Frequently Asked Questions About Openness in Adoption

Education Services
Transforming Knowledge into Skills

Preamble

All children and youth who are involved in the child welfare system need permanency and life-long connections. Adoption is one path to permanency which requires good solid planning with all parties including the child and youth. Openness within adoption is a way to preserve and nurture meaningful relationships with family, friends and individuals who are significant and prominent figures in the child or youth's life.

The purpose of the following frequently asked questions (FAQs) is to assist child welfare and legal professionals, as well as private adoption practitioners in achieving a greater understanding and appreciation when it comes to openness in adoption planning.

1. What is "openness" in adoption?

Openness in adoption denotes maintaining some degree of contact between adopted children and youth, their birth families, and other individuals with whom the children or youth have had significant relationships prior to the adoption (for example, a foster family). There are many forms that openness in adoption can take; these forms of contact can vary in terms of the nature, frequency, intensity/emotional impact, duration and location. The openness continuum can range between the exchanging of non-identifying information through a third party, to arrangements for face-to-face contact and many implementations of openness in between.
Openness should always be considered when permanency plans are being discussed for a child or youth.

Openness does not mean shared parenting; more specifcally, adoptive parents make all decisions about the child or youth, regardless of any openness arrangement. The importance of and need for openness can evolve over the course of a child or youth's life and as per the child or youth's best interests.

When a child or youth is placed for adoption, any previous access arrangements cease. Therefore, openness in adoption is not simply a continuation of an access order with a former Crown Ward but rather represents a new arrangement for contact between the child or youth and people who were significant to the child or youth in his/her life prior to adoption, so long as the goals of permanency are met.

2. What has led to the changes related to the provisions of adoption openness within the *Child and Family Services Act* ?

Openness is entrenched within the *Child and Family Services Act* (CFSA) because of a number of milestone events and reports in child welfare.

- In 2006, the government of Ontario introduced the Transformation Agenda which allowed for the inclusion of openness orders and agreements, where clinically appropriate (i.e., in the best interests of the child).
- The 2006 OACAS *Youth Leaving Care Report* and the 2009 OACAS guide *Building Bridges to Belonging: Promising Practices for Youth*, also highlighted young people's desire for permanency and the need to increase the number of adoptions.

- Then, in 2009, an expert panel established by the government of Ontario developed a report called *Raising Expectations*. This report highlighted the need to create more opportunities for adoption and called for contact or communication with birth families, when safe and appropriate, to not be a barrier to the adoption of children and youth who are Crown wards. It also called for openness in adoption plans.

With proclamation of *Bill 179* (Building Families and Supporting Youth to be Successful Act, 2011), the amended *Child and Family Services Act* removed access orders as a legal impediment to adoption. The Youth Leaving Care hearings and the report *My Real Life Story* further confirm the need to remove barriers to adoption for children in care and to facilitate permanency.

3. What are the benefits of openness?

The primary benefits of openness are that adoptive children and youth have the opportunity to maintain meaningful and beneficial relationships as well as be linked to their history. Contact with birth family member(s) and past caregiver(s) can ease the transition to adoption for the youth, thus allowing them the chance and time to settle into and form meaningful attachments to the adoptive family.

The following benefits of open adoptions impact the parties involved in different ways.

Openness in adoption:

- Provides an opportunity to the child/youth to identify with or relate to the person(s) with whom s/he has had meaningful and beneficial relationships, and in doing so facilitates the development of an accurate and positive sense of identity and self-worth;
- Offers a means to retrieve medical and genealogical information and the possibility of obtaining first-hand information and understanding of the reasons leading to adoption, who the child/youth looks like, where his/her interests came from;
- Helps fill gaps in the child/youth's history, and offers insight about past experiences, and helps children/youth embrace their history such that the birth family is not a mystery;
- Minimizes the impact of loss and facilitates grieving;
- Helps birth family members to more readily accept and support the adoption and confirm that the adoptive parents will be the psychological parents;
- Provides for an opportunity for a possible role of the birth family members in the child/youth's future;
- Affords dignity and respect to the child/youth and their birth family members by being open about what has happened;
- Can address the child/youth's anxieties;
- Helps adoptive families to be more empathetic, accepting of their child's curiosity, and worry less about attachment;
- Helps families to be better equipped to answer their child's questions and encourages greater communication about adoption.

(Adapted from Riggs, 2007)

4. Should some level of openness (along a continuum) be considered in every adoption?

Openness should be considered in every adoption situation, but since each adoption is unique, the decision to incorporate openness and how to arrange this should be made on a case-by-case basis. The continuum of contact that is possible through an adoption openness arrangement can be defined in different ways: frequency, intensity/emotional impact, duration and location of visit, to name a few. Forms of contact can range from an exchange of cards, letters and photographs to visits with birth family members or other significant people to the child such as foster parents. There is no one-size-fits-all approach.

Moreover, as the child or youth grows and matures and circumstances change in their lives and the lives of the people significant to the child or youth, the level of openness may need to change in order to continue to be of benefit.

5. What are the definitions of "meaningful" and "beneficial" in adoption openness?

When thinking about adoption openness in the legal context of an openness order, the court defines "meaningful" as a relationship that is significant to the child or youth, while beneficial is defined as a relationship that is advantageous to the child or youth. While there is significant case law defining beneficial and meaningful in the context of determining whether there should be access to a Crown ward, there has been limited interpretation of the terms in the context of openness in adoption. However, the openness should confer a current benefit to the child or youth and the relationship should be meaningful to the child or youth at the time the order is made. It remains to be seen how courts across the province will interpret meaningful and beneficial in this context for infants and toddlers.

6. What is the difference between an openness agreement and an openness order and when would each arrangement be used?

An **openness agreement** is arranged outside of court and negotiated by the adoptive parent(s) of a child or youth and most often a birth family member, and/or another significant person to the child such as a foster parent. Efforts should be made to ascertain the child's views and wishes before an openness agreement is made. In the case of children who have been Crown wards, the Children's Lawyer and the local children's aid society are usually involved in helping to determine the parameters of the openness agreement.

Openness agreements can be more or less formal, and can be made at any time before or after an adoption order is made. Openness agreements offer more flexibility than openness orders because as circumstances change (e.g., a family moves), the particulars of the arrangement can be re-negotiated by the involved parties without going to court. On the other hand, if there is a break-down in honouring the openness commitments made, an agreement cannot be legally enforced.

Openness agreements can be used in adoption situations where there is a desire for continued contact between the child and individuals significant in his/her life and prior to the adoption, but the contact had occurred through an informal arrangement and did not involve a court order for access.

Openness orders, on the other-hand, are arrangements for contact in adoption that are court-ordered. When making the order, among other things, the court must be satisfied that the openness is in the best interests of a child and that the openness order will permit the continuation of a relationship that is beneficial and meaningful to the child. As a result of the legislative changes brought about by Bill 179, there are now **two** sets of circumstances in which an application for an openness order may be made:

1. the situation where there is no order for access to a Crown Ward who will be placed for adoption, and the Society applies for an openness order; and

2. the situation where there is an order for access to a Crown Ward who is to be placed for adoption, and a person to whom an access order was granted applies for an openness order*.

See sections 145.1 and 145.1.2 of the CFSA for information about filing and responding to the two different types of openness applications, what evidence the courts look for when making openness orders, and how to vary or terminate an openness order.

***Note**: An access order will automatically terminate once the child is placed for adoption.

Please refer to the flow chart created by Kristina Reitmeier, Chief Counsel, Toronto CAS (August 2011). This flow chart, found **here**, visually highlights the preceding information.

7. What is meant by "best interest of the child" in adoption decisions?

The "best interests of the child" is an overarching principle which guides a court's deliberation when making decisions about permanency for children or youth. Central to its purpose is that the needs of the child are of paramount importance. Sections 136(2) and 136(3) of the CFSA set out the factors to consider when making an adoption decision in a child's best interests.

8. Under what conditions might openness not be in the child's best interest?

There will be cases in which any level of openness is not an appropriate option, where the relationship with the biological family, or any other person, would not be meaningful and beneficial to the child (i.e., if there is an inability on the part of the parties desiring contact to respect the permanency goal of an adoption and the legal role of the adoptive parent or where there has been harm done to a child and/or reasonable risk of continuation of similar behaviour). Essentially, the safety and well-being of the child must be a primary consideration in openness, and involve a careful assessment of any risk to the child or adoptive family of the form of openness being considered.

The legislation ensures that the openness determination process does not interfere nor impair a child's opportunity for adoption placement. children's aid societies will need to examine the circumstances of the particular person with whom openness is sought and identify any issues that would mitigate against exposing the person to the child.

It is important to recognize and appreciate that a child's best interests are not being served if openness is the only consideration in a child's adoption planning.

9. When does a discussion about openness begin? And who should participate?

Discussions about openness should begin as soon as possible once it has been determined that adoption is in the best interests of the child or youth. It is advisable to organize a meeting between parties in order to discuss what openness could look like, and in certain situations, mediation can be useful. As per the answer to question #14, practitioners should consider involving the Office of the Children's Lawyer. Whether or not mediation is utilized, the ultimate goal is to bring the parties together in a non-adversarial way and attain consensus, all for the benefit of the child. In certain situations, it is important to help birth parents think of themselves as participating members of a permanency plan and not defendants. In other words, every effort should be made to engage person(s) who will maintain contact with the child in a permanency plan.

10. What factors are to be considered when assessing whether an adoptive family has the ability to support openness?

The decision to pursue openness in adoption is a complex, ongoing decision that requires flexibility, commitment on the part of both families, and skilled communication. Section 145.1.2 (7) of the CFSA explains that in deciding whether to make an openness order under this section, the court shall consider the ability of the person with whom the society has placed or plans to place the child for adoption to comply with the arrangement under the openness order. It is important that child welfare professionals determine the adoptive parents' view on this issue and assess their abilities to manage court-ordered openness as well as mitigate and resolve all related circumstances. Adoptive families will need help in defining their relationship with the birth parents after adoptive placement. This defining acknowledges the existence of information and/or contacts shared prior to adoptive placement. Adoptive families should be encouraged to seek independent legal advice regarding the form of openness being proposed, and prior to consenting to an openness order under Section 145.1 or having openness ordered under Section 145.1.2.

11. How can adoptive parents be prepared and supported to handle situations where a child or members of a birth family use social media to contact each other, when this type of contact is not specified in an existing openness arrangement?

The shift in philosophy as it pertains to adoption openness, that is, away from secrecy and toward ongoing connections, has been enabled and supported by the Internet. With the rising number of social networking sites and resources available, it has become very easy to find people these days, even with minimal and limited information. In light of this, adoptive parents must anticipate and plan for the likelihood of virtual contact with birth family members (Siegel, 2012). The outcomes of adoptees and birth family members connecting with each other virtually can be beneficial but also challenging.

From a child welfare practice perspective, it will be important for adoption professionals to educate today's prospective adoptive parents about the likelihood of someone initiating virtual contact during the adoptee's childhood. Parents need to be guided to discuss how to manage electronic communication long before their children are old enough to reach out or possibly be found. Through becoming informed about this possibility, adoptive parents can better anticipate and respond to the contact when it occurs (Siegel, 2012).

12. Will children's aid societies be involved in supervising post-adoption contact?

The *Child and Family Services Act* (CFSA) states that the Court cannot order a children's aid society to supervise in post-adoption contact situations. It is at the CAS's respective discretion should they wish to facilitate the post-adoption contact.

13. Are the adoptive parents parties to the openness applications?

Whether or not the adoptive parents are entitled to notice depends on what type of openness is being sought in the proceeding. If the child is a Crown ward without access under section 145.1 (1) only the Society can make an openness application, and the adoptive parents must be notified (section 145.1 (2)).

If the openness order application is made under section 145.1.2, the prospective adoptive parents are not parties and thus cannot be served with the openness application (section 145.1.2 (2)).

Adoptive families should be encouraged to seek independent legal advice regarding the form of openness being proposed, whether or not they are parties to the proceeding. Some adoptive families may bring a motion to be added as a party to the proceedings after seeking legal advice.

14. At what point should the Office of the Children's Lawyer (OCL) be engaged in discussions about openness arrangements?

If the OCL is representing a child in an ongoing child protection proceeding and Crown wardship is a possible disposition, openness should be considered at a very early stage and these discussions would include the OCL as the child's counsel.

The OCL can be appointed by the court in a variety of openness proceedings under s. 153.5 of the CFSA. The section provides that a child may have legal representation in legal proceedings under the following sections:

(a) S.145.1 – an openness application brought by the Society after a Crown ward without access order;
(b) S. 145.1.2 – an openness application after a Crown wardship with access order;
(c) S. 145.2 – a variation of an openness order before adoption;
(d) S. 153.1 – a variation of an openness order post adoption.

Section 153.5(2) states that if the court finds that it is desirable for the child to have legal representation under one of these proceedings, the Court may appoint the OCL, upon the consent of the OCL, to represent the child.

There are three mechanisms to request OCL involvement in openness files where there is a current Crown wardship with access order:

1. Notice to the OCL through the Ministry of Children and Youth Services (MCYS) notification process
2. Court order
3. Pre-Court Alternative Dispute Resolution (ADR)

For more information about the above three mechanisms, please see **OCL Involvement**.

15. What role can the OCL play with respect to planning and implementing openness arrangements? What to expect from OCL Involvement?

The OCL will (or can) take on a number of responsibilities upon accepting a file where openness arrangements are being considered. The work by the OCL can include the following:

1. Meet with the child to ensure that they have an independent voice regarding openness arrangements

2. Speak with the Society to get a sense of the current access arrangements (frequency, location, supervised/unsupervised) and to inquire as to whether the access has been positive for the child from the Society's perspective.

3. Where appropriate, meet with the person(s) to whom the child has access

4. If possible, meet with the adoptive parents

5. Participate in any discussions regarding openness arrangements

6. In appropriate cases, serve and file an openness application on behalf of the child and represent the child within the proceeding.

16. Where can I find more information on adoption openness?

Useful websites

Aboriginal Children: Maintaining Connections in Adoption by Jeannine Carriere and Sandra Scarth. Canadian Child Welfare Portal
http://cwrp.ca/publications/1019

Adoption Council of Canada (ACC)
http://www.adoption.ca

Adoption Council of Ontario (ACO)
http://www.adoption.on.ca

Ministry of Children and Youth Services, Adoption Section
http://www.children.gov.on.ca/htdocs/English/topics/adoption/index.aspx

Ministry of Children and Youth Services, Raising Expectations, Recommendations of the Expert Panel on Infertility and Adoptions
http://www.children.gov.on.ca/htdocs/English/infertility/report/index.aspx

Ontario Association of Children's Aid Societies
http://www.oacas.org/childwelfare/adopt.htm

Presentation on Openness to Foster Parent Society, 2012
http://fosterparentssociety.org/wordpress/wp-content/uploads/2012/08/Bill179WorkshopWSlides.pdf

Recommended Readings on the Subject of Openness

Duxbury, M. (2006). *Making room in our hearts: Keeping family ties open through adoption.* (1 ed.). Routledge.Plunkett, R. (2010). Developing a model to guide openness planning in child protection based adoptions. *OACAS Journal*, 55(1).

Hastings, Kawartha-Haliburton, and Northumberland Children's Aid Societies (2007). Openness in Adoption Resource Guide.

Howard, J. A. (2012). *Untangling the web: The internet's transformative impact on adoption.* Evan B. Donaldson Adoption Institute, New York, NY.

Melina, L. R., & Roszia, S. K. (1993). *The open adoption experience - a complete guide for adoptive and birth families.* (1 ed.). William Morrow Paperbacks.

Neil, E., Cossar, J., Jones, C., & Lorgelly, P. (2011). *Supporting direct contact after adoption.* BAAF.

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Siegel, D. H. (2012). Social media and the post-adoption experience. *Social Work Today*, 12(5), 22. Retrieved from http://www.socialworktoday.com/archive/091712p22.shtml

Smith, C., & Logan, J. (2004). *h.a.after adoption: Direct contact and relationships.* Routledge.

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Expert Panel on Infertility and Adoption, (2009). Raising expectations: Recommendations of the expert panel on fertility and adoption. Retrieved from: http://www.children.gov.on.ca/htdocs/English/documents/infertility/RaisingExpectationsEnglish.pdf

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Riggs, D. (2007). Facilitated openness can benefit children in care. St. Paul, MN: North American Council on Adoptable Children. Retrieved March 15, 2010 from: http://www.nacac.org/adoptalk/facilitated_openness.html