



S-087469

No:
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

OLIVIA PRATTEN

PLAINTIFF

AND:

**ATTORNEY GENERAL OF BRITISH COLUMBIA
and COLLEGE OF PHYSICIANS AND
SURGEONS OF BRITISH COLUMBIA**

DEFENDANTS

Brought under the Class Proceedings Act

WRIT OF SUMMONS

PLAINTIFF: Olivia Pratten
c/o Arvay Finlay
1350 - 355 Burrard Street,
Vancouver, B.C.
V6C 2G8

DEFENDANTS: Attorney General of British Columbia
c/o Legal Services Branch
1001 Douglas Street
Victoria BC
V8W 9J7

College of Physicians and Surgeons of British Columbia
400-858 Beatty Street
Vancouver, British Columbia
V6B 1C1

ELIZABETH THE SECOND, by the Grace of God, of the United Kingdom, Canada and Her other Realms and Territories, Queen, Head of the Commonwealth, Defender of the Faith.

To the Defendants **The Attorney General of British Columbia and the College of Physicians and Surgeons of British Columbia**

TAKE NOTICE that this action has been commenced against you by the Plaintiff for the claims set out in this Writ.

IF YOU INTEND TO DEFEND this action, or if you have a set-off or counterclaim that you wish to have taken into account at the trial, YOU MUST

- (a) GIVE NOTICE of your intention by filing a form entitled "Appearance" in the above registry of this Court, at the address shown below, within the Time for Appearance provided for below and YOU MUST ALSO DELIVER a copy of the Appearance to the Plaintiff's address for delivery, which is set out in this Writ, and
- (b) if a statement of claim is provided with this Writ of Summons or is later served on or delivered to you, FILE a Statement of Defence in the above registry of this court within the Time for Defence provided for below and DELIVER a copy of the Statement of Defence to the Plaintiff's address for delivery.

YOU OR YOUR SOLICITOR may file the Appearance and the Statement of Defence. You may obtain a form of Appearance at the Registry.

JUDGMENT MAY BE TAKEN AGAINST YOU IF

- (a) YOU FAIL to file Appearance within the Time for Appearance provided for below, or
- (b) YOU FAIL to file the Statement of Defence within the Time for Defence provided for below.

TIME FOR APPEARANCE

If this Writ is served on a person in British Columbia, the time for Appearance by that person is 7 days from the service (not including the day of service).

If this Writ is served on a person outside British Columbia, the time for Appearance by that person after service, is 21 days in the case of a person residing anywhere within Canada, 28 days in the case of a person residing in the United States of America, and 42 days in the case of a person residing elsewhere.

[or, if the time for Appearance has been set by order of the court, within that time.]

TIME FOR DEFENCE

A Statement of Defence must be filed and delivered to the Plaintiff within 14 days after the later of

- (a) the time that the Statement of Claim is served on you (whether with this Writ of Summons or otherwise) or is delivered to you in accordance with the Rules of Court, and
- (b) the end of the Time for Appearance provided for above.

[or, if the time for Defence has been set by order of the court, within that time.]

<p>The address of the registry is:</p> <p>800 Smithe Street Vancouver, British Columbia V6Z 2E1</p>
<p>The Plaintiff's ADDRESS FOR DELIVERY is:</p> <p>Arvay Finlay 1350 - 355 Burrard Street, Vancouver, B.C. V6C 2G8</p> <p>Fax number for delivery (if any): (604) 687-1941</p>
<p>The name and office address of the Plaintiff's Solicitor is:</p> <p>Arvay Finlay 1350 - 355 Burrard Street, Vancouver, B.C. V6C 2G8 Attention: Joseph J. Arvay, Q.C.</p>

The Plaintiff's claim is set out in the attached Statement of Claim.

October 23, 2008
Dated

Joseph J. Arvay^a
Solicitor for the Plaintiff

No:
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

OLIVIA PRATTEN

PLAINTIFF

AND:

**ATTORNEY GENERAL OF BRITISH COLUMBIA
and COLLEGE OF PHYSICIANS AND
SURGEONS OF BRITISH COLUMBIA**

DEFENDANTS

Brought under the Class Proceedings Act

STATEMENT OF CLAIM

The Parties

1. The Plaintiff, Olivia Pratten (“Olivia”), is a journalist with an address in this litigation care of 1350 - 355 Burrard Street, Vancouver, British Columbia, V6C 2G8. Olivia brings this action on her own behalf and on behalf of a class of persons described herein as people conceived by way of gamete donation who do not know the identity of one of their biological parents (the “Class” or “Class Members”).
2. The Defendant, Attorney General of British Columbia, has an address for service at 1001 Douglas Street, Victoria, British Columbia, V8V 1X4.
3. The Defendant, College of Physicians and Surgeons of British Columbia (the “College”), is a body incorporated by statute with a records office at 400-858 Beatty Street, Vancouver, British Columbia, V6B 1C1.

Olivia’s Birth

4. Olivia’s biological mother is Shirley Pratten (“Shirley”). In 1981, because Shirley’s husband was unable to produce viable sperm for the purposes of conceiving a child,

Shirley attended on several occasions at the medical offices of Dr. Gerald Korn in Vancouver, British Columbia. Dr. Korn is now retired, but at that time, he was a well-known specialist in infertility and fertility treatments.

5. Under the direction and care of Dr. Korn, Shirley was impregnated with donor sperm that was obtained by, and was in the possession of Dr. Korn. Dr. Korn advised Shirley and her husband that the identity of the sperm donor (the "Donor") would remain anonymous.
6. As a result of the donor insemination procedure, Shirley gave birth to Olivia.
7. Shirley chose not to deceive or withhold from Olivia the truth about Olivia's biological origins and informed Olivia from an early age that she was conceived by way of donor insemination.

Donor Information Refused / Donor Records at Risk

8. Olivia does not know the identity of the Donor and knows very little about his medical or social history except what is referenced in paragraph 12 below.
9. Dr. Korn's records in relation to the Donor and in relation to Shirley and Olivia (the "Donor Records"), contain information as to the identity of the Donor, and likely contain information about the Donor's medical history and information such as his ancestry, culture, language, religion, race and ethnicity (hereinafter referred to as "social history").
10. The information in the Donor Records could one day be vital to Olivia's health. If the Donor Records are lost or destroyed, that information will be lost for all time and Olivia's health and safety could be compromised as a result.
11. The Donor Records also identify the Donor, and Olivia wishes to have the opportunity to know the identity of her biological father. That knowledge would alleviate the psychological distress that Olivia experiences in not knowing her biological origins.
12. Olivia has asked Dr. Korn on several occasions to provide her with information as to the identity of the Donor and his medical and social history. Dr. Korn informed Olivia that the Donor was a Caucasian medical student, who had a stocky build, brown hair, blue

eyes, and type 'A' blood, and was "healthy" according to a verbal medical interview. Dr. Korn has refused to provide any more information and refused to identify the Donor on the basis that the Donor had provided the sperm to Dr. Korn with the expectation that the he would remain anonymous.

13. Olivia sought Dr. Korn's assurance that the Donor Records will be preserved indefinitely. Dr. Korn refused to provide that assurance, although Olivia understands that Dr. Korn has to date maintained the Donor Records in storage somewhere. As Dr. Korn is now retired and growing older, the continued preservation of the Donor Records is uncertain and the Donor Records are therefore at risk.
14. Olivia asked the British Columbia College of Physicians and Surgeons (the "College") to take custody of the Donor Records, but the College refused to do so. The College advised Olivia that Dr. Korn is only required to preserve the Donor Records for six years, after which they may be "shredded or incinerated". This 6-year retention period is reflected in what is presently Rule 13 of the College's *Rules* made under the *Medical Practitioners Act*, R.S.B.C. 1996, c. 285.

Discrimination Suffered by Persons Conceived by Gamete Donation

15. British Columbians know the identity of their biological parents unless:
 - (a) they are deceived about their biological parentage, or that information is withheld from them;
 - (b) due to unusual and/or unpredictable circumstances, such as rape by or sex with an unknown person resulting in conception, the biological father is unknown to the biological mother;
 - (c) they were adopted; or
 - (d) they were conceived by way of gamete donation (conception resulting from the donation of either a donor father's sperm or a donor mother's egg).
16. Categories "a" and "b" are the result of private acts.

17. Categories “c” and “d” are circumstances within the regulatory control of the provincial government.
18. For people who are adopted in British Columbia, the *Adoption Act*, RSBC 1996, c. 5 and the *Adoption Regulation*, BC Reg, 291/96 (specifically, those sections set out in Schedule A hereto) provide that:
 - (a) records relating to the medical and social history of the biological parents of an adopted person are created and preserved so that the information can be made available in the event of medical necessity, and in any event to an adopted person when they turn 19;
 - (b) records relating to the identity of the biological parents of an adopted person are preserved;
 - (c) each adopted person, upon turning 19, has the opportunity to learn the identity of the biological parents, and make contact with them; and
 - (d) each adopted person has the ability to have the records relating to the identity of their biological parents considered so that they can ensure that a sexual partner or proposed sexual partner is not biologically related to the adopted person.
19. For people such as the Plaintiff and other members of the Class there is no legislation in place which provides them with equivalent benefits to those enjoyed by adopted persons, as detailed above. Specifically, for the Plaintiff and Class Members:
 - (a) records relating to the medical history or social history of the gamete donor who is their biological parent are not preserved or required to be preserved;
 - (b) no legislative regime or process exists through which the Plaintiff and Class Members can obtain information about the medical or social history of the gamete donor who is their biological parent, even in circumstances where such information is medically necessary;

- (c) records relating to the identity of the gamete donor who is their biological parent are not preserved or required to be preserved;
 - (d) no legislative regime or process exists through which the Plaintiff and Class Members can have the opportunity to learn the identity of the gamete donor who is their biological parent, or make contact with them; and
 - (e) no legislative regime or process exists through which the Plaintiff and Class Members can have the records relating to the gamete donor who is their biological parent considered so that they can ensure that a sexual partner or proposed sexual partner is not biologically related to them.
20. As a result, the Plaintiff and Class Members are treated differently than people in British Columbia who do not know the identity of a biological parent because they were adopted.
21. The differential treatment arises by virtue of a law that draws a distinction based on the manner in which the Plaintiff and Class Members were conceived.
22. The differential treatment imposes a disadvantage on the Plaintiff and Class Members in comparison with those people who were adopted. This disadvantageous treatment undermines the human dignity of the Plaintiff and Class Members.
23. Many of the members of the Class were conceived by gamete donation because of the physical disability of one of their parents which resulted in his or her infertility.
24. Many members of the Class were born into a family where the mothers were single or where their parents were lesbian, and for that reason were unable or unwilling to conceive a child by sexual intercourse.
25. Discrimination against the Plaintiff and Class Members on the basis that they were conceived by gamete donation rather than conceived by sexual intercourse and adopted is prohibited by section 15 of the *Charter of Rights and Freedoms* (the “*Charter*”) because discrimination by mode of conception is a basis for discrimination because of physical disability, sexual orientation, family status or is otherwise analogous to the grounds enumerated in that section.

26. Accordingly, the under-inclusiveness, or discrimination by omission, of the *Adoption Act* and the *Adoption Regulation*, as set out above, including the failure of the legislature to make reasonable accommodation for persons with disabilities and for lesbian persons, contravenes section 15 of the *Charter* and cannot be demonstrably justified in a free and democratic society.

Violation of Security of the Person

27. The Province of British Columbia and the College have historically permitted and continue to permit British Columbia medical practitioners who facilitate conception by way of gamete donation to destroy records (such as the Donor Records) containing:

- (a) the identity, the medical history and the social history of gamete donors;
- (b) the identity of patients who received gamete donations, the procedures administered, and the identity of the gamete donor from whom the gametes were received; and/or
- (c) the identity of each child conceived from a specified gamete donor's donated sperm or egg.

(collectively, "Gamete Donor Records")

28. According to the rules enacted by the College, Gamete Donor Records need only be preserved for 6 years, and thereafter may be destroyed.
29. Circumstances of medical necessity may arise where access to the Gamete Donor Records is required to safeguard the physical and psychological well-being of the Plaintiff and Class Members. Medical necessity includes, but is not limited to, circumstances or situations where:
- (a) diseases, disorders and conditions, genetic or otherwise, suffered by a gamete donor cannot be traced to children of the gamete donor, which thereby precludes early identification and treatment;

- (b) diseases, disorders and conditions, genetic or otherwise, suffered by the Plaintiff or Class Members cannot be traced back to the gamete donor to assist with identification and treatment, and/or to prevent further distribution and use of unhealthy gametes;
 - (c) the Plaintiff or a Class Member is concerned that they may be biologically related to a sexual partner or proposed sexual partner, such that the health and dignity of their families and children are at risk; and
 - (d) the Plaintiff or a Class Member may suffer from psychological distress and hardship from being irreparably cut off from crucial components of their identity, including the social, racial, cultural, religious, and/or linguistic history of their biological parents.
30. The decision of these defendants not to ensure that Gamete Donor Records are preserved permanently and made available in circumstances of medical necessity to the Plaintiff and Class Members deprives the Plaintiff and Class Members of their right to security of the person, contrary to section 7 of the *Charter*. No principle of fundamental justice justifies this deprivation and, further, such deprivation is arbitrary, irrational, grossly disproportionate, grossly under-inclusive and contrary to the duty of the state to reasonably accommodate persons with disabilities.

WHEREFORE the Plaintiff and, if the proceeding is certified as a class proceeding, the Class Members, seek the following relief:

- (a) an interim, interlocutory and permanent injunction prohibiting the destruction, disposal or redaction of any and all Gamete Donor Records in British Columbia;
- (b) a declaration that the provisions of the *Adoption Act* and the *Adoption Regulations*, as set out in Schedule A hereto, unjustifiably contravene section 15 of the *Charter*, and as a result, are of no force and effect (the “Declaration of Invalidity”).

- (c) the Declaration of Invalidity be suspended for an amount of time as is reasonably required for the Province of British Columbia to enact legislation that conforms to the *Constitution Act, 1982*, and in particular, provides for:
- (i) the permanent preservation of all Gamete Donor Records in British Columbia;
 - (ii) a process by which the information relating to the medical and social history of a gamete donor is made available to the Plaintiff and Class Members in the event of medical necessity, and in any event is made available to the Plaintiff and Class Members upon application when the Class member is 19 years or older;
 - (iii) a process by which the Plaintiff and Class Members who are 19 years or older, have the opportunity to learn the identity of the gamete donor who is their biological parent, and to make contact with them; and
 - (iv) a process by which the Plaintiff and Class Members have an opportunity to determine whether they are biologically related to a sexual partner or proposed sexual partner.
- (d) A declaration that the decision of the defendants not to ensure that Gamete Donor Records are preserved permanently and made available in circumstances of medical necessity to the Plaintiff and Class Members unjustifiably contravenes section 7 of the *Charter*.
- (e) An order requiring the College to amend Rule 13 of the College's Rules made under the *Medical Practitioner's Act*, R.S.B.C. 1996, c. 285 to include a requirement that physicians and retired physicians in British Columbia must preserve Gamete Donor Records permanently.

(f) Costs, including special costs.

Place of Trial: Vancouver, BC

October 23, 2008
Dated

"Joseph J. Arvay"
Solicitor for the Plaintiff

THIS STATEMENT OF CLAIM is filed and delivered by **Joseph J. Arvay, Q.C.** of the firm Arvay Finlay, whose place of business and address for service is 1350 - 355 Burrard Street, Vancouver, British Columbia, V6C 2G8. Telephone: (604) 689-4421. Facsimile: (604) 687-1941.

SCHEDULE A

1. Impugned Provisions of the *Adoption Act*

Before placement by a director or an adoption agency

6 (1) Before placing a child for adoption, a director or an adoption agency must

(a) provide information about adoption and the alternatives to adoption to the birth parent or other guardian requesting placement,

* * *

(c) obtain as much information as possible about the medical and social history of the child's biological family and preserve the information for the child,

(d) give the prospective adoptive parents information about the medical and social history of the child's biological family,

* * *

Before a direct placement

8 (1) As soon as possible before a direct placement, the prospective adoptive parents must notify a director or an adoption agency, in accordance with the regulations, of their intent to receive a child in their home for adoption.

(2) As soon as possible after being notified under subsection (1), a director or the adoption agency must

(a) provide information about adoption and the alternatives to adoption to the birth parent or other guardian proposing to place the child,

(b) obtain as much information as possible about the medical and social history of the child's biological family and preserve the information for the child,

(c) give the prospective adoptive parents information about the medical and social history of the child's biological family,

* * *

Conditions on direct placement

- 9 Prospective adoptive parents may receive a child by direct placement but only if, before the child is received in their home,

* * *

(b) the prospective adoptive parents receive a copy of child's biological family,

Required documents

- 32 Before an adoption order is made, the following documents must be filed with the court:

* * *

(b) the child's birth registration or, if it cannot be obtained, satisfactory evidence of the facts relating to the child's birth;

* * *

Before a child is brought into British Columbia for adoption

- 48 (1) Before a child who is not a resident of British Columbia is brought into the Province for adoption, the prospective adoptive parents must obtain the approval of a director or an adoption agency.

(2) The director or the adoption agency must grant approval if

(a) the birth parent or other guardian placing the child for adoption has been provided with information about adoption and the alternatives to adoption,

(b) the prospective adoptive parents have been provided with information about the medical and social history of the child's biological family,

* * *

(3) The director or the adoption agency must preserve for the child any information obtained about the medical and social history of the child's biological family.

* * *

Disclosure of information

56 Subject to the regulations, the Provincial director may disclose to an adult who, as a child, was adopted in accordance with the Convention any information in the Provincial director's records concerning the adult's origin.

* * *

Part 5 — Openness and Disclosure

Definitions

58 In this Part:

"adoptive parent" means a person who adopted a child under this Act or any predecessor to this Act;

"original birth registration" means

(a) a registration maintained under section 13 (a) of the *Vital Statistics Act*, or

(b) a registration showing the name of the birth parent and containing a notation of the adoption and any change of name consequent to the adoption;

"record" has the same meaning as in the *Freedom of Information and Protection of Privacy Act*.

Openness agreements

59 (1) For the purpose of facilitating communication or maintaining relationships, an openness agreement may be made by a prospective adoptive parent or an adoptive parent of the child and any of the following:

(a) a relative of the child;

(b) any other person who has established a relationship with the child;

(c) a prospective adoptive parent or an adoptive parent of a sibling of the child.

(2) An openness agreement

(a) may only be made after consent to the adoption is given by the birth parent or other guardian who placed or requested that the child be placed for adoption, and

(b) may include a process to resolve disputes arising under the agreement or with respect to matters associated with it.

(3) If the child is of sufficient maturity, the child's views must be considered before the agreement is made.

Post-adoption openness

60 (1) Any of the following may, in accordance with the regulations, register with the Provincial director to indicate their interest in making openness agreements:

(a) an adoptive parent of a child under 19 years of age;

(b) a relative of an adopted child under 19 years of age.

(2) If an adoptive parent of a child under 19 years of age and a relative of the child have both registered under this section, the Provincial director

(a) may assist them in reaching an openness agreement and may facilitate the exchange of non-identifying information, and

(b) must, if they wish to exchange identifying information, disclose to each the identifying information provided by the other.

(3) Subsection (2) applies also if an adoptive parent of a child under 19 years of age and an adoptive parent of a sibling of that child have registered under this section.

Disclosure in the interest of a child

61 A director may disclose identifying information to a person if the disclosure is necessary

(a) for the safety, health or well-being of a child, or

(b) for the purpose of allowing a child to receive a benefit.

Disclosure when an aboriginal child is under 19

62 (1) A director or an adoption agency may, in a child's best interests, disclose to a prospective adoptive parent or an adoptive parent of an aboriginal child any of the following:

(a) the name and location of an Indian band, if the child is registered or entitled to be registered as a member of the band;

(b) the name and location of an aboriginal community, if the child is an aboriginal child and a birth parent of the child identified that community;

(c) the location of the Nisga'a Lisims Government, if the child is a Nisga'a child.

(2) A director may, in a child's best interests and with the written consent of the child's adoptive parents, disclose identifying information so that an aboriginal child can be contacted by the following:

(a) if the child is registered or entitled to be registered as a member of an Indian band, by a designated representative of the band;

(a.1) if the child is a Nisga'a child, by a designated representative of the Nisga'a Lisims Government;

(b) if the child is an aboriginal child but is not registered or entitled to be registered as a member of an Indian band, by a designated representative of an aboriginal community that has been identified

(i) by the child, if 12 years of age or over, or

(ii) by a birth parent of the child, if the child is under 12 years of age.

(3) In exercising his or her power under subsection (2), the director may dispense with any consent required by this section if the adoption has broken down or it is not practical to obtain consent.

Disclosure to adopted person 19 or over

63 (1) An adopted person 19 years of age or over may apply to the chief executive officer for a copy of the following:

- (a) the adopted person's original birth registration;
- (b) the adoption order.

(2) When an applicant complies with section 67, the chief executive officer must give the applicant a copy of the requested records unless

- (a) a disclosure veto has been filed under section 65, or
- (b) a no-contact declaration has been filed under section 66 and the applicant has not signed the undertaking referred to in that section.

Disclosure to birth parent when adopted person is 19 or over

64 (1) If an adopted person is 19 years of age or over, a birth parent named on the adopted person's original birth registration may apply to the chief executive officer for a copy of one or more of the following:

- (a) the original birth registration with a notation of the adoption and any change of name consequent to the adoption;
- (b) the birth registration that under section 12 of the *Vital Statistics Act* was substituted for the adopted person's original birth registration;
- (c) the adoption order.

(2) When an applicant complies with section 67, the chief executive officer must give the applicant a copy of the requested records unless

- (a) a disclosure veto has been filed under section 65, or
- (b) a no-contact declaration has been filed under section 66 and the applicant has not signed the undertaking referred to in that section.

(3) Before giving the applicant a copy of the requested record, the chief executive officer must delete the adoptive parents' identifying information.

Disclosure veto and statement

65 (1) Either of the following may apply to the chief executive officer to file a written veto prohibiting the disclosure of a birth registration or other record under section 63 or 64:

- (a) an adopted person who is 18 years of age or over and was adopted under any predecessor to this Act;
 - (b) a birth parent named on the original birth registration of an adopted person referred to in paragraph (a).
- (2) When an applicant complies with section 67 (a), the chief executive officer must file the disclosure veto.
- (3) A person who files a disclosure veto may file with it a written statement that includes any of the following:
- (a) the reasons for wishing not to disclose any identifying information;
 - (b) in the case of a birth parent, a brief summary of any available information about the medical and social history of the birth parents and their families;
 - (c) any other relevant non-identifying information.
- (4) When a person applying for a copy of a record is informed that a disclosure veto has been filed, the chief executive officer must give the person the non-identifying information in any written statement filed with the disclosure veto.
- (5) A person who files a disclosure veto may cancel the veto at any time by notifying, in writing, the chief executive officer.
- (6) Unless cancelled under subsection (5), a disclosure veto continues in effect until 2 years after the death of the person who filed the veto.
- (7) While a disclosure veto is in effect, the chief executive officer must not disclose any information that is in a record applied for under section 63 or 64 and that relates to the person who filed the veto.

No-contact declaration and statement

- 66 (1) A birth parent who is named in an original birth registration and who wishes not to be contacted by the person named as the child in the registration may apply to the chief executive officer to file a written no-contact declaration.

(2) An adopted person 18 years of age or over who wishes not to be contacted by a birth parent named on a birth registration may apply to the chief executive officer to file a written no-contact declaration.

(3) When an applicant under subsection (1) or (2) complies with section 67 (a), the chief executive officer must file the no-contact declaration.

(4) The chief executive officer must not give a person to whom a no-contact declaration relates a copy of a birth registration or other record naming the person who filed the declaration unless the person applying has signed an undertaking in the prescribed form.

(5) A person who is named in a no-contact declaration and has signed an undertaking under subsection (4) must not

(a) knowingly contact or attempt to contact the person who filed the declaration,

(b) procure another person to contact the person who filed the declaration,

(c) use information obtained under this Act to intimidate or harass the person who filed the declaration, or

(d) procure another person to intimidate or harass, by the use of information obtained under this Act, the person who filed the declaration.

(6) A person who files a no-contact declaration may file with it a written statement that includes any of the following:

(a) the reasons for wishing not to be contacted;

(b) in the case of a birth parent, a brief summary of any available information about the medical and social history of the birth parents and their families;

(c) any other relevant non-identifying information.

(7) When a person to whom a no-contact declaration relates is given a copy of a birth registration under section 63 or 64, the chief executive officer must give the person applying the information in any written statement filed with the declaration.

(8) A person who files a no-contact declaration may cancel the declaration at any time by notifying, in writing, the chief executive officer.

Applicant must comply with *Vital Statistics Act*

67 A person who applies to the chief executive officer under this Part must

(a) supply any proof of identity required by the chief executive officer, and

(b) if the application is for a copy of a record, pay the fee required under the *Vital Statistics Act*.

Contact by a director

68 In compelling circumstances affecting anyone's health or safety, a director may contact any of the following to share with or obtain from them any necessary information:

(a) a birth parent;

(b) if the birth parent is not available, a relative of the birth parent;

(c) an adopted person 19 years of age or over.

Mutual exchange of identifying information

69 (1) Any of the following may, in accordance with the regulations, register with the Provincial director to exchange identifying information:

(a) an adopted person 19 years of age or over;

(b) an adult relative of an adopted person 19 years of age or over.

(2) If an adopted person 19 years of age or over and a relative of the adopted person have both registered under this section, the Provincial director must notify each of them and disclose the identifying information provided by the other.

Director's right to information

70 (1) A director has the right to any information that

(a) is in the custody or control of a public body as defined in the *Freedom of Information and Protection of Privacy Act*, and

(b) is necessary to enable a director or an adoption agency to locate a person for the purposes of this Act or is necessary for the health or safety of an adopted person.

(2) A public body that has custody or control of information to which a director is entitled under subsection (1) must disclose that information to the director on request.

(3) This section applies despite the *Freedom of Information and Protection of Privacy Act* or any other enactment.

(4) If requested by a director, a CFCSA director must disclose to the director any information that

(a) is obtained under that Act, and

(b) is necessary to enable the director or an adoption agency to exercise the powers or perform the duties or functions given to them under Parts 2, 3 and 4 and sections 61 and 62 of this Act.

(5) In subsection (4), "CFCSA director" means a director designated under section 91 of the *Child, Family and Community Service Act*.

Director's authority to collect information

70.1 A director may collect from a person any information that is necessary to enable the director to exercise his or her powers or perform his or her duties or functions under this Act.

Search and reunion services

71 (1) An adult who has obtained a record under section 63 or 64 may apply to the Provincial director for assistance in locating any of the following:

(a) if the applicant is an adopted person,

- (i) a birth parent of the applicant,
- (ii) an adult adopted sibling of the applicant, or
- (iii) if a birth parent of the applicant is dead, an adult birth sibling of the applicant;

(b) if the applicant is a birth parent, an adult adopted child of the applicant.

(2) A birth parent who signed a consent to the adoption of a child may apply to the Provincial director for assistance in locating the child, if the child is 19 years of age or over.

(3) After the death of an adult who, as a child, was adopted under this Act or any predecessor to this Act, any of the following may apply to the Provincial director:

- (a) an adult child or adult grandchild of the deceased;
- (b) if a child of the deceased is under 19 years of age, the child's surviving parent or guardian.

(4) An applicant under subsection (3) must provide a copy of the deceased's death certificate and may apply for assistance in locating

- (a) a birth parent of the deceased,
- (b) an adult adopted sibling of the deceased, or
- (c) if the deceased's birth parent is dead, an adult birth sibling of the deceased.

(5) After the death of a birth parent whose child, who is an adult, was adopted under this Act or any predecessor to this Act, another adult child of the deceased may apply to the Provincial director for assistance in locating the applicant's adopted birth sibling.

(6) An applicant under subsection (5) must provide a copy of the deceased's death certificate.

(7) No one is entitled to assistance under this section in locating a person who has filed a disclosure veto or a no-contact declaration.

(8) Subject to the regulations, the Provincial director may provide the assistance requested by an applicant under subsections (1) to (6).

(9) If a person located by the Provincial director wishes not to be contacted by an applicant, the Provincial director must not disclose any information identifying the name or location of the person.

(10) If a person located by the Provincial director wishes to be contacted by an applicant, the Provincial director may assist them to meet or to communicate.

(11) The Provincial director must inform an applicant if the person whom the applicant requested assistance in locating wishes not to be contacted, is dead or cannot be located.

* * *

2. Impugned Provisions of the *Adoption Regulation*

Birth family medical and social history report

4 (1) For the purposes of sections 6 (1) (c) and 8 (2) (b) of the Act, a director or the administrator must, with respect to a child to be placed for adoption, obtain information about the medical and social history of the child and the child's biological family that includes, as practicable, all of the following:

(a) a physical description of the birth mother and birth father, and information about

- (i) the personality and personal interests of each of them,
- (ii) their cultural, racial and linguistic heritage, and
- (iii) their religious and spiritual values and beliefs;

(b) a detailed health history of the birth mother and birth father, including

- (i) the lifestyle of the birth parents respecting usage of tobacco, alcohol and prescription and non-prescription drugs,
- (ii) prenatal information respecting the birth mother, and
- (iii) any medical condition and other health information about the biological relatives of the birth parents that may be relevant to the child;

(c) a detailed social history of the birth mother and birth father, including

- (i) the relationship between the birth parents,
- (ii) details about any other child born to either of them,
- (iii) educational background and, if applicable, future educational plans,
- (iv) particulars respecting past, present and future employment, and

- (v) family background information about the mother and father (both by birth and adoption) and the sisters and brothers (both by birth and adoption) of each birth parent;
- (d) the reason why the birth parents have decided to make an adoption plan for the child;
- (e) a physical description of the child, and information about
 - (i) the personality, behaviour and personal interests of the child, and
 - (ii) the cultural, racial, linguistic and religious heritage of the child;
- (f) a detailed health history of the child, including
 - (i) the birth medical,
 - (ii) a history of the physical growth and development of the child,
 - (iii) the results of any past medical reports from a health care provider about the child's physical and mental health, and
 - (iv) the results of a current medical report about the child's physical and mental health;
- (g) a detailed social history of the child's life experiences, including
 - (i) where the child has lived, who parented the child and the period of time the child lived with each of those persons,
 - (ii) the child's relationship with birth family, caregivers and peers, and
 - (iii) the child's educational background and current level of education;
- (h) the child's understanding and views about an adoption plan for the child.

(2) For the purpose of section 48 (2) (b) and (3) of the Act, the information about the medical and social history of the child and the child's biological family must include those matters in subsection (1) as are reasonably practicable.

(3) The information required by this section must be in the form of a written report.

* * *

Part 5 — Openness and Disclosure

Post-adoption openness registry

19 (1) A registry is established to be known as the post-adoption openness registry.

(2) A person referred to in section 60 (1) of the Act may, on application to the Provincial director in the form and manner specified by the Provincial director, register on the post-adoption openness registry an interest in making an openness agreement to facilitate communication or establish a relationship.

(3) The application for registration under subsection (2) must be accompanied by

(a) a copy of the birth certificate, or other identifying documentation acceptable to the Provincial director, of the person making the application, and

(b) any other information required by the Provincial director for the purpose of ascertaining the applicant's identity and relationship to the party with whom the applicant wishes to exchange information.

(4) The Provincial director may examine the application that is submitted

(a) to ensure that the requirements of subsection (3) are met and the information provided in the application is, in the opinion of the Provincial director, complete, and

(b) to determine whether

(i) there is a record on file relating to the adopted person,

(ii) the applicant was involved in a British Columbia adoption for which a director has a record, and

(iii) the applicant is eligible to register on the post-adoption openness registry.

(5) On acceptance of the application for registration, the Provincial director must

- (a) record the information provided on the post-adoption openness registry, and
 - (b) notify the applicant that the registration has been recorded.
- (6) The registration under subsection (5) is effective on the date of recording.
- (7) A person who is registered on the post-adoption openness registry must notify the Provincial director of any change of name or address recorded on the registry.
- (8) On being satisfied
 - (a) that a transcription error or an omission exists with respect to information submitted to the post-adoption openness registry, and
 - (b) about the true facts to be recorded,the Provincial director may correct the error or add the omitted information.
- (9) A registration under this section is valid until one of the following occurs:
 - (a) the receipt by the Provincial director of a written notice of cancellation of registration sent to the Provincial director by the applicant;
 - (b) all requested matches have been met;
 - (c) the adopted person, whose adoptive parent has registered under this section, reaches the age of 18 years and files a disclosure veto or a no-contact declaration;
 - (d) the adopted person, whose adoptive parent has registered under this section, reaches the age of 19 years.
- (10) If a registration is cancelled or is no longer valid under subsection (9), the Provincial director must promptly remove from the post-adoption openness registry all information received under this section.

[am. B.C. Reg. 350/2005, Sch. 3, ss. 1 to 3.]

Incapacity of adopted person or birth parent to file veto or no-contact declaration

- 20 If an adopted person or birth parent is incapable of filing a veto under section 65 of the Act or a no-contact declaration under section 66 of the Act, the veto or no-contact declaration may be filed by the following persons:

(a) on behalf of an adopted person who does not have a committee, by the adopted persons parent or guardian if the parent or guardian has provided the Chief Executive Officer of Vital Statistics with an affidavit of 2 medical practitioners setting forth their opinion that the adopted person is incapable of managing his or her affairs by reason of

- (i) mental infirmity arising from disease, age or otherwise,
- (ii) a genetic condition or hereditary condition, or
- (iii) disorder or disability of mind arising from the use of drugs;

(b) on behalf of an adopted person who has a committee, by the adopted person's committee;

(c) on behalf of a birth parent who has a committee, by the birth parent's committee.

[am. B.C. Reg. 362/2003, s. 3.]

Form of undertaking

21 For the purpose of section 66 (4) of the Act, a person who requests information from the Chief Executive Officer of Vital Statistics about a person to whom a no-contact declaration relates must, on a form provided by the Chief Executive Officer of Vital Statistics, undertake not to do any of the following:

- (a) knowingly contact or attempt to contact the person who filed the no-contact declaration;
- (b) procure another person to contact the person who filed the no-contact declaration;
- (c) use information obtained under the Act to intimidate or harass the person who filed the no-contact declaration;
- (d) procure another person to intimidate or harass, by the use of information obtained under the Act, the person who filed the no-contact declaration.

[am. B.C. Reg. 362/2003, s. 3.]

Passive reunion registry

- 22 (1) A registry is established to be known as the passive reunion registry.
- (2) A person referred to in section 69 of the Act may, on application to the Provincial director in the form and manner specified by the Provincial director, register on the passive reunion registry an interest in exchanging identifying information with a specified party.
- (3) The application for registration under subsection (2) must be accompanied by
- (a) a copy of the birth certificate, or other identifying information acceptable to the Provincial director, of the person making the application,
 - (b) an application fee of \$25 payable to the minister responsible for the *Financial Administration Act*, and
 - (c) any other information required by the Provincial director for the purpose of ascertaining the applicant's identity and relationship to the party with whom the applicant wishes to exchange identifying information.
- (4) The Provincial director may examine the application that is submitted
- (a) to ensure that the requirements of subsection (3) are met and the information provided in the application is, in the opinion of the Provincial director, complete, and
 - (b) to determine whether
 - (i) there is a record on file relating to the adopted person,
 - (ii) the applicant was involved in a British Columbia adoption for which a director has a record, and
 - (iii) the applicant is eligible to register on the passive reunion registry.
- (5) On acceptance of the application for registration, the Provincial director must
- (a) record the information provided on the passive reunion registry, and
 - (b) notify the applicant that the registration has been recorded.

(6) The registration under subsection (5) is effective on the date of recording.

(7) A person who is registered on the passive reunion registry must notify the Provincial director of any change of name or address recorded on the registry.

(8) On being satisfied

(a) that a transcription error or an omission exists with respect to information submitted to the passive reunion registry, and

(b) about the true facts to be recorded,

the Provincial director may correct the error or add the omitted information.

(9) A registration under this section is valid until one of the following occurs:

(a) the receipt by the Provincial director of a written notice of cancellation of registration sent to the Provincial director by the applicant;

(b) all requested matches have been met.

(10) If a registration is cancelled or is no longer valid under subsection (9), the Provincial director must promptly remove from the passive reunion registry all information received under this section.

[am. B.C. Reg. 350/2005, Sch. 3, ss. 1 to 4.]

Eligibility to register for the exchange of identifying information

23 For the purpose of section 69 (1) (b) of the Act, an adult relative of an adopted person includes the following persons:

(a) a male person who has signed an acknowledgment of paternity;

(b) a male person who has signed an unmarried parents agreement;

(c) a male person who was interviewed by a social worker and verbally acknowledged paternity;

(d) a male person who is, in the opinion of the Provincial director, clearly identified on the record as the birth father.

[am. B.C. Reg. 350/2005, Sch. 3, s. 2.]

Assistance in locating an adopted person, birth parent or sibling

- 24 (1) An adult person referred to in section 71 of the Act may, on application to the Provincial director in the form and manner specified by the Provincial director, apply for assistance in locating a birth parent, an adult adopted sibling, an adult birth sibling or an adult adopted child.
- (2) The application under subsection (1) must be accompanied by
- (a) a copy of the record obtained under section 63 or 64 of the Act or the consent referred to in section 71 (2) of the Act,
 - (b) a copy of the birth certificate, or other identifying information acceptable to the Provincial director, of the person making the application,
 - (c) an application fee of \$25 payable to the minister responsible for the *Financial Administration Act* and
 - (d) any other information required by the Provincial director for the purpose of ascertaining the applicant's identity and relationship to the party whom the applicant wishes to locate.
- (3) The Provincial director may examine the application that is submitted to ensure that the requirements of subsection (2) are met and that the information provided in the application is, in the opinion of the Provincial director, complete.
- (4) A person who has applied for a search under this section must notify the Provincial director of any change of name or address on record.
- (5) Before the Provincial director begins action to locate a person, a person who has applied for a search under this section must pay a fee of
- (a) \$250 for assistance in locating the first person, and
 - (b) \$180 for assistance in locating a second or subsequent person.
- (6) An application for a search under this section remains in effect until one of the following occurs:
- (a) the receipt by the Provincial director of a written notice of cancellation of the application sent to the Provincial director by the applicant;

(b) all requested searches have been undertaken.

(7) An applicant need not provide the fee referred to in subsection (2) (c) if the applicant has applied for registration on the passive reunion registry under section 22 and has paid the fee referred to in subsection (3) (b) of that section.

No.
Vancouver Registry

**IN THE SUPREME
COURT OF BRITISH COLUMBIA**

BETWEEN:

OLIVIA PRATTEN

PLAINTIFF

AND:

**ATTORNEY GENERAL OF BRITISH COLUMBIA
and COLLEGE OF PHYSICIANS AND
SURGEONS OF BRITISH COLUMBIA**

DEFENDANTS

WRIT OF SUMMONS AND STATEMENT OF CLAIM

SH/ch

File no.: 27995-0001

Arvay Finlay
1350 - 355 Burrard Street,
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