

Challenging new adoption information disclosure law

BY CHRISTOPHER GULY
For Law Times

When she was 14 years old, Toronto lawyer Stacey L. Stevens was told her stepfather had legally adopted her after her biological parents divorced and her mother remarried. More than two decades later, in 2002, Stevens went in search of her birth dad, a Toronto firefighter.

Through information obtained from a colleague of his, she tracked him down and called his home. A woman, his wife, answered the phone.

"She had no idea I existed — nor did my two stepsisters," recalls Stevens, who was told her father had died six months before.

Now, Stevens, who practises at Thomson Rogers, has teamed up with Clayton Ruby to challenge the constitutionality of Ontario's new Adoption Information Disclosure Act, which comes into effect Sept. 1 and would allow birth parents and adult adoptees to find out the identity of the other.

Stevens and Ruby argue the law violates the privacy rights of those who opted to remain anonymous.

"I can really relate to this situation," says Stevens.

"What if I had shown up at my biological father's home 10 years ago? What might that have done to his family?" she says, add-

ing that Ruby didn't know she had been adopted when he recruited her to work on the challenge on behalf of four Ontarians — Joy Cheskes, Denbigh Patton, and two known only as CM and DS — who had either been adopted or put a child up for adoption.

"To date, there has been an understanding that the information concerning adoptions would be forever sealed," says Stevens. "The new legislation takes the decision to be found out of the hands of each of the parties, and fails to recognize the possibility that there are parties to an adoption who have kept their past a secret.

"As a result, there will be birth parents who have no choice but to live their lives in fear of being 'outed' to other members of their family or friends.

"And there will be adopted children who, as adults, may be unaware that they had been adopted, and are happy with their lives the way they have chosen to live them without knowing their birth parents."

She says unwanted reunions carry the risk of psychological harm, embarrassment, shame, and disruption of family life.

In the application filed in the Ontario Superior Court last October, they argue by amending the province's Vital Statistics Act to disclose adoption-related records without the other person's consent, the Adoption



Stacey Stevens never knew her real father but is still fighting the constitutionality of Ontario's new adoption information disclosure law.

Information Disclosure Act provides "a unilateral and presumptive right of access."

States the application: "By impinging on the applicants' right to have their personal information remain private . . . by removing [their] right to control the dissemination of personal information . . . and through an "adoption disclosure regime [that] results in state-imposed psychological harm," the law violates the rights to "security of the person" and "liberty" found under s. 7 of the Charter of Rights and Freedoms.

"The government's position is that adoption can be stig-

matizing and part of the stigmatization is when you keep it all secret — so from now on they are going to let birth parents and adoptees have access to each other's records," says Ruby, who with Stevens and Caroline Wawzonek, also of his firm Ruby & Edwardh, are working on the case *pro bono*.

"We say fine, but what about people who, 20 years ago, were promised confidentiality? Why are you undoing that promise? They have a reasonable expectation of privacy under the Charter."

He says every other province that has enacted similar legislation to Ontario's has included a veto mechanism by which one of the parties involved in an adoption can decline to have their personal information shared with either their birth parent or the child put up for adoption.

"Without that, it's unconstitutional — and the reasonable expectation of privacy is breached," says Ruby.

Under ss. 48.1 and 48.2 of the Adoption Information Disclosure Act, which received royal assent on Nov. 3, 2005, an adopted person 18 years of age or older can apply to Ontario's registrar general for uncertified copies of that person's original birth certificate and any registered order concerning their adoption. Meanwhile, the birth parent of an adopted person can access the same information, along with a substituted birth

registration disclosing the new name of the adopted person, as long as he or she is at least 19 years old.

Any information about the adoptive parents would be removed.

Each is entitled to copies of the notice when the registrar sends the applicant the uncertified copies.

However, Stevens points out that since the legislation is retroactive and the registrar has the power to make available any file that has previously been sealed, adoptees or their birth parents — who previously had the option of anonymity — will have their personal information disclosed without their consent.

She says that while the act states that the applicant must produce "evidence satisfactory to the registrar general of the applicant's identity and age," there is no indication as to what constitutes "satisfactory evidence" and, thus, opens the process up to potential identity fraud.

The legislation does allow people who have undergone an adoption process in Ontario to have a no-contact notice placed in their file.

An adopted person or birth parent can also apply to the Child and Family Services Review Board for an order preventing the disclosure of their personal information. The board will make the order if it deems it "appropriate." **LT**