

Submission to the Joint Oireachtas Committee on Health and Children on the pre-legislative scrutiny on the Heads of the General Scheme of the Adoption (Information and Tracing) Bill 2015

By Kathy McMahon, Founder
for Irish First Mothers Group

<http://IrishFirstMothers.com>
firstmotherstogether@gmail.com

Executive Summary

Who: A peer support group of over 50 Irish mothers whose infants were coercively placed for adoption. Many of whom were incarcerated in so-called 'Mother and Baby Homes'.

In brief:

- We argue that recent **international law** experience shows it is best legislative practice to avoid including discriminatory contact vetos in laws affecting parties to adoption.
- We maintain that achieving a good **public health** outcome from the passage of the Bill should be the primary goal of this legislative review.
- We favor light-touch regulation incorporating online technology; addressing constitutional privacy concerns and fostering '**Reconnection and Reconciliation**'.

1.0 About Irish First Mothers

Our group was established in February 2014. We have at present 54 verified members - ranging in age from early 40's through to mid 70's. We hold group meetings and provide mutual peer support via telephone and social media interaction.

The great majority of members were incarcerated in mother and baby homes and other institutions. Our mothers are at different stages in relation to reconnecting with their now adult children. Some have been reconnected for years; others more recently reconnected; and yet more still in the process of tracing.

Sadly some members have uncovered after tracing, records indicating that their child died either shortly after birth or post adoption. But some question the validity of the death certificates they have obtained for their infants and are in the process of attempting to establish the facts.

Our group provides peer support - which refers to support from a person who has knowledge from their own experiences. Because of our varying ages and experiences, stages of reconnection, with our now adult children, we provide each other invaluable support, in many cases support for the first time since losing our children to adoption.

We help each other with recovery from the psychological and physical effects of in many cases decades of trauma, disenfranchisement, suppressed grief, isolation, familial ostracization, internalized shame and guilt. We encourage each other to seek assistance from professional therapists as need arises and where available.

The title of the group is acknowledgement that our children have been raised by other mothers. We recognize the bond between our children and their adoptive parents and we pose no threat to that bond.

2.0 About Kathy McMahon

My name is Catherine (Kathy) McMahon. I am an Irish 'First Mother'.

In early 2014 I felt there was a need for a secure place for mothers to share experiences, encouragement and support. I founded a private group solely for Irish mothers affected by coercion or incarceration during pregnancy and/or forced adoption of their infant(s). We now number in excess of 50 verified first mothers as members.

In June 2014 I set up a public face for our private group, "A Voice for First Mothers" which has 200 Facebook members comprising more broadly of supporters, natural parents and adopted people.

My own eldest and first child was born in April 1974 in the National Maternity Hospital, Holles St., Dublin. I spent 4 months in Ard Mhuire, Good Shepard Convent Dunboyne Co Meath prior to her birth.

I was aged 18 when I gave birth. I nursed my child for 7 days after she was born. On the day I was discharged from Hollis Street hospital a nurse took my child without warning. I was later forced to sanction her adoption. I did not see my daughter for another 28 years.

In 1976 I kept my second child despite spending time in another religious-run institution, St. Patick's Mother and Child home at Navan Road, Dublin.

I reconnected with my eldest adopted daughter in 2001 after we both registered on the 'Adoption Ireland' online contact register. Both my child and I have known each others' home addresses, phone numbers and family details since we reconnected. Neither of us have intruded or otherwise invaded each others' lives.

I have been tasked to deliver Irish First Mothers' opinions, experiences and our stance in relation to the heads of this proposed bill.

3.0 General Comments re ‘Contact Veto’

3.1 We estimate from our collective members’ experience that around 98% of mothers are open to reconnecting with their adopted children at some level. Thus the proposed "contact veto" system is a simplistic and outdated adoption reconnection model.

The vast majority of mothers are very open to contact from the outset. Some who may be initially hesitant will in the main shift their view over time when approached sensitively. They may be open to written contact initially; then phone contact; and the overwhelming majority of mothers will eventually embrace the opportunity for personal contact. That’s our experience of existing and ongoing *ad hoc* adoption reconnections taking place today.

3.2 By framing the evolution of a person’s attitude as a formal bureaucratic decision, in the unsympathetic format of an "official" document, we may set back the very reconciliations which should be our primary public health goal.

3.3 Administration of a veto will further delay the process of reunification with natural mothers of whom many are elderly. Bureaucratic delays have resulted in some cases in adult adopted people discovering their natural mother has died before they had an opportunity to meet. According to the annual report of Tusla, there are currently 1,042 people waiting for information and tracing service for “historical adoptions”. (<http://bit.ly/1Om2LXw>) In light of this, even before a planned mass public awareness campaign, why place even more strain on the system by involving the state in the relationships between mature adults who can readily decide what form their contact will take?

3.4 In a great many cases, adopted persons and their natural mothers have been sundered from each other by procedures which were arguably illegal and a violation of both their constitutional rights. Thus the state has little foundation for denying the human right to knowledge of family by imposing restrictions which could cause untimely delay in accessing information. In this respect, note there are already multi-year delays for adopted persons under existing procedures. All persons subjected to illegal adoption procedures have the same rights as every other citizen to their full birth information -including adoption information and medical history.

4.0 Adoption Law Reform in Victoria, Australia

4.1 For many decades, the adoption laws of the so-called United Kingdom commonwealth countries and Ireland have evolved in synchrony - often informed by developments in each country's reform of law in this area.

4.2 The state of Victoria in Australia has just earlier this year passed the 'Adoption Amendment Bill 2015' under which reference to 'contact preferences' were removed from Adoption Act amendments which had come into force only in 2013.

The new legislation did not affect a person's right to register their wishes in relation to contact on Victoria's Adoption Information Register, but penalties that make it an offence for parents to contact their adult adopted children if the adoptee has lodged a statement specifying 'no contact' were also removed from Victorian law.

Prompting the reform was an awareness that parents, particularly mothers, who had their children forcibly removed had regarded the contact statements as hurtful and discriminatory as they only targeted parents.

Moving the Bill on 10 June 2015, Victoria's Attorney-General, Mr. Martin Pakula said:

"the 2013 amendments were unnecessary: Victoria already had a scheme for recording contact wishes between all parties to an adoption – the adoption information register, a longstanding, non-punitive, non-discriminatory and effective mechanism. Under this bill, all adopted people will retain the right to lodge a statement of wishes on the adoption information register."

"By singling out natural parents for unequal treatment before the law, the 2013 amendments lost an opportunity to end the paternalistic and discriminatory approach to natural parents. [...] This bill will ensure adult natural parents and adult adopted children are treated equally at law, thereby – finally – renewing and fulfilling 2013's lost opportunity."

(See: Victoria's Hansard Parliamentary record at: <http://bit.ly/1ZirVcY>)

4.0 Continued - Adoption Law Reform in Victoria, Australia

4.2 ...Continued.

Supporting the Bill, Victoria MP, Sam Hibbins wrote:

“[contact statements] set up yet another barrier to contact between natural parents and adopted children being re-established. It is not appropriate when we are dealing with two adults who want to regulate contact with each other. [...] We should revert to the framework we had in place for 29 years after the passing of the Adoption Act 1984 where Victorian adults regulated contact between each other.”

(See: <http://bit.ly/1G0K6xw>)

4.3 Curiously, that just-removed discrimination in Victorian adoption law was against natural mothers seeking contact - whereas the discrimination often referenced in regard Irish adoptions is against adopted persons seeking contact.

These regressive legalistic approaches in either jurisdiction were and are driven by mere cultural and social preoccupations - not best objective legislative practice.

4.4 Rather than discriminate against any person seeking information or contact, we advocate educating and informing all parties and applicants about their responsibilities in mutual respect - as a core part of their engagement with an adoption reconnection service.

5.0 First Mothers Experience in Reconnection

There is a misinformed general perception that natural mothers are/were uneducated. Nothing could be further from the truth. Quite a number of natural mothers became social workers, nurses, medical professionals and even counselors - working in their communities to assist families and individuals with life crises.

So, to further inform the committee we offer a sample of personal comments and experiences of issues in the proposed Bill - as described by members of First Mothers group in a recent private poll. Names have been redacted to preserve their anonymity.

Mother 1 - Opposed to Veto.

There was an 8 year delay in the exchange of information despite the fact that both natural mother and adopted person were searching and requesting information about each other simultaneously. Feels it is an outrage and an insult to both parties to impose a Veto. Mother was offered counseling.

Mother 2 - Opposed to Veto.

Information was sparse and incomplete. Both mother and adopted adult child are aware of each others whereabouts and neither have engaged in inappropriate contact. No counseling was offered.

Mother 3 - Opposed to Veto.

Contact made with child via a nun involved in the mother and baby home where mother stayed during pregnancy. Child was given information on mother but it took further 2 years before mother was given any info on adult child. No counseling offered.

5.0 Continued - First Mothers Experience in Reconnection

Mother 4 - Opposed to Veto.

Adult child traced mother, both met with social worker from adoption agency separately. They were to meet but adult child changed mind after meeting with social worker. Mother feels social worker biased adult child against her. Adult child given mothers contact details. There has been no contact since.

Mother 5 - Opposed to Veto.

Traced adult child via online register in 2001. Had email contact only for 2 years prior to meeting in person. Both natural mother and adult child have phone numbers, address, family details of each other. Neither turned up on each others doorsteps or made unwelcome contact. Opposed to Veto

Mother 6 - Opposed to Veto.

Is in the process of tracing via Child and Family Agency Services. Attending meetings with social worker.

5.0 Continued - First Mothers Experience in Reconnection

Mother 7 - Opposed to Veto.

Direct quotes:

“There was no delay when my child came to look for me in 2011 but turns out he had looked for me in 2008 but adoption agency turned him away as things were not good for his adoptive parents! They also never gave him letters I wrote to him telling him I would be willing to meet if and ever he came looking for me.”

“We both wrote to each other within 2 weeks of getting the information. I am upset and annoyed that people who know nothing about intricacies of the lifelong effects of cruel practice are framing the proposed bill in such a way that it could appear that natural mothers do not want to know anything about their lost children - when in experience all mothers are desperate for info about their children.”

“I’m also very angry that adoptees may have to sign legal document agreeing not to contact. Also very angry at creation of unnecessary bureaucracy creating work for those social workers who helped separate families in first place! No other estranged families are subjected to this level of interference.”

“I work with people who have committed crimes including murder of family members none of them are subject to this sort of intrusion.”

“Considering this year Tulsa didn’t know what counseling was available when they contacted me it indicates it is not readily available therefore the approach proposed in this bill will create longer waiting times.”

“Sadly my son was totally unprepared for our meeting and sadly he got different versions of events from me than he was given by adoption agency and adoptive parents. I think therapy should be made available to adoptees and natural mothers but not through agencies who were involved in the separation of mother and child.”

6.0 Legal Considerations re ‘Contact Veto’

6.1 Public and political discussion of this proposed legislation has often been informed by a 1998 Supreme Court judgment which sought in part to defend a guarantee of confidentiality extended in practice to mothers who gave birth in state-sanctioned, so-called Mother and Baby Homes’ at the time of the adoption of their infants.

See:

Supreme Court *IOT v B* [1998] 2 IR 321

<http://adoptionrightsalliance.com/IOTvB1998.pdf>

Dr. Conor O’Mahony: <http://constitutionproject.ie/?p=331>

6.2 My own abiding memory of my incarceration in such a home was of my fellow mothers screaming in anguish following the often forced removal of their babies. That’s the kind of personal experience which allows us mothers to confidently assure the committee that our rights and welfare were not the paramount concern of those around us. So be assured that we were never offered ‘confidentiality’ in the form of guarantees that our children would be prevented from contacting us post-adoption.

6.3 Rather than being offered confidentiality, mothers were threatened to never attempt contact ourselves. When we signed, if we signed, any documents we were warned never to try to find our children. We were warned that our infant child was no longer ours and that there would be consequences for us if we attempted to search for them or made contact with either our children or their adopting parents. Mothers were isolated and forced to keep our experiences and our child secret; to never speak of them again. It wasn’t the children who were not wanted. Mothers weren’t wanted because we were unmarried. It wasn’t the children of whom us mothers were ashamed; it was the mothers of whom society was ashamed.

6.4 We are unable to locate even one natural mother of an adopted person who was given confidentiality assurances.

6.0 Continued - Legal Considerations re 'Contact Veto'

6.6 Neither is the general constitutional right to privacy applicable, because the Irish State unconstitutionally sundered natural familial bonds when it allowed forced adoptions based on coerced consent. The State in aiming for restorative justice must “restore” access and grant rights to all damaged parties in respect of relevant State certificates and records held by all agents of the State - without restriction or delay.

6.7 The Supreme Court judges in *IO'T v B* determined that maternal privacy rights must be balanced with the right to birth information. But it is the role of the Oireachtas to set that balance. The court judgment cites the following passage with approval:

“None of the personal rights of the citizen are unlimited: their exercise may be regulated by the Oireachtas when the common good requires this.”

(*Ryan v A.G.* [1965] IR 294 at 312)

We argue that the vast majority of mothers neither claim a guarantee of confidentiality, nor wish to exercise privacy rights against their own offspring. Accordingly, the common good would be served by legislating for the great bulk of affected citizens - not a minority.

6.8 In any event, while the relevant Supreme Court determination is surely well-considered, it arguably has only academic relevance - because the applicability of the judgment is in doubt as there exists no substantive cohort of women who were given exceptional confidentiality guarantees.

6.9 In this matter of adoption reconnection which affects mental health if left unresolved*, the common good is served by law which supports and encourages the process of adoption reconnection and reconciliation. A good law would be one which produces the favorable public health outcome of many fruitful reconnections arising from the legislation.

(* For overview of unresolved adoption psychological trauma See Attachments)

7.0 Health-focused Adoption Reconnection

7.1 A speedy resolution of traumatic adoption issues is in the public interest. Specifically we should have a bias to speedily facilitate the greatest number of fruitful reconnections for the greatest number of persons.

7.2 Where possible we should devise streamlined administrative systems which allow applicants to automatically progress their own reconnections once their identity and qualification to seek information has been established.

7.3 Under such a streamlined process, public education is in-built in the procedure and Tusla preferably only involved where an applicant is requesting their assistance.

7.4 Our experience with these issues shows that a publicly accessible online system could process the bulk of interested parties with speed, convenience and at low cost.

An online service, could be complimented by an in-person telephone-based intermediation service.

Where older persons lack the ability to participate in online interaction, they could nominate reconnection assistants to intermedate and aid them. These might be other mothers, siblings, other relatives, persons experienced in reconnection, counselors or social workers acting for Tusla.

In Conclusion

Let us in conclusion quote the views on adoption information issues of the current Irish President:

“The one thing that I think is horrific, where information has been denied, where there has been no attempt to meet the reasonable request of people for basic information where the State has been responsible, the State has to take responsibility...”

President Michael D Higgins.
17th February, 2014

(See: <http://www.bbc.com/news/world-europe-26227236>)

Considering president Higgins' comments, let us discharge our responsibilities in ways which serve the interests of those unjustly denied due process and still refused the basic remedy of access to their own rightful heritage of personal information.

Thank You.

ENDS

(See Also: attachments to this emailed submission)

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