



NATIONAL ADOPTION MONTH

National Adoption Week was celebrated this month, November 10–16, 2008, as a time to give public recognition families who, through adoption and foster care, provide a home and security to a child or children who do not have a stable family life. Adoption is a way of providing a safe and secure family life for children who can no longer be cared for and brought up by their natural parents.

Adopting a child in Ireland is still a rare and privileged event. There are 5,000 children in the care of the State in Ireland. Many of these children cannot be adopted because they were born into a family unit consisting of *married* parents, who could not for one reason or another offer them a stable family life. A child born to married parents is deemed to be constitutionally safeguarded by being born within such a unit. They can only be placed for adoption in very rare situations where their parents have failed them for physical or moral reasons and where that failure is serious and likely to persist during their minority. Most *married* parents who find that they cannot maintain family life do not fail for physically or morally reprehensible reasons and so their children can never be adopted, even if they wished them to be. Many other children who were born to *unmarried* parents who cannot provide a stable family life for their children at least have a choice, they can at least choose adoption as the best “second chance” of family life for their children. In many of these situations, however, the parents decline to make that choice because they do not want to lose the legal link connecting them to their child, which is precious to them. There is no statutory system of “open adoption” in Ireland by which an adoption order can be made while preserving legal ties to the natural parents, be they married or unmarried. Other countries have that possibility but Irish law has not developed that capacity as of yet. Many children remain in foster care as a result. Foster care is an excellent system but it does not provide a legal guarantee of security

for either the child or the foster family. Many children experience serial foster carers for as long as they remain in the care system. Statistics tell us that a child’s educational and emotional horizons are in many instances diminished by such life experiences in care.

The majority of *domestic adoption* applications in Ireland today are not strangers adopting a child placed for adoption, but the adoption of a child into stepfamilies (usually the natural mother and her new husband). From 1952 to 1990 the vast majority of children adopted in Ireland were children who had been placed for adoption within the country by unmarried mothers who could not care for the children. These adoptions are processed under the Adoption Act 1952 and the adoption order has the effect of severing all connections with the child’s non-custodial birth parent, usually the birth father. The Adoption Act 1998 gave the non-custodial birth parent the right to notification/consultation before a child is placed for adoption. The legislation however does not grant that non-custodial birth parent the right to consent or contest the adoption. The non-custodial birth parent can only apply for joint guardianship and either custody or access to the child and that decision is made by the court on the basis of the best interests of the child.

In recent years, there has been a large decline in the number of babies voluntarily placed for domestic adoption. Many non-custodial birth parents now object to adoption because they do not want to lose the legal link with their child, even where that the child is being raised in another family who would like to adopt him or her and give them legal rights within that family unit. Most of the children who are currently placed for adoption in Ireland are adopted by relatives or are “step parent” adoptions. This has meant that opportunities to adopt a non-relative child have decreased considerably and parents who want to adopt a baby and provide a home must turn to intercountry adoption to achieve that goal. It would

seem that Ireland has one of the highest rates of intercountry adoption in Europe, so there is no shortage of families who want to adopt. However not everyone is *eligible* to adopt a child either solely or jointly with a spouse/partner. Adoption in Ireland is complicated by the Irish Constitution and the provisions which protect the family unit which is based on marriage. The Twenty-Eighth Amendment of the Constitution Bill 2007 was published in February 2007. This Bill contains the Government's proposal to amend the Constitution in relation to children and included a provision to ensure that all children would be eligible for voluntary adoption, subject to appropriate consents. The Joint Committee on the Constitutional Amendment on Children was established in November, 2007, to report back within four months, on the proposals set out in the Bill. The Committee recently received Dáil and Seanad approval for an extension of their timeframe to November 30, 2008 which fortuitously coincides with Adoption Week. The issue of amending the Constitution cannot move forward until the Committee have finalised their deliberations.

Even on the intercountry adoption front however obstacles remain. Ireland has still not ratified The Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption into domestic law, so intercountry adoption is still governed by the Adoption Act 1991. Giving a child from another country a permanent family life is a very wonderful thing to do. However intercountry adoption is a very daunting thing to undertake. There is a triangle of interests: birth parents in another country, prospective adoptive parent or parents in Ireland and a vulnerable child in need of a home. In this triangulation of interests the child is certainly the most vulnerable party. Managing that adoption process needs a lot of co-operation to ensure that the best interests of the child prevail. Article 9(c) of this Hague Convention requires Central Authorities to take all appropriate measures to promote the development of adoption counselling and post-adoption services.

The Adoption Board/Authority in Ireland must operate under a legislative system which badly needs an overhaul, not just on the domestic legislative

front, but also through urgent implementation of the Hague Adoption Convention.

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