

Group challenges adoption privacy laws

Disclosing identities of birth relatives violates Charter, litigants say

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Allowing birth parents and adopted children to freely access information about one another amounts to an unconstitutional invasion of privacy, according to a Charter of Rights challenge that will be argued in the Superior Court of Ontario today.

A group of four litigants contend that the last thing in the world many individuals want is to suddenly be contacted by a birth parent or the child they gave up for adoption.

"Their identifying information may now be disclosed to arguably the person they would least want to have access to it," says a legal brief prepared by Toronto lawyers Clayton Ruby and Caroline Wawzonek. The challenge maintains that Ontario's Adoption Information Disclosure Act, which allows birth parents and adoptees to access information about one another, breaches their right to life, liberty and security of the person.

The four litigants argue that the law retroactively reverses the situation for Canadians who gave up their child for adoption or who were themselves adopted in years past.

They argue that many people have valid reasons for not wanting to be confronted many years after the fact by a mother or father who gave them up for adoption or by a child who resents having been given away.

Three of the litigants are adoptees. The other is a birth parent. One of the adoptees stated in an affidavit that she has good reason to believe that her birth mother - who almost backed out of the adoption process two or three decades ago - is searching for her.

Having her identifying information disclosed to her birth-mother "would have an enormous impact on the people closest to me in my life, including my parents, my siblings and my daughter," the woman, who is a teacher, said in an affidavit.

Another of the adoptees stated that he has serious misgivings about risking the relationships he has with the family he grew up in.

"I am not currently willing to risk trauma to my life, to my family, to my loving, aging parents, to my identity," he said. "This is a weighty decision that I have carried all my adult life and will continue to ponder. But it is for me to ponder - and it is I who will suffer or benefit as a consequence of this decision."

The Ontario legislation was passed in 2005 and is expected to be fully implemented immediately before or after the Oct. 10 provincial election. It offers people an opportunity to sign a form indicating their preference to not be contacted.

It also allows for an adopted person or birth parent to apply for an order of non-disclosure if they can show that disclosure might lead to "sexual harm or significant physical or emotional harm" to either the adopted person or the birth parent.

Other provinces have enacted legislation similar to Ontario's, but they have included an actual option

for parents or adopted children to veto access to their identities if they so choose.

Those who support access to adoption records argue that the legislation is a boon to people who feel it is important for them to know whether their adopted child or birth parents are alive. They also applaud the fact that it allows for the possibility of establishing contact.