

Ontario Court Strikes Down Adoption Information Law

In a decision dated September 19, 2007, the Ontario Superior Court of Justice struck down provisions of newly enacted provincial legislation concerning the disclosure of adoption information.

Ontario enacted the Adoption Information Disclosure Act in November, 2005. The Act allowed adopted individuals over the age of 18 to obtain a copy of their adoption order or birth registration, both of which contain information that might enable the identification of birth parents. The legislation also allowed birth parents to obtain copies of adoption orders or birth registrations once an adoptee reaches 19 years of age. The information in these documents may enable birth parents to locate the adoptee.

Two exceptions were built into the legislation, which allowed birth parents and adoptees to file for “no contact” or “non-disclosure” orders. If a birth parent or adoptee files a “no contact” order, a searching adoptee or birth parent must agree in writing not to contact the person who registered the order before he/she can obtain any documents. “Non-disclosure” orders are granted at the discretion of the Child and Family Services Review Board in circumstances where “the order is appropriate to prevent sexual harm or significant physical or emotional harm to [the adopted person or birth parent].” [i] The new legislation marked a significant departure from the old law, which permitted the disclosure of adoption information only with the consent of both parties (subject to health and safety reasons).

The Superior Court declared the legislation unconstitutional on the basis that it violated [section 7](#) of the Charter and could not be saved under [section 1](#). Justice Belobaba held that the new legislation “[constituted] an invasion of the dignity and self-worth of [both birth parents and adoptees], and their right to privacy as an essential aspect of their right to liberty in a free and democratic society has been violated.” [ii] The deprivation of the liberty interest protected by section 7 of the Charter was not in accordance with the principles of fundamental justice, because the legislation failed to protect an individual’s reasonable expectations of privacy in personal and confidential information. In order to reach this conclusion, Justice Belobaba recognized the following as a principle of fundamental justice:

Where an individual has a reasonable expectation of privacy in personal and confidential information, that information may not be disclosed to third parties without his or her consent. [iii]

Reaction to the decision has been mixed. Ontario’s Information and Privacy Commissioner, Ann Cavoukian, interpreted the decision as a victory for individual privacy rights. Other groups, however, expressed concerns that the decision leaves adoptees and birth parents without a venue for seeking essential information.

Sources:

- [Cheskes v. Ontario \(Attorney General\)](#), 2007 CanLII 38387 (Ontario Superior Court of Justice).
- Daniela Simunac, [Court Quashes Law on Ontario Adoption](#) The London Free Press (19 September 2007).
- Steve Rennie, [Court Quashes Adoption Disclosure Law](#) The Toronto Star (19 September 2007).

Further Reading:

- Daina Young, [Section 7 of the Charter of Rights and Freedoms](#) Centre for Constitutional Studies.

[i] [Cheskes v. Ontario \(Attorney General\)](#), 2007 CanLII 38387 (Ontario Superior Court of Justice) at 23.

[ii] Ibid. at 83

[iii] Ibid. at 127.