

EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN [SQUARE BRACKETS].

NOTE: PURSUANT TO S 22A OF THE ADOPTION ACT 1955, ANY REPORT OF THIS PROCEEDING MUST COMPLY WITH SS 11B, 11C AND 11D OF THE FAMILY COURT ACT 1980. FOR FURTHER INFORMATION, PLEASE SEE <https://www.justice.govt.nz/family/about/restriction-on-publishing-judgments/>

**IN THE FAMILY COURT
AT PAPA KURA**

**I TE KŌTI WHĀNAU
KI PAPA KURA**

**FAM-2019-004-001144
[2023] NZFC 8201**

IN THE MATTER OF THE ADOPTION ACT 1955

[WALTER BRITTON]
Applicant

Hearing: 25 July 2023

Appearances: R Sim for the Applicant
A Cooke as Lawyer to Assist

Judgment: 25 July 2023

ORAL JUDGMENT OF JUDGE MAUREEN SOUTHWICK KC

[1] This application comes before the Court again, little progress having been able to be made to advance Mr [Britton]'s application.

[2] In 2019, Mr [Britton] filed an application pursuant to s 23(3)(b) of the Adoption Act 1955. Mr [Britton] was born in [town A], South Australia in January 1971. He came to New Zealand with his mother and older sister at a very young age and was adopted in this country by [Virginia] and [Charles Britton].

[3] Mr [Britton] has recently been made aware of the fact that his biological father was, at the time of his adoption, imprisoned in Australia - it is not known whether or not his consent was required to be sought.

[4] Mr [Britton] now aged 52, together with his partner seek to move permanently to Australia. For that purpose he requires proof of his birth in Australia in order to obtain immediate citizenship. This will facilitate access to essential services, in particular, in relation to a number of significant health issues he has.

[5] The immigration department in Australia will not accept as proof of his birth in Australia, the New Zealand generated birth certificate which was issued upon his adoption. This is in spite of the fact that this certificate records Mr [Britton]'s birth as being in South Australia.

[6] Two requests have previously been made by Family Court Judges in this country to provide the adoption file to this Court. The reason for requiring this is that the Australian authorities have advised that the Applicant's original birth certificate has been sent to this country and hence should be on the New Zealand adoption file.

[7] The Registrar Births, Deaths and Marriages has responded on both occasions advising that they are unable to provide the information because "the adopted person was not born in New Zealand." That fact appears to have no relevance to the request made and suggests that the Registrar is ignoring or not aware of the reasons for the request.

[8] In seeking access to the file the applicant must of course satisfy the provisions of s 23(3)(b)(iii) of the Adoption Act.

[9] Mr Cooke was appointed as lawyer to assist the court and he filed his report in November 2022. At that stage, Mr Cooke raised some doubts as to whether Mr [Britton]'s reasons for seeking the information were of a 'special' nature and therefore whether the request fell within the confines of that provision.

[10] The relevant section reads as follows:

(3) Adoption records shall not be available for production or open to inspection except...

(b) on the order of the court made –

(i) for the purposes of a prosecution for making a false statement; or

(ii) in the event of any question as to the validity or effect of any interim order or adoption order; or

(iii) on any other special ground.

[11] At the date of his report, Mr Cooke concluded that a wish to obtain Australian citizenship did not fall within a “special ground”.

[12] On 14 November 2022, I issued a Minute following a hearing attended by Mr [Britton], at that stage unrepresented. He was seeking representation and ultimately engaged Mr Sim. However, in discussion with Mr [Britton] it became clear that his reasons for seeking production of his adoption file was somewhat more complex than had been put before Mr Cooke.

[13] Today, Mr [Britton] has given evidence in which he confirmed the more detailed reasons for his request. Mr [Britton] has a full sister slightly older than him, who lives [in Australia]. She is a solo mother with two independent children. Whilst she continues to work she suffers from multiple medical issues including the effects of a significant car accident.

[14] Mr [Britton] understandably wishes to be able to relocate to Australia in order to assist her and in order to assist his own similar medical conditions in a warmer climate. Mr [Britton] has very recently had surgery to fuse two vertebrae in his neck and he has had titanium rods inserted in his neck and back. He suffers from severe arthritis.

[15] Information has been ascertained from ancestry.com about his birth parents. That information has come as something of a surprise to Mr [Britton] including the fact that his paternal grandfather is of Sri Lankan origin. He now also knows that both his father and his grandfather died of bowel cancer.

[16] Mr [Britton]’s adopting mother, Mrs [Virginia Britton] died when Mr [Britton] was 14 at which time he left home. This event left him something of a lost soul in terms of being able to find family. The relationship with his sister in Australia is therefore particularly important. He has found that he has two half siblings who reside in New Zealand but clearly his close relationship is with his sister [in Australia].

[17] Mr [Britton]’s family history is further complicated by the fact that at a much earlier time he discovered that his biological mother had had a sex change and is therefore living a very different life than was expected to be the case.

[18] Recent case law relating to the application of s 23(3)(b)(iii) is relatively slight. Mr Cooke is correct to refer the Court to the inescapable fact that generally speaking the section has been interpreted conservatively.

[19] For example in *Re KC* Judge Russell observed that there is a high threshold to be crossed and a “relatively conservative approach” needs to be taken.¹

[20] Again in *Re Adoption of S* Judge Ellis commented:²

It is nevertheless clear from the context of the Adoption Act 1955 (even as amended in 1985) that as a general rule adoption records are to be kept secret; that the exceptions to the rule are to be strictly limited; that the discretion of the Courts is not unfettered; and that the general policy of the Act is to preserve the anonymity and confidentiality of the various persons affected by the adoptions should not be lightly eroded.

[21] Nevertheless, the fact is that information arising out of adoption records is frequently of great significance to the person who seeks information from those adoption records.

[22] In my view, the words “special grounds” need to be interpreted in the context of today’s better understanding of the impacts upon adopted persons of not being able to know and understand their family history.

¹ *Re KC* [2013] NZFC 488.

² *Re adoption of S* [1996] NZFLR 552 (FC).

[23] I find that it is a “special ground” that Mr [Britton] wishes to relocate to the country of his birth for reasons which relate to his health and his relationship with his birth sister. I further find that the need for immediate access to health and other services in that country will be facilitated by production of his Australian birth certificate and that the ability to access these services will be of critical importance to Mr [Britton].

[24] Mr Cooke today agreed that the further information which has been provided by Mr [Britton] puts the application into a somewhat different category. I have no criticism of Mr Cooke in his reporting to the Court and indeed it is the additional information which changes the nature of the application now before the Court.

[25] The frustration at this time is the apparent inability to locate the adoption file. I cannot accept that such important information could be lost and am hopeful that now the background to the case is better understood, this difficulty will be overcome. I therefore direct that a copy of this decision is to be made available to the Registrar who is to advise the Court within 21 days what effort has been made to obtain the adoption records and why any ongoing difficulty exists if that is the case.

[26] Accordingly:

- (a) Mr [Britton] has satisfied the Court that there is a special ground pursuant to s 23(3)(b)(iii) of the Adoption Act which requires that he may inspect the adoption file as sought.
- (b) The Registrar births, deaths and marriages is to report to this court within 21 days as to the whereabouts of the file. If it is unable to be located, the reasons for that are to be provided to the Court.
- (c) Mr Cooke’s appointment as lawyer to assist the court is to remain for a further six weeks during which time he is to communicate with the internal affairs department in an effort to ascertain more clearly where the difficulty lies in providing the adoption file.

- (d) This matter is to be placed in a case management review list in six weeks' time to monitor progress.

Judge M J Southwick
Family Court Judge | Kaiwhakawā o te Kōti Whānau
Date of authentication | Rā motuhēhēnga: 10/08/2023