for adoption where this seemed to be the case. It remains to be seen how many other individuals would attempt to pursue an incestuous relationship or if this is little more than a hypothetical example.

Judicial review may also protect certain vulnerable members of the population from becoming the victims of fraud. It is easy to imagine someone wishing to be adopted by the elderly with the purpose of benefiting from their estate or conning them out of money. However, there are many other ways of conning someone out of their money such as marriage, or through wills, both of which are probably easier for a con artist to accomplish.

Consent Not Required?

Perhaps one of the most interesting sections of B.C.’s Act is s.44(2), which does not require the consent of anyone other than the adult-child who wishes to become adopted (note: the persons adopting are applicants for the adoption). This would appear to mean that the adult-child, being over the age of 19 does not need to gain the consent of any biological parents or of a spouse or even siblings who may be affected by the adoption process. However, looking at the case law surrounding adult adoption, it appears the courts have modified the effect of this section.

In *Birth Registration No. 74-09-024793 (Re)*, [1994] B.C.J. No 594, the B.C. Supreme Court held that even though consent is not required, the *Rules of Court* apply for adult adoption. The court noted that Rule 10(5) [now Rule 10(4)] of the *Rules of Court* is mandatory and requires service of the petition and copies of all affidavits on all persons whose interests may be affected by the adoption order. Natural parents have rights that would be altered with the granting of an adoption order and they must be notified. Basically, consent is not required, however stakeholders or relatives could have their arguments heard by the court if they object to the adoption. This is yet another reason why judicial discretion would be beneficial: weighing the arguments of all competing groups.

Position

Section 44(2)a, of the *Adoption Act* of B.C. should be repealed. This would bring the Act in line with other provinces in Canada and still provide for judicial review in granting adoption orders. The court would be able to grant adoptions in cases that are presently restricted because of age and residency limitations. Furthermore, any reasons to deny adoptions would be determined by a judge, limiting instances of fraud, incest, immigration and other familial disputes. There may be some arguments to deny adult-adoption, yet it seems unreasonable that age and residency would be one of them. In any case, these arguments should be put to a judge who can then decide whether an adoption should be granted.

Reference:

Adult Adoption Legislation

Alberta: *Adult Adoption Act*

<http://www.canlii.org/ab/laws/sta/a-4/20060412/whole.html>

British Columbia: *Adoption Act* (specifically section 44)

http://www.qp.gov.bc.ca/statreg/stat/A/96005_01.htm

Ontario: *Child and Family Services Act* (s.146(3))

<http://www.canlii.org/on/laws/sta/c-11/20060412/whole.html>

Saskatchewan: *Adoption Act* (s.24)

<http://www.canlii.org/sk/laws/sta/a-5.2/20060412/whole.html>

Interesting Cases:

Birth Registration No. XXX (Re) 2004 YKSC 18

- Notice to biological parent required

Re Proposed Adoption of Q.(A.L.K.), 1996 CanLII 4748 (ON C.J.)

- application to “adopt-out” of a family denied

Re Proposed Adoption of W.(S.), 2004 ONCJ 442 (CanLII)

- application to adopt for immigration purposes

H.V. v. M.S., 2004 CanLII 14891 (ON S.C.)

- adoption granted, women who viewed each other as having a “mother-daughter” relationship