

**Brief Submission regarding the Quebec Ministry of Justice's Draft Bill
for the Act to amend the Civil Code and other legislative provisions as
regards adoption and parental authority**

Submitted by Stephanie O'Hanley to the Committee on Institutions

February 3, 2010

Dear Committee Members:

My name is Stephanie O'Hanley and I am the Quebec representative for the Canadian Council of Natural Mothers (CCNM), a Canada-wide organisation representing women who have lost children to adoption. While I will promote many positions held by the CCNM, I would like to make it clear that for the purposes of this brief I am speaking for myself and not officially representing the CCNM.

SUMMARY

- Adoption should be viewed as a last resort option and family preservation should always come first.
- Every effort should be made to encourage a young woman/girl to keep her child and/or have the child kept within its original extended family, including the natural (biological) father's family. Social workers, lawyers and counselors must be obligated to provide a pregnant girl or woman in distress with a list of resources and services available to help her raise her child. A girl or woman considering adoption during a pregnancy should be encouraged to revisit this "choice" after her baby is born and she has had at least six weeks to parent her child. Only in extreme circumstances (abuse/incest/rape/outright rejection of child by natural parents) should adoption be considered.
- An effort needs to be made to ensure that both the original mother and father sign consent to adoption papers and that extended family are informed before a child is surrendered to adoption. Natural parents must be told to seek legal representation when they sign adoption papers and they must receive a copy of any surrender papers they sign. The adoption court process should be clearly explained to the person(s) signing the adoption papers, including the court's declaration of the child as being "abandoned." The risk of developing adoption-related post-traumatic stress disorder or depression later on must be explained to the woman who signs adoption papers.

- Open adoption does not resolve the pain and psychological suffering a woman faces when she loses a child to adoption. Knowing how her child is faring over the years is better than knowing nothing but it's akin to looking through a fishbowl and watching someone else replace you as mother. Any open adoption agreement must have legal teeth so that the original parents may enforce the agreement. Adoptive parents must not be legally permitted to unilaterally close an open adoption agreement without going to court and proving just cause.
- "Adoption simple" should be the norm for all adoptions, unless extreme circumstances make this a bad idea (abuse/danger posed to child by original family etc.). An adoption should simply be listed on the birth certificate as a statement of fact.
- Disclosure vetoes should be discouraged except in extreme circumstances. The right to identity should and must supersede any "right" to privacy for natural parents and adopted people.
- Adoption records must be opened retroactively. It is wrong and unfair to close files forever after the natural mother dies. Thousands of people in Quebec are affected by adoption. It is a myth that natural mothers were ever promised confidentiality. Since privacy laws do not apply to the dead there is no reason for people affected by past adoptions in Quebec to be denied their origins and medical information.

ADOPTION MUST BE VIEWED AS A LAST RESORT

I lost my firstborn son to adoption in 1987 in Montreal. I was never declared an unfit parent. I had been raised Catholic and thought my son needed two parents. I had no idea that years later I would suffer from post-traumatic stress disorder, anxiety and depression and that I would deeply regret this supposedly "voluntary choice."

For this reason it disturbs me to see my government promoting adoption. There's a saying in the adoption community that "adoption is a permanent solution to a temporary problem." The girl/woman who loses a child to adoption is often unsupported, low income and socially isolated. Too often she is unaware of the trauma adoption will cause her in the long term. The "choice" this girl/woman makes is the sort of "choice" someone makes with a gun to their head or back against the wall.

In most instances, the pregnant girl/woman in distress is never in distress forever. With help, she most likely will be able to successfully raise her child. A child's legal filiation is a serious matter. When I lost my son to adoption 22 years ago I was not even given a copy of the papers I signed and I had no understanding that my son would be declared abandoned in court. At no time did social workers provide with a list of resources to help me raise my child, nor was I warned that I would suffer psychological distress as a result of my so-called decision. Had I known what I know today, I would never have surrendered my firstborn son to adoption.

QUEBEC MUST MAKE FAMILY PRESERVATION A PRIORITY AND ADOPTION LAWS MUST REFLECT THIS

In cases of disaster and war United Nations policy is to make every effort to ensure family preservation is paramount. The government of New South Wales, Australia revamped its laws so that adoption is viewed only as an absolute last resort after all other options have been pursued.

The Quebec government should take the same stance. Adoption should not happen to children who already have families unless the family is proven to be dangerous to the child. Being poor, young, naive and inexperienced are no reasons for a young woman to lose her child to adoption. If she lacks support or there is poor communication in her own family, social workers should offer the girl/woman help and point her to services and resources to raise her child. They should be obligated to get in touch with her immediate and extended family and investigate whether they will help her raise the child and/or raise the child if she cannot.

The approach to adoption in this province needs to be flipped around so that the attitude is to ask anyone contemplating surrendering a child to adoption why they are "choosing" adoption. If the root cause is addressed, adoption is usually unnecessary. Social workers, lawyers and counselors must be obligated to provide a pregnant girl or woman in distress with a list of resources and services available to help her raise her child. A girl or woman considering adoption during a pregnancy should be encouraged to revisit this "choice"

after her baby is born and she has had at least six weeks to parent her child. It will do a baby no harm to spend six weeks with its mother. Only in extreme circumstances (abuse/incest/rape/outright rejection of child by natural parents) should adoption be considered.

ADOPTION CONSENT MUST BE INFORMED

Every effort needs to be made to inform extended family before a child is surrendered to adoption. Both the original mother and father must consent to signing adoption papers. Natural parents must be told to seek legal representation when they sign adoption papers and they must receive a copy of any surrender papers they sign. The adoption court process and the legal rights of original parents should be clearly explained to the person(s) signing the adoption papers, including the court's declaration of the child as being "abandoned." The risk of developing adoption-related post-traumatic stress disorder later on must be explained to the woman who signs adoption papers.

OPEN ADOPTION

In our popular culture much of the information we hear about open adoption perpetuates a myth that it's always a win-win situation for the natural mother in distress and her child. The pregnant mother can choose from prospective adoptive parents, usually kind, loving infertile couples with the means to raise a child. The pregnant girl or woman can work out an agreement with the chosen adoptive parents so that she may receive photos of her child growing up and possibly even see her child on a regular basis. She may even be able to see her child more often as he or she matures. She can go with her life, pursue her studies and career and go to have other children when she is ready.

The problem with this scenario is it leaves the false impression that the pregnant mother is in a position of power and that she is making a choice. Most pregnant mothers in distress are very different from the main character in the movie *Juno*. No girl or woman with a real choice would choose adoption. If a girl or woman loves her baby she wants to raise her baby. I think even discussing adoption before a baby is born is a form of coercion. No one should be promising their unborn baby to other people until they have seen their child, had a chance to parent their child and know what they will be losing. Teenagers especially may not anticipate the depth of the loss. Open adoptions tend not to involve other parties who want an ongoing relationship with the child (relatives of the natural parents: grandparents, cousins, aunts, uncles etc.). These agreements are typically negotiated between a natural mother and prospective adoptive parents, leaving out natural fathers and the extended families of both natural parents.

It's far too easy for the child of a mother in distress to lose their original filiation forever. When a girl or woman is in a crisis pregnancy, she is hardly in a position of true power. There is a power imbalance between the pregnant mother in distress and the usually older, infertile couple with the financial means to raise a child. Open adoption does not address the power imbalance that causes adoptions to happen in the first place. It does not respect the principle of family preservation.

Some open adoption close because the natural mother can't handle the pain of having contact with her child but not being her child's mother. Even if adoptive parents respect an open adoption agreement, it takes an incredible amount of psychological health and strength to watch someone else raise the child for whom you feel love and emotional attachment. I don't know a mother anywhere who would want to see another woman raise her own flesh and blood. It's a rare mother who can agree to an open adoption and not get hurt. Only by living in denial or portraying oneself as some sort of "birthmother" saint can a woman make peace with watching the child she gave birth to be raised by other people. Open adoption is better than closed adoption in the sense that the mother knows what has happened to her child. But it does not prevent a girl or woman from suffering trauma and loss.

Anecdotal information suggests that many open adoptions close. According to adoption activists in the United States, in spite of natural mothers acting in good faith to keep agreements negotiated with adoptive parents, open adoptions can close suddenly. There are reports of natural mothers committing suicide following the sudden closure of an open adoption. I searched on the Internet and have not been able to find any government tracking the success of open adoptions, nor are there any statistics on how many open adoptions have become closed adoptions or how many natural mothers have committed suicide.

In open adoption, once surrender papers are signed, the adoptive parents become the child's only legal parents and the child's filiation is transferred to the adoptive parents. Adoptive parents may decide they find it too difficult to deal with the reality of their child having another parent or parents, grandparents, cousins, aunts and uncles. There is absolutely nothing natural parents can do if adoptive parents close an adoption by failing to send promised photos or refusing visitation, making their phone numbers unlisted, changing their legal names or moving out of province or even out of the country.

To prevent this from happening, Quebec adoption laws would need to include legal protection for natural parents and open adoption agreements must be legally binding. To make open adoptions fair, natural parents would need to have legally enshrined visitation rights with their child and penalties for adoptive parents who break agreements without just cause. This may prove difficult. Natural parents tend to have less income than adoptive parents and fewer financial means to fight for visitation in court if an open adoption closes. Still, if there are no legal remedies and no real protection for natural parents, open adoption becomes just another way to trick naïve pregnant girls and women into losing their children.

PERMANENT GUARDIANSHIP – AN ALTERNATIVE TO ADOPTION

In cases where immediate and extended family are unable to raise a child but family members want to maintain ties and pose no danger to the child, why not promote permanent guardianship as an alternative to open adoption? This way children would retain their original birth certificates and identities. Guardians would have the same rights as adoptive parents and be able to provide a permanent home for a child and the necessary stability.

ADOPTION SIMPLE SHOULD APPLY TO ALL ADOPTIONS

I think applying adoption simple only to adoptions of older children is a mistake. Quebec's current closed adoption laws hail from the 1920s, when social mores dictated that a child born out of wedlock was illegitimate, a bastard. Adoption was forced on young Catholic girls and women facing an unplanned pregnancy as a way to "save" the "sinning" mother and child from the "shame" of illegitimacy. To legitimize a child's birth, a new birth certificate was issued replacing the names of the original parents with those of the married, good Christian adoptive parents. Adoption records were sealed to ensure the child's supposed illegitimacy would remain hidden. Natural mothers were told never to speak of their children again.

It's no longer 1926. We don't need laws that perpetuate secrets and lies. Quebec will respect the United Nations Convention on the Rights of the Child if adoption simple becomes the norm for most adoptions. If we follow France's example, birth certificates for adopted people would simply reflect the reality of an adoption. The names of the child's original parents would appear on the birth certificate and the adoptive parents names added once a child is adopted. Sealing records and hiding original identities should be viewed as measures reserved only for extreme circumstances (for instance, when a child's original family poses a real danger to that child).

DISCLOSURE VETOES

It's one thing to set limits on contact between adopted people and natural parents. It's another to withhold medical information that affects not only the adopted person but any children the adopted person may have and any descendants. I am not in favour of disclosure vetoes. The only situation I could see meriting a disclosure veto would be if releasing identifying information puts an adopted person in real danger. Providing medical information needs to be mandatory, no matter the circumstances.

QUEBEC NEEDS TO OPEN ADOPTION RECORDS RETROACTIVELY

In North America adoption simple is a progressive idea. But keeping our current system of closed and sealed records for adoptions of the past is not only retrograde, it makes our province look bad. We'd be the only jurisdiction that revamped adoption laws but didn't open adoption records retroactively. Adoption affects thousands of people.

Natural mothers were never promised confidentiality. It was imposed on them when the Catholic Church forced young pregnant mothers to work in church orphanages and surrender their babies for adoption. Other mothers were shamed into "abandoning" their babies. We're running out of time to negotiate reunions with many of these mothers. Reunions need not be traumatic for older natural mothers. If you speak to authorities in other jurisdictions where adoption records have opened (in Canada this includes British Columbia and Ontario) you will discover the experience has been that between 95 and 97 per cent of adopted people and natural parents want a reunion. Older natural mothers may sometimes be more hesitant to have a reunion but with the involvement of an effective intermediary (Mouvement Retrouvailles, Parent Finders) they may find peace with their past.

Many of these women are now dead but their children are not allowed to know their origins. This is shameful. Nova Scotia is a politically conservative province. But even in Nova Scotia adopted people can learn the identity of their natural mothers upon the mother's death. It is an abuse of privacy laws to apply confidentiality rules after death, especially when no proof exists that confidentiality was ever promised to natural mothers.

Stephanie O'Hanley
February 2010