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1st SESSION, 66th GENERAL ASSEMBLY  
Province of Prince Edward Island  
68 ELIZABETH II, 2019

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**(Bill No. 29)**

## **An Act to Amend the Adoption Act**

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Hon. Ernie Hudson  
Minister of Social Development and Housing

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**GOVERNMENT BILL**

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Carol Mayne  
Acting Queen's Printer  
Charlottetown, Prince Edward Island

**Prince Edward Island  
Legislative Assembly**

**ASSEMBLY / SESSION / YEAR**  
66th General Assembly / 1st / 2019

**AMENDMENTS**

**BILL NUMBER: 29** **PAGE No. 2 of 16 PAGES**

**TITLE: An Act to Amend the Adoption Act**

#	SECTION	AMENDMENT	DATE

**NOTED:**

**CERTIFIED CORRECT:**

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**COMMITTEE CLERK**

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**CHAIR, IN COMMITTEE**



## AN ACT TO AMEND THE ADOPTION ACT

BILL NO. 29

2019

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BE IT ENACTED by the Lieutenant Governor and the Legislative Assembly of the Province of Prince Edward Island as follows:

1. The *Adoption Act* R.S.P.E.I. 1988, Cap. A-4.1, is amended by the addition of the following heading immediately before section 1:

### INTERPRETATION

2. Section 1 of the Act is amended

- (a) by the repeal of clause (a) and the substitution of the following:

- (a) “**adopted person**” means a person 18 years of age or older who was adopted as a child;
    - (a.1) “**adoption order**” means an order for the adoption of a child issued under section 38 and, in sections 48.1 to 50, includes an order for the adoption of a child issued under a previous Act governing adoption in the province;

- (b) by the addition of the following after clause (d):

- (d.1) “**birth parent**” means a parent listed on the original birth registration of a child;

- (c) in clause (e), by the deletion of the words “who has been or is being adopted or placed” and the substitution of the words “under the age of 18 years, except where otherwise indicated”;

- (d) by the addition of the following after clause (e):

- (e.1) “**contact preference**” means a document filed under section 48.2 or a similar document filed under legislation in another jurisdiction, in which a person states whether the person is willing to have contact with another person and, if so, the manner in which the person is willing to have contact with the other person;

(e) **by the addition of the following after clause (h):**

- (h.1) “**disclosure veto**” means a document filed under section 48.1 or a similar document filed under legislation in another jurisdiction, prohibiting the disclosure of identifying information about the person who files it;

(f) **by the addition of the following after clause (j):**

- (j.1) “**identifying information**” means information that, directly or indirectly, identifies or may identify a person;

(g) **by the addition of the following after clause (k):**

- (k.1) “**non-identifying information**” means information that does not or is not likely to identify a person;

(h) **in clause (n), by the deletion of the period and the substitution of a semicolon; and**

(i) **by the addition of the following after clause (n):**

- (o) “**undertaking**” means a document completed in accordance with subsection 48.2(4) or a similar document completed under legislation in another jurisdiction, in which a person undertakes to act in accordance with another person’s contact preference.

**3. Section 2 of the Act is amended**

(a) **by the repeal of clause (c) and the substitution of the following:**

- (c) a birth parent and an adoptive parent may choose to conceal or disclose their identity at the time of an adoption;

(b) **by the repeal of clause (g) and the substitution of the following:**

- (g) the interest of an adopted person or a birth parent in obtaining identifying information respecting the other should be balanced to the extent possible with the other person’s interest in protecting his or her privacy.

**4. The heading immediately before section 3 of the Act is repealed and the following substituted:**

**CUSTODY, GUARDIANSHIP AND PLACEMENT**

**5. Section 4 of the Act is amended**

- (a) **in subclause (a)(ii), by the deletion of the words “, in such form and manner as the regulations or the Director may require” and the substitution of the words “in the prescribed form”; and**



- (b) in clause (b), by the addition of the word “and” after the semicolon.
- 6. Clause 9(a) of the Act is amended by the addition of the word “and” after the semicolon.
- 7. The heading immediately before section 10 of the Act is repealed and the following substituted:

## **ADOPTION**

### **Application To Adopt**

- 8. Clause 18(1)(a) of the Act is repealed and the following substituted:
  - (a) either
    - (i) the child’s birth certificate, where the identities of the parties are known to one another, or
    - (ii) the following documents, where the identities of the parties are not known to one another:
      - (A) a statement indicating the number of the child’s birth registration and the child’s given name, sex, date and place of birth, and
      - (B) an extract from the child’s birth registration showing the child’s surname at birth or parent names, sealed and not disclosed to the applicant;
- 9. Clause 22(c) of the Act is amended
  - (a) in subclause (ii), by the deletion of the word “or” after the words “jurisdiction,”;
  - (b) in subclause (iii), by the addition of the word “or” after the words “jurisdiction,”; and
  - (c) by the addition of the following after subclause (iii):
    - (iv) named by the child’s mother as the child’s father and acknowledges that he is the child’s father,
- 10. Subsection 23(1) of the Act is amended by the deletion of the words “such form and manner as may be prescribed by the regulations or is satisfactory to the court” and the substitution of the words “the prescribed form”.
- 11. Section 47 of the Act is amended by the addition of the following after subsection (4):

**Prescribed information from birth registration**

  - (5) On the request of the Director, the Director of Vital Statistics shall provide to the Director prescribed information from the original birth registration of an adopted person who was born in the province.

12. The heading immediately before section 48 of the Act and section 48 of the Act are repealed and the following substituted:

## **POST-ADOPTION**

### **Disclosure of Non-Identifying Information**

48. **Disclosure of non-identifying information**

The Director, a person who placed a child or the court may at any time disclose to a party to a placement or adoption non-identifying information in respect of the background or circumstances of the child, including cultural heritage, medical history, family history and reasons for placement.

13. The Act is amended by the addition of the following after section 48:

### **Disclosure of Identifying Information**

#### *Disclosure Veto*

48.1 **Persons who may file disclosure veto**

- (1) Where an adoption order was made in the province before January 31, 2020, the following persons may file with the Director a disclosure veto in the form required by the Director:
- (a) the adopted person;
  - (b) a birth parent of the adopted person.

#### **Attached statement**

- (2) A person who files a disclosure veto under subsection (1) may file with it a written statement that includes any of the following information:
- (a) the reasons the person does not want identifying information disclosed;
  - (b) non-identifying information, including information about the medical or social history of the person and the person's family.

#### **Provision of notice and copy of statement**

- (3) Where a person applies under section 48.3 or 48.5 for information or a copy of the adoption order to which a disclosure veto relates, the Director shall notify the person that a disclosure veto has been filed and provide the person with a copy of any written statement filed with the disclosure veto.

#### **Modification or cancellation of disclosure veto**

- (4) A person who files a disclosure veto may modify or cancel the disclosure veto by giving notice to the Director in the form required by the Director.

#### **Effect of death on disclosure veto**

- (5) A disclosure veto filed under this section ceases to have effect one year after the death of the person who filed it.



### ***Contact Preference***

#### **48.2 Persons who may file contact preference**

- (1) Where an adoption order was made in the province, at any time, the following persons may file a contact preference with the Director in the form required by the Director:
- (a) the adopted person;
  - (b) a birth parent of the adopted person.

#### **Attached statement**

- (2) A person who files a contact preference under subsection (1) may file with it a written statement that includes any of the following information:
- (a) the reasons the person does not want to be contacted or wants to be contacted only in a specified manner, as the case may be;
  - (b) non-identifying information, including information about the medical or social history of the person and the person's family.

#### **Provision of notice and copy of statement**

- (3) Where a person applies under section 48.3 or 48.5 for information or a copy of the adoption order to which a contact preference relates, the Director shall notify the person that a contact preference has been filed and of the preference stated in it and provide the person with a copy of any written statement filed with the contact preference.

#### **Undertaking**

- (4) For the purpose of section 48.3 or 48.5, a person who is notified of a contact preference under subsection (3) may complete an undertaking, in the form required by the Director, stating that the person undertakes not to
- (a) knowingly fail to comply with the contact preference, either directly or through another person;
  - (b) intimidate or harass the person who filed the contact preference, either directly or through another person; or
  - (c) publish any identifying information about the person who provided the contact preference.

#### **Modification or cancellation of contact preference**

- (5) A person who files a contact preference under subsection (1) may modify or cancel the contact preference by giving notice to the Director in the form required by the Director.

### ***Disclosure to Adopted Person***

#### **48.3 Application for prescribed information from birth registration or copy of adoption order**

- (1) An adopted person may apply to the Director, in the form required by the Director, for the following:
- (a) prescribed information from the original birth registration of the adopted person, if the adopted person was born in the province;
  - (b) a copy of the adoption order in respect of the adopted person, if the adopted person was adopted in the province.

**Provision of prescribed information or copy of adoption order**

- (2) Subject to subsections (3) and (4), on receipt of an application made in accordance with subsection (1), the Director shall provide to the adopted person prescribed information from the original birth registration of the adopted person or a copy of the adoption order in respect of the adopted person, as the case may be.

**No provision of identifying information**

- (3) The Director shall not provide to the adopted person prescribed information from the original birth registration of the adopted person that is identifying information about a birth parent of the adopted person who has filed
- (a) a disclosure veto; or
  - (b) a contact preference, in respect of which the adopted person has not completed an undertaking.

**Concealment of identifying information**

- (4) Before providing to the adopted person a copy of the adoption order in respect of the adopted person, the Director shall conceal any identifying information that appears on the adoption order about a birth parent of the adopted person who has filed
- (a) a disclosure veto; or
  - (b) a contact preference, in respect of which the adopted person has not completed an undertaking.

***Disclosure to Child of Deceased Adopted Person***

**48.4 Application by child of deceased adopted person**

Where an adopted person is deceased, an adult child of the adopted person may make an application under subsection 48.3(1), and section 48.3 applies with the necessary changes.

***Disclosure to Birth Parent***

**48.5 Application for copy of adoption order**

- (1) Where an adopted person is 19 years of age or older, a birth parent of the adopted person may apply to the Director, in the form required by the Director, for a copy of the adoption order in respect of the adopted person, if the adoption took place in the province.

**Provision of copy of adoption order**

- (2) Subject to subsections (3) and (4), on receipt of an application made in accordance with subsection (1), the Director shall provide a copy of the adoption order in respect of the adopted person to the birth parent of the adopted person.

**Concealment of identifying information about adoptive parents**

- (3) Before providing a copy of an adoption order under subsection (2), the Director shall conceal any identifying information that appears on the adoption order in respect of the adoptive parent or parents.





**No provision of copy of adoption order**

- (4) The Director shall not provide a copy of the adoption order in respect of the adopted person to the birth parent of the adopted person, where the adopted person has filed
- (a) a disclosure veto; or
  - (b) a contact preference, in respect of which the birth parent has not completed an undertaking.

***Disclosure to Child of Deceased Birth Parent***

**48.6 Application by child of deceased birth parent**

Where a birth parent of an adopted person is deceased, an adult child of the birth parent may make an application under subsection 48.5(1), and section 48.5 applies with the necessary changes.

***Disclosure to Third Party***

**48.7 Disclosure, indigenous status**

On the request of an adopted person or a parent or guardian of an adopted child, the Director may disclose identifying information about the adopted person or adopted child or a birth parent of the adopted person or adopted child, as the case may be, and any other information the Director considers relevant, to the Registrar under the *Indian Act* (Canada) or the appropriate federal or provincial official for the purpose of determining the adopted person's or adopted child's entitlement to registration or benefits under that Act.

**48.8 Disclosure to adoption authority**

The Director may disclose non-identifying or identifying information to the authority responsible for adoption records in another jurisdiction for the purpose of determining whether a disclosure veto or contact preference has been filed under this Act or in that jurisdiction, as the case may be.

**48.9 Disclosure to medical practitioner or other health professional**

The Director, a person who placed a child or the court may at any time disclose to a medical practitioner or other health professional non-identifying or identifying information for the purpose of providing health care to an adopted child.

- 14. The heading immediately before section 49 of the Act and section 49 of the Act are repealed and the following substituted:**

**Post-Adoption Register**

**49. Post-adoption register**

- (1) The Director shall keep a post-adoption register, formerly known as the Reciprocal Search Register, to provide for information-sharing or contact, on mutual consent, between persons who have been affected, directly or indirectly, by an adoption order.

**Registration**

- (2) A person who is 18 years of age or older may apply to the Director, in the form required by the Director, to be registered and matched with other persons registered in relation to an adoption order.

**Director's duties on match**

- (3) Where two persons are matched on the register, the Director shall, subject to subsections (4) and (5),
- (a) inform each person of the match;
  - (b) determine whether there is mutual consent to exchange non-identifying or identifying information or arrange contact; and
  - (c) on request, assist the persons to exchange non-identifying or identifying information or arrange contact.

**Disclosure veto or contact preference**

- (4) Where a person with whom a match is sought has filed a disclosure veto or a contact preference for no contact, the Director shall not take any action under subsection (3).

**Consent withdrawn**

- (5) Where a person withdraws consent to exchanging non-identifying or identifying information or arranging contact, the Director shall advise the other person and not take any further action in respect of the match.

**15. Section 50 of the Act is repealed and the following substituted:**

**50. Active search**

- (1) The Director shall, on request, provide post-adoption search services in relation to an adoption order to the following:
- (a) the adopted person, for the purpose of locating a birth parent, the biological father or a birth sibling of the adopted person;
  - (b) a birth parent or a person who may be the biological father of the adopted person, for the purpose of locating the adopted person.

**Search of records**

- (2) The Director shall, subject to subsection (3),
- (a) search records kept by or accessible to the Director; and
  - (b) if possible, make contact on a confidential basis with the person who is the subject of the search.

**Disclosure veto or contact preference**

- (3) Where the records indicate that the person who is the subject of the search has filed a disclosure veto or a contact preference for no contact, the Director shall not take any further action under subsection (2).

**Disclosure**

- (4) Where the person who is the subject of the search consents, the Director shall assist the persons to exchange non-identifying or identifying information or to make contact, as the case may be.



**16. The Act is amended by the addition of the following after section 50:**

**50.1 Provision of information by public body**

- (1) For the purpose of section 50, a public body, as defined in the *Freedom of Information and Protection of Privacy Act* R.S.P.E.I. 1988, Cap. F-15.01, shall provide to the Director, on request, any information in the custody or control of the public body that is relevant to a search.

**Provision of information by Director of Vital Statistics**

- (2) For the purpose of section 50, the Director of Vital Statistics shall provide to the Director, on request, prescribed information in the custody and control of the Director of Vital Statistics in respect of the birth, adoption, marriage or death of an adopted person or a birth parent that is relevant to a search.

**17. Section 52 of the Act is repealed and the following substituted:**

**52. Registration or search requested by child**

- (1) An adopted child, with the written consent of a parent or guardian, or the parent or guardian of an adopted child, with the written consent of the adopted child, may apply to register the adopted child under section 49 or make a request under section 50, and the Director may register the adopted child or conduct a search, as the case may be, if the Director believes it is in the best interests of the adopted child.

**Director may dispense with consent**

- (2) Notwithstanding subsection (1), the Director may dispense with consent required under subsection (1), if the Director determines that consent cannot practically be obtained or is being unreasonably withheld and the adopted child would suffer significant harm if the registration or request were not permitted.

**18. Section 54 of the Act is repealed and the following substituted:**

**54. Application of sections 47 to 53**

For greater certainty, sections 47 to 53 apply in respect of adoptions effected under this Act or any previous Act governing adoptions in the province.

**19. The heading immediately before section 55 of the Act is repealed and the following substituted:**

**GENERAL**

**20. The Act is amended by the addition of the following after section 55:**

**55.1 Prohibition, advertisement**

- (1) A person who publishes or causes to be published in any form or by any means an advertisement concerning the placement or adoption of a child is guilty of an offence and is

liable upon summary conviction to a fine not exceeding \$5,000 or imprisonment for a term not exceeding 6 months.

**Exceptions**

- (2) Subsection (1) does not apply to the publication of
- (a) a notice under the authority of a court order;
  - (b) a notice or advertisement authorized by the Director;
  - (c) an announcement of a placement or adoption of a child;
  - (d) a notice, advertisement or similar publication specified in the regulations.

**55.2 Prohibition, undertaking**

A person who fails to comply with an undertaking completed by the person pursuant to subsection 48.2(4) is guilty of an offence and is liable on summary conviction to a fine not exceeding \$5,000 or imprisonment for a term not exceeding 6 months.

**21. (1) Subject to subsection (2), this Act come into force on January 31, 2020.**

**(2) Section 13 of this Act, to the extent that it creates sections 48.3, 48.4, 48.5 and 48.6 of the Act, comes into force on January 31, 2021.**



## EXPLANATORY NOTES

**SECTION 1** adds a heading before section 1 of the Act.

**SECTION 2** amends and adds definitions for terms used in the Act.

**SECTION 3** repeals and replaces clauses 2(c) and (g) of the Act to update the principles guiding the administration of the Act.

**SECTION 4** repeals and replaces a heading in the Act.

**SECTION 5** clarifies provisions in section 4 of the Act.

**SECTION 6** clarifies section 9 of the Act.

**SECTION 7** repeals and replaces a heading in the Act.

**SECTION 8** repeals and replaces clause 18(1)(a) of the Act to correct a drafting error.

**SECTION 9** adds a provision requiring the consent of a parent of the child who is named by the child's mother as the child's father and acknowledges that he is the child's father to the adoption of the child, subject to an agreement or order under the *Child Protection Act*.

**SECTION 10** clarifies subsection 23(1) of the Act.

**SECTION 11** adds subsection 47(5) to the Act requiring the Director of Vital Statistics to provide to the Director, on request, prescribed information from the original birth registration of an adopted person who was born in the province.

**SECTION 12** repeals and replaces a heading in the Act.

**SECTION 13** adds sections 48.1 to 48.9 to the Act.

Section 48.1 provides that, where an adoption order was made in the province before January 31, 2020, the adopted person to whom the order pertains or the birth parent of the adopted person may file a disclosure veto. It provides that a person may file a written statement with a disclosure veto containing explanatory or factual information. It sets out the process to be followed where a person makes an application under section 48.3 or 48.5 for information or a document to which the disclosure veto relates. It provides for the modification or cancellation of a disclosure veto and the expiration of a disclosure veto one year after the death of the person who filed it.

Section 48.2 provides that, where an adoption order was made in the province, at any time, the adopted person to whom the order pertains or the birth parent of the adopted person may file a contact preference. It provides that a person may file a written statement with a contact preference containing explanatory or factual information. It sets out the process to be followed where a person makes an application under section 48.3 or 48.5 for information or a copy of a document to which the contact preference relates, including providing for the applicant to complete an undertaking in relation to the contact preference. It provides for the modification or cancellation of a contact preference.

Section 48.3 provides for an adopted person to apply to the Director for prescribed information from the adopted person's original birth registration, if the person was born in the province, and a copy of the adoption order that pertains to the adopted person, if the person was adopted in the province. The provision of the information or a copy of the order is subject to a disclosure veto or contact preference. If a birth parent has filed a disclosure veto, the information disclosed shall not include and the requested copy shall conceal any identifying information about the birth parent. If a birth parent has filed a contact preference, the adopted person must sign an undertaking before receiving the information or copy of the order.

Section 48.4 provides that, where an adopted person is deceased, an adult child of the adopted person may make an application under section 48.3.

Section 48.5 provides that, after an adopted person reaches the age of 19 years, a birth parent of the adopted person may apply for a copy of the adoption order that pertains to the adopted person, if the adoption order was made in the province. The provision of a copy of the adoption order is subject to a disclosure veto or contact preference. If the adopted person has filed a disclosure veto, a copy of the adoption order shall not be provided. If the adopted person has filed a contact preference, the birth parent must sign an undertaking before receiving a copy of the adoption order. Any identifying information respecting the adoptive parent or parents shall be concealed on a copy of an adoption order provided to a birth parent.

Section 48.6 provides that, where a birth parent of an adopted person is deceased, an adult child of the birth parent may make an application under section 48.5.

Section 48.7 permits the Director to disclose identifying information about an adopted child, adopted person or a birth parent and any other information the Director considers relevant to the Registrar under the *Indian Act* (Canada) or another appropriate official for the purpose of determining the adopted child's or adopted person's entitlement to registration or benefits under the *Indian Act* (Canada).

Section 48.8 permits the Director to disclose information to the authority responsible for adoption records in another jurisdiction for the purpose of determining whether a disclosure veto or contact preference has been filed under this Act or in that jurisdiction, as the case may be.

Section 48.9 permits the Director, a person who placed the child or the court to disclose information to a medical practitioner or other health care professional for the purpose of providing health care to an adopted child.



**SECTION 14** repeals and replaces section 49 of the Act to allow any person who is 18 years of age or older and has been affected, directly or indirectly, by an adoption order to register on the post-adoption register and be matched with others registered in relation to that adoption order. It sets out the Director's duties where there is a match, subject to a disclosure veto, a contact preference or the withdrawal of consent to exchanging information or making contact.

**SECTION 15** repeals and replaces section 50 of the Act to provide post-adoption search services in relation to an adoption order to the adopted person, for the purpose of locating a birth parent, biological father or birth sibling of the adopted person, and to a birth parent or person who may be the biological father of the adopted person for the purpose of locating the adopted person. It sets out the Director's duties in respect of a search, subject to a disclosure veto or contact preference.

**SECTION 16** adds section 50.1 to the Act, which requires a public body and the Director of Vital Statistics to provide certain information in their custody or control to the Director for the purpose of conducting a search under section 50.

**SECTION 17** repeals and replaces section 52 of the Act to improve the wording. The section provides for the registration of an adopted child on the post-adoption search registrar or the conduct of a post-adoption search on behalf of an adopted child.

**SECTION 18** repeals section 54 of the Act to improve the wording. The section confirms that sections 47 to 53 of the Act apply in respect of adoptions effected under this Act or any previous Act governing adoptions in the province.

**SECTION 19** repeals and replaces a heading in the Act.

**SECTION 20** adds sections 55.1 and 55.2 to the Act. Section 55.1 provides that any person who publishes or causes to be published an advertisement concerning the placement or adoption of a child is guilty of an offence and subject to a fine or imprisonment, subject to certain exceptions. Section 55.2 provides that any person who fails to abide by an undertaking completed under this Act is guilty of an offence and subject to a fine or imprisonment.

**SECTION 21** provides for the commencement of this Act on January 31, 2020, with the exception of certain provisions of the Act created by section 13 of this Act, which will come into force on January 31, 2021. The purpose of this is to give persons a period of time to file a disclosure veto or a contact preference before information about them becomes subject to disclosure.

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(Bill No. 29)

**An Act to Amend the Adoption Act**

<b><i>STAGE:</i></b>	<b><i>DATE:</i></b>
<i>1st Reading:</i>	November 19, 2019
<i>2nd Reading:</i>	
<i>To Committee:</i>	
<i>Reported:</i>	
<i>3rd Reading and Pass:</i>	
<i>Assent:</i>	

**SIGNATURES:**

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Honourable Antoinette Perry, Lieutenant Governor

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Honourable Colin LaVie, Speaker

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Joseph Jeffrey, Clerk

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Hon. Ernie Hudson  
Minister of Social Development and Housing

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GOVERNMENT BILL

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2019  
1st SESSION, 66th GENERAL ASSEMBLY