



## Memorandum: Openness in Adoption

# The Child Welfare Toolkit

A Joint initiative between the Factor-Inwentash Faculty of Social Work and the David Asper Center on Constitutional Rights, Faculty of Law, University of Toronto

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# Introduction

This toolkit was funded by The Law Foundation of Ontario and developed with input from key stakeholders in the child welfare and child protection sectors. It synthesizes the current legislation, case law, and social science research regarding the practice of child protection. The goal is to help ensure that judicial decisions are aligned with what has been found in social science literature to be in the best interest of children involved in the child welfare system and their families. This resource is made available to practicing child protection lawyers and various actors within the child welfare sector through the [cwrp.ca](http://cwrp.ca).

In 2017, the *Child, Youth, and Family Services Act (CYFSA)* was implemented in Ontario. Its full impact on child protection litigation is not yet known. The intervention of children's aid society ("Society") workers into the private lives of families has a profound and permanent impact on both caregivers and their children. Negative effects of child welfare interventions are disproportionately felt by certain groups who are more likely to be subject to society involvement, including Indigenous peoples, Black families, those living below the poverty line, and female-led single parent households. Given the serious impact of the state becoming involved in families, it is critical that these actions should have a strong evidentiary basis and that data informing judicial decisions should be accessible, up-to-date, and accurate.

This toolkit focuses on four key areas of child protection law in Ontario:

1. post-adoption openness
2. access during interim or temporary placements
3. the use of parenting capacity assessments, and
4. the application of emergency apprehensions.

We have identified a disconnect between legal decisions and social science research in all four areas. Social science evidence surrounding parental access is not universally known, leading to discrepancies in litigation outcomes. The literature on parental capacity assessments is inconsistent, and limitations in each type of assessment make it

difficult to determine which one, if any, will generate appropriate data on a parent's abilities. While emergency removals of children from their parents are common within the child welfare system, there is limited research evaluating the impact of the practice on the well-being of children. Finally, little is known about post-adoption openness, particularly to what extent the factors used by courts to grant openness are in fact grounded in social science research.

Each area in the toolkit contains two sections: (1) case law examples highlighting patterns in judicial decision-making for relevant provisions from the *CYFSA*, and the interpretation of these provisions by the courts; and (2) an overview of the broader child welfare literature concerning the respective service or decision-point. Sections outline the methodology used to locate the relevant materials and literature; and consider the overrepresentation of First Nations and Black children and families in the child welfare system.

# Section 1: The Case Law

## Post-Adoption Openness

The following section outlines case law and social science literature concerning post-adoption openness. A relatively new procedure under the *Child, Youth and Family Services Act*, openness orders provide for varying degrees of communication and the maintenance of relationships between adoptive children and birth families or others with whom the child has significant ties, following their adoption. This brief includes a brief synthesis of the case law and social science literature which highlights gaps, points of alignment, and potential future directions for judicial decision making and social science research. The brief is not intended to be a comprehensive summary of the law respecting post-adoption access or openness and is no substitute for legal advice in this developing area of the law.

## Legal Issues

1. What factors contribute to the granting (or not) of parental access during extended society care, thereby leading to the potential for a post-adoption openness order?
2. How do courts determine the nature of access during extended society care (which often defines the parameters of a subsequent openness order)?

## Legislation

Section 179 (1) of the *Child, Youth and Family Services Act, 2017 (CYFSA)* provides the definition of an openness order within the adoption context:

openness order” means an order made by a court in accordance with this Act for the purposes of facilitating communication or maintaining a relationship between the child and,

- (a) a birth parent, birth sibling or birth relative of the child,

- (b) a person with whom the child has a significant relationship or emotional tie, including a foster parent of the child or a member of the child’s extended family or community, or
- (c) in the case of a First Nations, Inuk or Métis child,
  - (i) a person described in clause (a) or (b), or
  - (ii) a member of the child’s bands and First Nations, Inuit or Métis communities who may not have had a significant relationship or emotional tie with the child in the past but will help the child to develop or maintain a connection with the child’s First Nations, Inuit or Métis cultures, heritages and traditions and to preserve the child’s cultural identity and connection to community.

Regulation 155/18 under the CYFSA also provides the following definition of “openness” in s. 94(1):

- “openness” includes written, verbal or face to face contact or communication where,
- (a) the communication may be direct or indirect and may permit the disclosure of identifying or non-identifying information, and
  - (b) the frequency of contact or communication may vary from episodic to ongoing.
- (2) For the purposes of subsection (1), “non-identifying information” means information which, when disclosed either alone or in combination with other information, does not reveal the identity of the person to whom it relates.

After a child is placed for adoption, either the society having care and custody of the child (if there is no access order in effect) or the holder of an access order may apply for an openness order. If the case concerns a First Nations, Métis, or Inuit child, the relevant society, the child or a representative of each of the child's bands and First Nations, Métis, or Inuit communities may apply for an openness order. The court may only make an openness order if it is satisfied that the order is in the best interests of the child, maintains a beneficial and meaningful relationship, and, in cases involving a child aged 12 or older, with the consent of the child.<sup>1</sup> In cases of openness orders applied for under the section governing First Nations, Métis, and Inuit children, the beneficial and meaningful relationship requirement is replaced by a requirement that the openness order help the child to develop or maintain a connection with their Indigenous culture, heritage, and traditions as well as their cultural identity and connection to the community. The court must also consider the ability of prospective adoptive parents to comply with the order.

After the openness order has been made, the adoptive parent or a supervising society may apply to vary or terminate the order both before and after the adoption has occurred. The adopted child or holder of the openness order may also make such an application with the leave of the court, after the adoption has occurred. The court may grant a variation or termination of the openness order if there has been a material change in circumstances, the change/termination is in the child's best interests, and, in the case of a variance, the proposed change allows a beneficial and meaningful relationship to continue or helps to develop or maintain a child's cultural identity or connection to their First Nations, Métis, or Inuit identity.

Relevant sections of the *Child, Youth and Family Services Act, 2017 (CYFSA)* are reproduced in Appendix A.

<sup>1</sup> Consent of additional parties is required if the society is making the application. See s.194(4)(c).

## Legal Findings

### 1. Legal Research Methods

To determine which cases were the most relevant to adoption openness, searches were performed including the terms: adoption, openness order, extended society care, child protection, and contact. The search was further limited to Ontario cases, looking at all levels of the court system. The years included in the search were from 2000 to 2021, with preference given to cases from 2017 to 2021, to capture the legislative changes introduced through the *CYFSA*. Searches were conducted on CanLII (open resource) and Westlaw (subscription-based resource). Cases were sorted by most cited, and criteria returned 36 results. These were then examined to determine if they applied to the legal issue through their headnotes, legislation followed, and use of the search terms listed above.

Most of the cases discovered in the search concerned the placement of a child in extended society care (formerly referred to as Crown Wardship) and discussed openness in the context of granting access during extended society care. The following analysis is primarily based on those extended society care cases for several reasons. First, the statutory tests for extended society care access and post-adoption openness are quite similar: both require an analysis of the best interests of the child. The definition of a child's best interests in both contexts means that judges will make similar considerations in evaluating both forms of contact. Second, in some jurisdictions the terms of an extended society care access order form the basis for a post-adoption openness order. Additionally, openness is a factor when making an extended society care access order. Sometimes, no changes are made, and the extended society care access order becomes the openness order. Lastly, access during extended society care confers a statutory right on the access holder to apply for an openness order, meaning that the consideration of openness, and its potential effects on the child's best interests necessarily begins in the determination of extended society care access. Judges have often made comments,

supporting these three links between extended society care access and openness, see, for example, *J.G.*, at para. 84 (ONCJ, 2019). Discussions with child protection professionals have also confirmed the close link between the determination of extended society care access and openness, particularly for children moving quickly into adoption.

A further search was conducted to find reported cases that covered openness outside of extended society care access proceedings. This query generated *Re Proposed Openness Order for S.M., 2009 ONCJ 317* and 7 other cases that referenced it and which dealt with the issue of openness on its own. The “pure openness” cases will be discussed separately.

## 2. Jurisprudence

The test to determine whether access should be granted in extended society care is whether it is in the best interests of the child. The analysis is to be grounded in the fifteen statutory enumerated factors from section 74(3)<sup>2</sup> of the *CYFSA* and whether such an order would preserve a relationship which is beneficial and meaningful for the child, but courts may consider other factors they deem relevant, including the future benefits of the relationship. As per the *Kawartha-Haliburton* case, the *CYFSA* removed the presumption against access and made the child’s “best interests” test predominant in determining access, emphasizing the importance of preserving Indigenous children’s cultural identity and connection to community (ONCA, 2019). Additionally, in the *J.G.* case, the Ontario Court of Appeal held that because there is a ‘predictive element’ in all decisions about the child’s best interests, there is no need to restrict the analysis to the present status of the child and their relationship with the access seeker, but a more holistic analysis may be conducted which includes considerations about the child’s future. (ONCA, 2020) This contrasts with the pre-*CYFSA* framework in which consideration was restricted to the child’s present circumstances and an access order had to preserve a “beneficial and meaningful relationship” in order to be granted.

### Best Interests of the Child

The *CYFSA* enumerates the list of factors to be considered in determining the best interests of a child in section 74(3):

- (3) Where a person is directed in this Part to make an order or determination in the best interests of a child, the person shall,
  - (a) consider the child’s views and wishes, given due weight in accordance with the child’s age and maturity, unless they cannot be ascertained;
  - (b) in the case of a First Nations, Inuk or Métis child, consider the importance, in recognition of the uniqueness of First Nations, Inuit and Métis cultures, heritages and traditions, of preserving the child’s cultural identity and connection to community, in addition to the considerations under clauses (a) and (c); and
  - (c) consider any other circumstance of the case that the person considers relevant, including,
    - (i) the child’s physical, mental and emotional needs, and the appropriate care or treatment to meet those needs,
    - (ii) the child’s physical, mental and emotional level of development,
    - (iii) the child’s race, ancestry, place of origin, colour, ethnic origin, citizenship, family diversity, disability, creed, sex, sexual orientation, gender identity and gender expression,
    - (iv) the child’s cultural and linguistic heritage,
    - (v) the importance for the child’s development of a positive relationship with a parent and a secure place as a member of a family,
    - (vi) the child’s relationships and emotional ties to a parent, sibling, relative, other member of the child’s extended family or member of the child’s community,

<sup>2</sup> The test to determine the best interests of a child in the openness context can be found in section 179 of the *Act* and contains similar factors to the one discussed here.

- (vii) the importance of continuity in the child’s care and the possible effect on the child of disruption of that continuity,
- (viii) the merits of a plan for the child’s care proposed by a society, including a proposal that the child be placed for adoption or adopted, compared with the merits of the child remaining with or returning to a parent,
- (ix) the effects on the child of delay in the disposition of the case,
- (x) the risk that the child may suffer harm through being removed from, kept away from, returned to or allowed to remain in the care of a parent, and
- (xi) the degree of risk, if any, that justified the finding that the child is in need of protection. 2017, c. 14, Sched. 1, s. 74 (3).

In many cases, such as *J.G. and R.D.F.*, courts will reproduce in its entirety this list of factors and apply it to the case under consideration. (ONSC, 2019) Courts will sometimes emphasize other considerations in determining whether to grant access in extended society care, bypassing altogether statutory considerations. For an example of this, see the *N.H.* case. (ONSC, 2018) The statute requires courts to consider the first two factors, the views of the child(ren), if they can be ascertained, and the importance of preserving a child’s connection to First Nations, Métis, or Inuit community if they are of Indigenous heritage.

### Views of the Child

The degree to which courts consider the views of the child varies; sometimes the child is deemed too immature to have weight assigned to their views, or even to express their views at all, such as in *B.C. and D.C.* at paragraph 195. (ONSC, 2019) In some instances, courts are more willing to take into account the child’s views, even in the case

of extremely young children. For example, in the *R.H.* case, the court held that a child could express their views non-verbally, through their attachment to the parent. (ONCJ, 2018)

From the sample of 36 cases examined, the child’s views were discussed in 19 cases. In the remaining 17 cases, this omission could sometimes be attributed to the fact that the case was an appellate decision, or one that dealt with a very narrow issue in extended society care access, making the views of the child not pertinent to the analysis. In others, the lack of discussion of the child’s views, including cases involving children as old as 7 or 8, could not be explained.

In the 19 cases in which judges broached the child’s views, every child 7 years or older had their views taken into consideration. Similarly, no child 3 years or younger had their views taken into consideration (with one notable exception).<sup>3</sup> Between the ages of 4 and 6 less consistency was noted. In one case, a 6-year-old child was deemed too immature to have their views recorded, while in at least 2 other cases 4-year-old children had their views taken into account. Lastly, in cases involving the oldest children from the dataset, judges seemed to take the children’s views most seriously. For example, in the *J.J.* case, the court gave “priority” to the views of a 12-year old child. (ONCJ, 2018)

### First Nations, Métis, and Inuit Children

In the case of First Nations, Métis, and Inuit children, the court is also required to consider the preservation of the child’s Indigenous heritage and their connection to their Indigenous community. Of the 36 analyzed cases, only 6 involved children who were either found to be First Nations, Métis, or Inuit for the purposes of the *CYFSA* or were recognized as having Indigenous heritage. Another distinction to note is whether or not the children (or their parents) can be connected to a specific First Nations, Métis, or Inuit band. If they can, then the statute gives the band or the relevant First Nations, Métis, or Inuit community the right to participate in the proceedings.

<sup>3</sup> In *Catholic Children’s Aid Society of Toronto v. R.H.* 2018 ONCJ 854 the court considered the views of a 2 year old child, stating that “The fact that the child is so young does not detract from considering that he speaks through his attachment to his mother.”



As part of the overall extended society care analysis, the court will often examine the current affiliation of the children, the birth parents, and sometimes the grandparents with the relevant Indigenous community or cultural heritage. For example in *B.C. and D.C.*, a mother’s “specific and detailed” testimony about her father’s adherence to First Nations spiritual and cultural traditions, as well as her own culturally significant tattoo were used to support a finding that the children in question were First Nations, for the purposes of the *CYFSA*. (ONSC, 2019) More generally, Courts have commented that there is a low evidentiary threshold to establish a child’s connection to a First Nations, Inuit, or Métis community, for example in *S.T.* (ONCJ, 2019). In the same case, the court specifically noted that it is not necessary to name a particular band, or First Nations, Inuit, or Métis community and that a lack of specific and detailed information does not preclude a finding that the child has First Nations, Inuit, or Métis heritage. However, courts do not always adopt such an expansive conception of First Nations, Inuit, or Métis heritage. In the *M.G.* case, the court commented that “the children’s connection to the First Nations community is tenuous at best and has not, as of yet, been an important aspect of their cultural identity.” The court also expressed skepticism about claims of a child’s or the parent’s Indigenous heritage, speculating that it may only have been introduced to bolster the parent’s position in proceedings (ONSC, 2020).

Regarding access specifically, both Indigenous heritage and a specific finding that a child is First Nations, Métis, or Inuit have been held as factors to support access in extended society care for a parent that shares that Indigenous heritage, in the cases of *S.D. and J.L.* and *M.G.*, respectively. (ONSC, 2020) Furthermore, courts will sometimes stipulate in the access order that birth parents can share information about their Indigenous culture with the child, such as in *B.S.* or take the children to Indigenous cultural events, as in *S.D. and J.L.* (ONSC, 2019; ONSC, 2020) Beyond access, courts have made other orders related to a child’s Indigenous heritage, including ordering the Children’s Aid Society (CAS) to assist the children in sustaining a connection to their heritage and informing prospective adoptive parents of the importance of this link. Examples of this can be seen in both *M.G.* and *B.C. and D.C.* (ONSC, 2020; ONSC 2020)

## Statutory Best Interests Factors

The *CYFSA* enumerates a series of factors that are to be used in determining what is in the best interests of the child.

### *The child’s physical, mental and emotional needs, and the appropriate care or treatment to meet those needs*

In several cases, courts have argued that access can help a child to improve their mental and emotional health, by helping them to develop a deeper understanding of their identity. For example, in *Y.M.*, the court held that “[a]n access order is unlikely to interfere with M.M.’s physical, mental or emotional needs. Having the mother and M.M.’s father play some small role in her life may actually help M.M. meet her mental or emotional needs – helping her to develop a deeper understanding of her identity”. (ONCJ, 2019)

In the *A.P.* case, the court stated that continued contact with the birth parents might undermine a child’s emotional stability, and that the birth parents may even be entirely unable to help the child develop a deeper understanding of their identity. (ONCJ, 2019) To this end, courts have also considered whether ongoing contact through access will disrupt the integration of the children within the new family by, for instance, demanding that the foster parents adhere to a strict dietary schedule insufficiently nutritious for the child’s needs, or refrain from the administration of vaccinations and other medications. One example of this is the *M.H.* case, which is also an example of courts noting when access visits are positive. In *A.R.*, the court considered the emotional impact on the child of inconsistent access use by a parent. (ONCJ, 2021; ONSC, 2021)

### *The child’s physical, mental and emotional level of development*

Several cases, including *Y.M.*, *J.G.*, and *R.S.* have found that ongoing contact will allow the children to access information about their family and medical history, supporting their physical, mental, and emotional level of development. (ONCJ, 2019) In *A.P.* the court noted that the mother was herself a crown ward with a lengthy relationship with the

CAS, which meant that the Society had access to the relevant family and medical information and could provide it to the child without the need for ongoing contact with the mother. (ONCJ, 2019)

***The child's race, ancestry, place of origin, colour, ethnic origin, citizenship, family diversity, disability, creed, sex, sexual orientation, gender identity and gender expression,***

***The child's cultural and linguistic heritage***

Courts have focused on preserving a connection to the child's cultural, religious, and racial heritage. This is a salient concern where it is unclear whether the adoptive parents will be a cultural match for the child, and less of a consideration when adoptive parents have demonstrated an ability to maintain the child's connection to their heritage, as can be seen in *Y.M.* and *A.P.* (ONCJ, 2019) In *B.S.*, (ONSC, 2019) this factor was been applied in favour of parental access to a child of Indigenous heritage, where the child was found to be First Nations, Inuit, or Métis, and the child's relatives had Indigenous heritage but were non-status.

***The importance for the child's development of a positive relationship with a parent and a secure place as a member of a family***

In the *K.B.* case, this factor was discussed in the context of providing children with “permanence and the stability of a caregiver who can meet their day to day needs while providing love, encouragement and security.” (ONCJ, 2018) In *B.P. and B.W.* and *J.G.*, this was described by the court as a child's fundamental need to have a “psychological parent”, different from the birth parents. (ONSC, 2018; ONCJ, 2019) Cases where courts have perceived parents as undermining the security of the child in foster care include stating that the child will return to their care in *B.C. and D.C.*, (ONSC, 2019) expressing anger at the child's use of “mother” and “father” to describe the alternative caregivers in *B.S.*, (ONSC, 2019) and failing to support the child's placement and/or maintaining a hostile relationship with the alternate caregivers in *A.R.* (ONSC, 2021)

***The child's relationships and emotional ties to a parent, sibling, relative, other member of the child's extended family or member of the child's community***

When a child has siblings, courts often take into account the preservation of relationships with those siblings as part of a best interests analysis, particularly if the siblings have a close bond. This can be seen in *B.P. and B.W.* (ONSC, 2018) In both *J.G.* and *Y.M.*, the court was particularly sensitive to a situation where one sibling has access to parents and the other does not, due to the worry that such a disparity in access could be confusing and unfair for the child in the future. (ONCJ, 2019) Furthermore, in *A.P.*, where a child's sibling has already been adopted (without access), the court looked favourably on placing the child with the same adoptive parents, to preserve the sibling relationship. (ONCJ, 2019)

***The importance of continuity in the child's care and the possible effect on the child of disruption of that continuity***

This factor is not frequently considered by courts in extended society care access proceedings. When it is considered, such as in *Y.M.*, courts have often commented that any disruption should be minimized by the structure of the access order. (ONCJ, 2019) In *B.P. and B.W.* (ONSC, 2018), the court noted that severing access would cause disruption in the child's life, but that continuing contact with the birth mother would probably disrupt it more.

***The effects on the child of delay in the disposition of the case***

This is another factor that courts have dealt with by tailoring the structure of the access (by not making it too extensive). Courts have also commented that a future, post adoption openness order discussion will not delay the process considerably, as the openness order will likely resemble the access order in cases like *J.G.* and *Y.M.*, though in other cases like *A.P.* they have considered working out an openness order to add a significant further delay in the disposition of the case. (ONCJ, 2019) The *A.P.* case is also an example of courts considering whether or not a suitable adoptive family has been found, as the lack of one (or the need to find a new one) may potentially delay the process further, especially in situations where there is a need to find an appropriate

racial and cultural match for the child. In *M.H.* the court commented that 22 months of litigation, the entire life of the child, was “too much delay”, and noted that parents will likely engage in further litigation from an “untenable” position. (at para. 245)

***The risk that the child may suffer harm through being removed from, kept away from, returned to or allowed to remain in the care of a parent***

To establish a risk to the child under this factor, evidence of a potential for harmful behaviours exhibited by the parents has been sufficient. For instance in *A.P.*, the court concluded that there was a risk of harm to the child due to the father’s history of criminality, incarceration, and substance abuse, and his failure to understand the causes of the removal of his child by the Society. Courts have also concluded that any harm that might result from ongoing contact could be prevented through supervised access orders in cases like *Y.M., J.G., R.S.*, (ONCJ, 2019) and *B.S.*, (ONSC, 2019) or observing that children may suffer emotional harm if existing contact is suspended, and access no longer occurs, like in *M.H.* (ONCJ, 2021)

***The degree of risk, if any, that justified the finding that the child is in need of protection.***

This factor was discussed in only one of the analyzed cases, *M.H.* (ONCJ, 2021)

“[249] The degree of risk factor is more relevant to placement than to access. However, the parents fixed belief system and their distrust of medical professionals does put the children at risk if the parents have a continuing role in their lives. I find that it is likely that the parents will not accept an adoptive parent who is not prepared to comply exactly with the parents’ religious beliefs. Furthermore, the mother said if the adoptive parents changed her children’s names she would not use their new names and she would find it very difficult to hear their children refer to the adoptive parent as their ‘Mummy’. There is a risk that the parents’ actions could work to break down an adoptive placement if they had ongoing access.”

<sup>4</sup> As the language in s.74(3) allows for

## **Other Best Interests Factors**

Courts have also considered a number of additional factors not enumerated in the statute as part of the best interests of the child analysis.<sup>4</sup> Some of the more frequently considered factors include the quality of the access visits, the parent’s consistency in exercising access, and whether there is a positive or negative relationship between the parents and the alternate caregivers. In *A.P.* and *J.G. and R.D.F.*, the court also looked to both the adoptive and birth parents’ experiences with contact and access regarding other children, with a positive history making access more likely to be found in the child’s best interests. (ONCJ, 2019; ONSC, 2019) Courts may also consider changes in parental behaviour, as they did in *J.G.* where the parent had a history of substance abuse or frequent contact with an abusive individual and a change in these behaviours has been seen as a positive factor in determining whether or not access between the child and the parent is in the child’s best interests. (ONCJ, 2019) Additionally, in *J.F.*, a case where the mother seeking access experienced substance abuse issues, the court did not hold this as making access contrary to the child’s best interests because the issue never interfered with the mother’s pre-existing access to the child in interim care. (ONCJ, 2018) In two cases, *R.S.* and *M.G.*, the court found that minimizing the child’s exposure to conflict between the birth parents was in their best interests. (ONCJ, 2019; ONSC, 2020)

## **Beneficial and Meaningful Relationship**

Under the old statutory scheme, this was an independent stage of the test that had to be satisfied in order for access to be granted. Since the passing of the *CYFSA*, this element has been subordinated to the overall best interests of the child analysis, as the Ontario Court of Appeal found in *J.G.* (ONCA, 2020). Examining the judicial treatment of what constitutes a “beneficial and meaningful relationship” leads to the discernment of many factors that courts use in their analysis of whether a relationship is beneficial and meaningful to the child.

The most frequently occurring factor is whether or not access visits in society care have been a positive and enjoyable experience for the child, though multiple cases clearly state that this alone is insufficient evidence that a relationship is beneficial and meaningful. An example of this can be seen in *B.P. and B.W.* (ONSC, 2018) In analyzing the quality of access visits, courts have made comments about the child's affection for the parent during access, and the child's behaviour both when they first met the parent, such as in *J.G.*, as well as at the end of the visit. (ONCJ, 2019) In *I.B.* the court considered whether or not the child looks forward to the visits. (ONSC, 2020) In a recent case, *M.H.*, the court looked extremely favourably on the fact that the parents were well prepared for the access visit with appropriate activities and snacks. (ONCJ, 2021) In another case, *VT.*, the court commented that the parents were entirely unprepared to engage in necessary routine feeding and diaper changes during an access visit. It was also noted that because of the parents' lack of demonstrated progress in gaining parenting skills, the visits remained heavily supervised by the CAS, an environment not conducive to forming a beneficial and meaningful relationship. (ONCJ, 2018) Courts have looked unfavourably on a lack of parental focus on the child during access visits, such as in *D.V.R.* (ONCJ, 2018) In that same case, the court considered changes in children's behaviour before and after access visits, such as their inability to display affection for foster parents after a visit. Lastly, in cases like *M.H.*, Courts have considered the absence of such changes as denoting a beneficial and meaningful relationship between the child and their parent. (ONCJ, 2021)

The next most frequently discussed factor is the level of contact that the parent has had with the child. This includes two distinct elements: the level of access in society care, and the time that the child was actually cared for by the parent before they were moved to society care. An example of the former is the *C.H.* case in which the court noted that 3 hours of weekly access could not be described as "significant" (and therefore not meaningful either), because the child would spend the remaining 165 hours in the week with the alternative caregivers. (ONCJ, 2018) An example of the latter is the case of *J.G.*,

where the mother had never been the child's caregiver, and had hardly seen him in his first 6 months of life; this, the court reasoned, was a factor weighing against finding the relationship was beneficial and meaningful. (ONCJ, 2019) The court also highlighted this point the *A.P.* case, noting that "the mother has not had any access to the child so clearly any visits by her would not meet any interpretation of the terms beneficial and meaningful." (ONCJ, 2019) In the same case, however, the court pointed out that, as a child gets older, even limited connections with their birth family could be beneficial and meaningful. Lastly, an increase in access during society care has weighed in favour of finding a relationship to be beneficial and meaningful, as the court found in and *J.G. and R.D.F.* (ONSC, 2019)

Another relevant issue has been whether parents have been consistent and punctual in their use of access. Courts have held that inconsistent use of access or frequent tardiness is an indication that a relationship may not be beneficial and meaningful, and *vice versa*. In the recent *M.H.* case, it was held that infrequent use of access due to restrictions and fears about the COVID-19 pandemic should not be held against the birth parents. (ONCJ, 2021)

In the *B.S.* case, the court held that a relationship may be "important to the child as a connection to her birth parent, helping her understand her roots, having another person in her life that loves her and the possibility of obtaining more medical and family history." The connection to a particular ethnic, cultural, linguistic, or religious background that can be facilitated through interaction with their birth parents has been cited as a source of benefit to the child. In cases such as *B.S.* where the child may be too young to determine whether the past and present relationship is beneficial and meaningful, courts have looked to the potential future relationship between the child and the birth parents. (ONSC, 2019)

In four cases, a parent's nexus with domestic violence and/or criminality has been held to render the relationship less beneficial and meaningful to the child. The clearest examples are instances where violence is directed at the child. In *J.J.*, the applicant father had previously been charged with assaulting the child; (ONCJ, 2018) in *B.S.*,

there was a history of child abuse while the children were in the care of the mother. (ONSC, 2019) In the latter case, the parents had been charged with animal cruelty and that rendered the relationship less beneficial and meaningful. Courts have made similar observations regarding domestic violence, even when the child was not a direct target of the violence, noting a parent's poor choice of partners and involvement in domestic violence relationships, such as in cases like *C.H.*, (ONSC, 2019) and the impact on the child of witnessing aggressive arguments and physical altercations between parents, especially during an access visit, in cases like *D.V.R.* (ONCJ, 2018)

Another factor salient to the analysis is the nature of the interactions between birth parents and CAS employees and alternate caregivers such as foster parents. In one case, *K.B.*, a mother coached the children to complain about the foster parents during access visits, frequently argued with CAS staff in front of the children, and serially violated restraining orders placed against her regarding the children's school and the foster family home. (ONCJ, 2018) Courts have looked favourably upon parents who establish positive and respectful relationship with alternate caregivers and who cooperate with the CAS, such as in the *J.G. and R.D.F.* and *R.S.* cases. (ONSC, 2019; ONCJ, 2019)

Finally, courts have also seen certain parental attributes as barriers to a beneficial and meaningful relationship for the child. In the case of a parent's struggles with mental health issues, the court's comments range from an enumeration of specific mental health problems and incidents in the *J.G. and R.D.F.* and *K.B.* cases, (ONSC, 2019; ONCJ, 2018) to general comments about the parent's issues in the *R.S.* case. (ONCJ, 2019) The second attribute courts have found concerning is drug use. In *J.G. and R.D.F.*, the court considered the parents' current use of marijuana and past use of harder drugs to be a concern. In another case, *C.H.*, the court claimed that the mother's use during pregnancy meant that the child was born with an addiction. (ONCJ, 2018) Lastly, in *A.P.* and *V.T.*, the court held that a parent's inability to attend to a child's "basic needs" made the relationship less beneficial and meaningful. (ONCJ, 2019; ONCJ, 2018)

## Impairment of Adoption

In *L.M. v. Peel Children's Aid Society*, the Court of Appeal explicitly overturned a lower court that took judicial notice of access orders impairing adoption. (ONCA, 2019) There, the court stressed that a judge's "common sense" and "informed experience" that an access order will impair adoption are not a basis, by themselves, to deny an access order. Instead, the court must examine all possible forms of access, including minimally intrusive ones like updates by letter or email, rather than outright rejecting access as a general principle.

Courts have adopted two interpretive aids for determining when an access order may impair adoption. The first is a list of reasons that an access order might deter prospective adoptive parents, from *Catholic Children's Aid Society of Toronto v. L.D.E.* (ONCJ, 2012):

1. Prospective adoptive parents might be deterred from applying to adopt a child with an access order if they are made aware that the person who has the access order might make an application for an openness order because:
  - a. They would be facing further litigation
  - b. They would not know the result of such litigation
  - c. They would not know what form an openness order might take
  - d. If an openness application is brought, the adoption will be delayed
  - e. If an openness order is granted they will have to deal with potentially difficult people and they would be required to deal with those potentially difficult people without the assistance of the Society unless the Society agreed to become involved
2. Parents of an adoptable child who have a record of being difficult to deal with and not supportive of foster placements might find their access request refused because of their past disruptive behaviour. The risk that these parents might undermine a potential placement for adoption if continued contact were permitted would likely be viewed as a reason not to grant an access order because such an order would impair that child's future opportunities for adoption.

Another factor was added in *A.P.* (ONCJ, 2019): the effect of an access order on other siblings in the adoptive home.

The second interpretive aid is a set of five attributes of birth parents that may impair a child's prospects for adoption. The first four factors are outlined in *Children's Aid Society of Toronto v. A.F.* (ONCJ, 2015) at paras. 166-169:

1. The first attribute is a difficulty with aggression, anger or impulse control. Persons with this attribute are often confrontational. This attribute may threaten the physical or emotional security of the adoptive parents and their family.
2. The second attribute is a lack of support for an alternate caregiver of the child. This might manifest itself in an undermining of the adoptive placement and the child's sense of security with the adoptive family. Persons with this attribute may be relentlessly critical of the adoptive parents and make their lives very difficult. They are usually unable to accept their reduced role in the child's life.
3. The third attribute is dishonesty and secrecy. Persons with this attribute can often not be trusted to comply with the terms of court orders or to accurately report any important issues about the child.
4. The fourth attribute is a propensity to be litigious. Persons with this attribute are usually unable to accept a reduced role in the child's life and are likely to engage in openness litigation.

The fifth attribute was added in *A.P.* at (para 132):

A person with a mental health condition, substance abuse issues, transience or chaotic lifestyle. Persons with this background may be difficult to deal with and their personal issues may result in there being difficulty in making arrangements with them for contact and as a result dissuade adoptive parents.

In some cases, like *M.G.*, courts have noted that adoption impairment should not be considered when the child's adoption is in the process of being finalized. (ONSC, 2020) On the other hand, in *R.S.*, the court

refused to consider impairment because no prospective adoptive family had been identified. (ONCJ, 2017) The latter is not a clear rule, as in many other cases courts have given extensive consideration to impairment despite the lack of an identified prospective adoptive family. Courts have also disregarded adoption impairment in circumstances where the prospective adoptive parents have indicated a desire to complete the adoption process, regardless of whether or not there was an access order, and therefore likely an openness order.

#### ***Aggressive, Angry, or Confrontational Behaviour***

Courts have grouped a variety of behaviours under this first attribute. A common theme is hostility towards foster parents in a variety of forms, including sending emergency services to the foster home, going to the foster home despite a restraining order to the contrary, such as in the *K.B.* case, (ONCJ, 2018) or merely imposing strict regulations on the child's routine at the foster home in an aggressive and confrontational way. Parents have also been assigned this attribute when they displayed anger towards CAS employees, family members or member of the community, such as in *J.G. and R.D.F.* as well as in situations of domestic violence, like the *V.T.* case. (ONSC, 2019; ONCJ, 2018) Courts have also taken into consideration the effects of aggressive or confrontational behaviour on the children, as in the *D.V.R.* case, and have also noted when this behaviour occurred during access visits, in cases like *B.C. and D.C.* (ONCJ, 2018; ONSC, 2019) Finally, in the *V.T.* case, the court took note of the fact that the parents were not undertaking any therapy or counselling, despite a history of mental health challenges and violent behaviours. (ONCJ, 2018)

#### ***Lack of Support for the Alternate Caregiver***

Birth parents have been seen by courts as demonstrating a lack of support for the alternative caregiver when they engaged in negative interactions such as imposing specific demands on the alternative caregiver. One example of this is the *M.H.* case. (ONCJ, 2021) On the contrary, court have looked favourably on positive interactions between the birth parents and alternative caregivers, such as in the *A.P.* case, where the parents had sent notes of appreciation to the alternative caregivers. (ONCJ, 2019) A lack of support for the alternative caregiver

has also been found in cases like *A.R.* and *K.B.*, where birth parents disparaged the alternative caregiver through various mediums such as paper flyers, social media posts, or mere verbal communication alleging inadequate care or even abuse. (ONSC, 2021; ONCJ, 2018) Lastly, courts have deemed birth parents who, to varying degrees, do not support the placement of the children with alternate caregiver as potentially impairing the adoption of the child. This includes the birth parents simply failing to understand the risk of destabilization presented by their re-introduction into the child's life, as was the case in *Y.M.*, (ONCJ, 2019) to more active behaviours such as coaching the children to speak negatively of the alternate caregivers, as the mother in *K.B.* did, (ONCJ, 2018) or challenging the children's growing attachment to the alternate caregivers by discouraging the children from calling the foster parents "mother" and "father", as can be seen in *A.R.* (ONSC, 2021)

#### ***Dishonesty and Secrecy***

In many cases, courts have simply declared birth parents to be dishonest and/or secretive with little accompanying commentary. Sometimes this analysis has caught behaviours such as the birth mother in *K.B.* continuing her relationship with a specific, problematic, psychiatrist, (ONCJ, 2018), a parent hiding their precarious living circumstances in *A.P.*, (ONCJ, 2019) or being dishonest about the reasons for inconsistent use of access or failing to participate in support programs as in *B.S.* (ONSC, 2019) In the *R.H.* case, the court invoked this attribute finding that the birth parents could not be trusted to comply with a court order. (ONCJ, 2018)

#### ***Propensity to be Litigious***

This attribute is mentioned far less frequently than the first three. It often arises when birth parents seem unlikely to accept the reduced level of access that openness will entail and consequently assume untenable positions in forthcoming openness litigation. The court made comments to this effect in *Y.M.*, *K.B.*, and *A.P.* (ONCJ, 2019; ONCJ, 2018; ONCJ, 2019) In the *S.D. and J.L.* case, (ONSC, 2020) the court used the mere fact that the father suffered from impulse control issues to infer that he would likely be litigious.

#### ***Mental Health or Substance Abuse Issues, Transient or Chaotic Lifestyle***

This attribute was only added in the *A.P.* case and its use by courts has been sparing. (ONCJ, 2019) In *A.P.*, the applicant father had been in and out of jail for the past decade, presumably an example of a transient or chaotic lifestyle. Only 3 of the examined cases discussed the parent's mental health and substance abuse issues, or their transient and chaotic lifestyles, in the context of access impairing adoption. In one such case, *B.S.* the parents' "unstable housing" and "substance abuse" were listed by the court as relevant issues to the determination of access. (ONSC, 2019)

#### **Case Studies on Adoption Impairment**

Considering adoption impairment attributes, the court in *J.G. and R.D.F.*, (ONSC, 2019) held that the biological parents possessed the first attribute, noting that:

The evidence in this case is that the mother and the father bicker frequently between themselves and have gotten into confrontations with other members of the community or with family members.

Ultimately, the parents were not seen as impairing the child's opportunities for adoption because they were capable of interacting respectfully with CAS workers and any contact between the children and the birth parents did not in any significant way undermine the "physical or emotional security" of the children or the adoptive parents.

In *M.H.*, the court argued that the birth parents could be considered as having the first four attributes. Three of the attributes were only briefly discussed, with the court stating that the parents were confrontational, secretive, and litigious. The court provided more analysis as to the second factor, a lack of support for the alternate caregiver, finding that the parents possessed this attribute despite a seemingly positive and accommodating relationship between the foster mother and the birth parents. The relationship was only positive because of the foster mother's willingness to comply with the parents' extensive demands on how the child should live, including specific restrictions such as what food the child could eat and what clothes the child could wear. To this

end, the court concluded that the parents would likely interfere with a potential future adoption, undermining the child's chance for adoption. (ONCJ, 2021)

### Terms of Access

The most common terms of an access order, among the cases studied, were 3-6 in-person visits per year for 1 or 2 hours, supervised by the CAS. Additionally, exchanges of photos, report cards, and information about the children's development was often ordered, usually at the same frequency as the in-person visits. Among the cases that deviated from these terms, *R.H.* provided for only access through exchanges of cards and letters, (ONCJ, 2018) *M.G.* provided for in-person visits only on special occasions, namely, birthdays and holidays, (ONSC, 2020) and *J.G. and R.D.F.* provided for in-person access once per month. (ONSC, 2019)

The court held in *J.S.R.* that the terms of access cannot be delegated to the CAS because it requires a balancing of considerations that can only be performed by the court. (ONSC, 2021) In another case, *T.H.*, the court held that changing the terms of access is a distinct issue, even when the child's status changes as a result of a status review. Therefore, CAS must justify the need for the change, even if in cases where the CAS obtains placement in extended society care on summary judgement. This is especially the case in situations where the change in access requested is a significant reduction or removes the parents as access holders, thus denying them the ability to apply for an openness order. (ONSC, 2021)

### Sibling Access

Analysis of the court's treatment of sibling access did not generate any clear trends, except that courts and the CAS seem to be committed to keeping siblings together. Of the 26 cases, 7 involved only a single child and no other children were discussed. In 3 cases, the subject of the case was a single child with siblings who were not discussed in that case. In these cases, plus 15 of the remaining 16,<sup>5</sup> the siblings involved had some form of contact with each other. This was achieved either through

a sibling access order, the siblings being cared for by the same foster parents with the intent to adopt, or sibling access arranged by the society or the foster parents.

## 3. Case Law Summaries

This section will present summaries of cases that deal with openness by itself, outside of the extended society care access context.

### *Re Proposed Openness Order for S.M., 2009 ONCJ 317*

This was the first case to discuss post-adoption openness, a fact noted by the authoring judge. This case concerned a 10-year-old child whose parents both suffered from severe physical and mental health issues, including early-onset dementia in the case of the mother. At the time of the decision, the child had regular access with his birth parents. However, his father often behaved inappropriately during the visits, making statements about the child returning home with him, while the child exhibited hesitation and awkwardness about the visits. The court concluded that the child had developed meaningful relationships with each of his parents over the course of his life thus far and that the child would benefit from a continued relationship with his parents in part due to such contact facilitating an ongoing connection to his African and Islamic heritage, neither of which he shared with the adoptive parents. The court also rejected the idea that the child's hesitation about visits could indicate that the relationship with the parents was not beneficial and meaningful, instead stating that such behaviours were normal for a child in the process of 'grieving' the parents he had lost to physical and mental health issues. Additionally, the court commented that the relationship protected by an openness order lied somewhere between occasional contact and extensive contact that might leave the child "in limbo" between the birth and adoptive parents. Lastly, the court made extensive comments about the importance of trying out an openness arrangement through 'road-testing' before making it permanent.

In the end, the court made the following openness order:

<sup>5</sup> The one exception is *K.B.* 2017 ONCJ 873, in which sibling access was not discussed at all.



## ORDER

[S.M.] will have contact with his birth mother and birth father in the discretion of his adoptive parents, with their prior express consent, with the following goals:

1. to serve [S.M.'s] needs and interests in preserving his bonds of affection with his birth parents;
2. to ensure that [S.M.] is able to keep a “pulse” on the wellbeing of his birth mother and birth father as he grows to adulthood;
3. to take into account the love of his birth parents for [S.M.], as well as their physical and mental health;
4. to promote security for [S.M.] in the care of his adoptive family; and
5. to ensure the security, integrity and privacy of the adoptive home.

### ***M. v. Children's Aid Society of County of Simcoe, 2012 ONSC 6707***

This case concerned a 5-year-old child with autism and other developmental issues. The child was transferred to foster care and, after the mother's exercising of contact under the access order lapsed, she was served with an order of termination. The mother sought a renewed access order, as a means of starting the process to reach an openness order.

In her analysis, the presiding judge acknowledged that one can imagine a potential future where the mother is a positive force in the child's life, as well as the fact that adoptions and foster care can often result in problematic outcomes that the lifetime dedication of a biological parent can help mitigate. Furthermore, evidence suggested that interactions between the mother and child had often been positive. It was noted that none of the evidence presented suggested that her inability to parent the child could be ascribed to extremely harsh life circumstances beyond her control.

The request to begin the openness process was denied in that case because the child's special needs warranted regularity and routine which the mother could not provide due to of her own issues and

precarious circumstances, as demonstrated by a lapse in contact between mid-2010 and early 2012 as the mother sought to acquire better living circumstances (in part to provide appropriate conditions for contact with the child). It was also noted that any affection displayed by the child may be a result of his developmental difficulties and would be displayed towards any person, and not because of any specific parental affection that would demonstrate the beneficial and meaningful nature of the relationship.

### ***Catholic Children's Aid Society of Toronto v. S.-K., 2016 ONCJ 242***

The children, who were 4.5 and 7 years old, had been adopted by maternal grandmother and her partner. The mother and children both sought an openness order with the same terms as the access order during crown wardship. It was found that the grandmother had provided a stable, safe, positive environment for the children. During visits with the mother, the mother engaged in presumably problematic behaviours such as discussing the legal issues with the children, crying in front of the children, and publicly indicating that she will be resuming full care of the children. These behaviours had a negative impact on the feelings and the behaviour of the children, leading to violent outbursts at school.

The court commented that openness orders, unlike access in crown wardship must be facilitated by the parties themselves and therefore, especially under an intensive contact schedule, will require good relations and even strong links between the adoptive and birth parents. It was also noted that the proposed schedule had disrupted the children's social and extracurricular activities.

Ultimately, the court concluded that the behaviour of the mother, especially her inability to accept the finality of adoption placement meant that the continuation of the relationship was not in the best interests of the children and so openness was not granted. Much of the court's language in this case centers around the burden on the adoptive parents, rather than a specific discussion of the best interests of the child.

### ***F. v. Simcoe Muskoka Child, Youth & Family Services, 2017 ONSC 5402***

In this case, the mother opposed a summary judgement motion that sought to deny her an openness order. The mother experienced developmental delays and mental health issues and had acknowledged her inability to care for the 2-year-old child, who suffered from many severe medical issues. The child's sibling lived with the birth father, and both of them will have had an openness order with respect to the sibling.

The court examined the mother's history of purportedly problematic behaviours, including outbursts claiming she was still the mother of the child, refusal to acknowledge the significant changes that come with adoption, and occasional outbursts of violence. The court further noted the mother's inconsistent use of the access rights granted under crown wardship and her problematic behaviour during the child's stays in hospital. It was also emphasized that given the child's unique needs, if this adoption were to fail, the child would likely be left to permanent foster care, heightening the importance of the comfort of the adoptive parents.

### ***M.H.L. v. H.F., 2021 ONSC 442***

This case involved a 2.5-year-old child. Both parties had already agreed on an openness order, with in person contact, but disagreed about the frequency of contact, with the father arguing for 1 visit per month and the adoptive parents seeking 3 visits per year. The child has been diagnosed with global developmental delay, and it was found that he was likely to develop further developmental issues, including autism. As a consequence of these medical issues, the court held that it was likely that the adoptive parents would have to spend a significant amount of time facilitating the child's medical care, and that on this basis, it was important to respect their views in determining the frequency of openness. Thus, the openness order limited in person contact to 3 visits per year, as was requested by the adoptive parents.

### ***L.M. c. Valoris pour Enfants et Adultes de Prescott-Russell, 2014 CSON 2921***

This case concerned a mother who sought to maintain the level of contact she had prior to adoption in the post-adoption openness order. This consisted of contact every other weekend, a weekly phone call,

and holiday access at the discretion of the society. After considering a variety of factors, the court concluded that contact with the mother had a negative impact on the children, evidenced by the children's state of perturbation and negative behaviour after contact. The court granted openness at the discretion of the adoptive parents with a minimum of four visits a year. The court opted for this more restrictive form of openness because of both the negative impact of contact on the children mentioned earlier, and because of the irreconcilability between the mother's stated desire to continue fighting for the return of her children and the adoptive parents' view that extensive contact with the mother would be destructive to the development of a new family for the children.

## Section 2: Social Science Evidence

### History of Openness in Adoption in Ontario

Adoption, which is governed by provincial and territorial law, was introduced into Canadian Common Law in 1873 (Grey and Bisset-johnson, 2013). During the 18<sup>th</sup> and 19<sup>th</sup> century, local charities and women's organizations created institutional spaces in the form of orphanages, workhouses, or industrial schools for children without parents (Brookfield, 2018). At this time, formal adoptions were uncommon, instead, children were customarily given farm or domestic service placements. By the end of the 19<sup>th</sup> century, middle-class reformers were advocating for a more nurturing and supportive environment for children, and as part of this reform the state took responsibility for young people (Brookfield, 2018). The changing moral values and beliefs of society have influenced the development of the child welfare system and are reflected in its historical progression (Fallon, 2005). Across Canada, provinces and territories started forming laws that established child welfare agencies, administrative units that were granted authority to care for dependent children and remove children from negligent families.

The new agencies were managed by social workers, an emerging profession at this time, who sought homes for the children in care through either orphanages or foster families (Brookfield, 2018). Non-kin adoptions, arranged by private channels or public agencies, grew more common in the early 20<sup>th</sup> century.

If an adoption order is made, the adoptive parents become the legal parents to the child, and the child acquires the surname of the adoptive family, as well as succession rights. The practice of adoption has changed in recent years in response to changing social needs and attitudes.

While closed adoptions were prevalent in the 20<sup>th</sup> century, in which the record of the biological parent is kept sealed and there is no contact between birth family and child, there is now mounting pressure from various stakeholders for adoptions to be kept open and contact

continued (OACAS, n.d.) In a closed adoption, the biological parents have no direct contact with their child or the adoptive family, and the adoptive family usually knows little about the birth parents (Robinson, 2017). It is intended to sever all ties between child and birth family.

Secrecy regarding birth families was once seen as crucial to the development and preservation of close ties to the adoptive families. Usually, the push for sealed records and closed adoptions was to “protect” the adoptee and adoptive parents from perceived disruption caused by the birth parents, and ultimately to allow the adoptive parents to create a clean slate for their child (Grey and Bisset-johnson, 2013).

The concept of adoption has transformed from “closed and secret” to one that recognizes the need for greater openness, transparency and acknowledges the child's history. In an open adoption, the biological parents of a child may participate in the process of placing the child with an adoptive family, and continue to have contact thereafter (Robinson, 2017). Adoption professionals have noted that birth parents in closed adoptions often live with painful emotions and fear for their children, and adult adoptees who had grown up in a closed adoption system found not having identifying information about their birth family debilitating and frustrating (Grey and Bisset-johnson, 2013).

In 1997, Congress passed the *Adoption and Safe Families Act*, which placed child safety as the paramount concern of the child welfare system (Wulczyn, 2000). The intent of the legislation was to achieve permanency for children in a more efficient manner without compromising their safety (Wulczyn, 2000). In Ontario, the department of government that regulates adoption is the Ministry of Children, Community and Youth Services. The most recent child welfare legislation in Ontario, the Child Youth and Family Services Act (CYFSA) embeds openness in the Act as the result of several milestone reports and events in child welfare. With the proclamation of Bill 179, ‘Building Families and Supporting Youth to be Successful Act, 2001’, the amended Child and Family Services Act removed access orders as a legal impediment to adoption (OACAS, n.d.). In 2006, the

government of Ontario introduced the Transformation Agenda allowing for the inclusion of openness orders and agreements where clinically appropriate (in the “best interest of the child”) (OACAS, n.d.). The 2006 OACAS Youth Leaving Care Report and the 2009 OACAS guide ‘Building Bridges to Belonging: Promising Practices for Youth’ emphasized young people’s wish for permanency and highlighted the need to increase the number of adoptions through a range of permanency options including openness. In 2009, following this, an expert panel established by the government of Ontario released ‘Raising Expectations’, a report which highlighted the need for more communication with birth families and called for openness in adoption plans.

## Literature Review

The central objectives of this literature review were to:

1. identify the breadth and scope of existing research evidence on the issue of openness in adoption in child welfare; and
2. uncover the range and nature of research on the topic

A literature review was conducted to determine the breadth of information available and to identify, collect, and synthesize information relevant to the issue of openness in adoption. The search engine ProQuest was utilized for the identification and collection of relevant studies. Search strategies were developed and refined after results were reviewed. Sources were included in the literature scan if they were peer-reviewed and contained keywords relevant to the research objective. Data sources were limited to those published in English. The final list of keywords and search terms used in the literature scan are provided below. Throughout the search process, keywords were added, deleted, or modified as different terms were discovered to enhance the search strategy.

The search term “Quasi-experimental” was added to narrow the search results, and because quasi-experimental designs were more likely to yield studies with relevant search results and more generalizable knowledge claims to the impact of openness orders on children.

The title and abstracts of records retrieved from the databases were screened for key words, anything not deemed relevant was not included and any duplicates were removed. Studies that did not pertain to the effects of openness orders were not included. A hand search of reference lists from relevant studies was also used to supplement searches. The final search result was 32 studies included in the literature scan. The results of the literature scan revealed a limited number of published articles from Ontario, and Canada in general. Of the main studies cited in this memorandum, 3 are Ontario studies, 5 are from other parts of Canada, and the remainder are from the United States, United Kingdom, Australia, Spain, Ireland, Israel, and Italy.

See Appendix A. for a description of the studies

## 1. Summary of Openness in Adoption

Openness in adoption includes maintaining a 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 (OACAS, n.d.) There are varying forms that openness within adoption orders can take, and they can differ in terms of the duration, nature, intensity, and location.

The objective of this review was to explore research on the issue of open adoptions and any evidence surrounding the benefits and limitations. Overall, the available evidence on the benefits of contact between adopted children and their birth families is inconclusive. In general, it is understood that there is no “one size fits all” model of openness. Rather, the nature of contact should be based on the individual needs of the child. There is no one definition of openness. Brodzinsky (2006) conceptualizes openness in adoption as having two dimensions: structural openness, contact between the birth and adoptive families; and communication openness, involving discussions about the child’s history and birth family (Brodzinsky, 2006; Soares et al., 2019).

Arguments that favour strengthening the quality and quantity of contact center around the potential benefits for the adopted child, adapted to the unique needs of each family, including the needs and experiences of the child(ren). Some of the benefits to openness include

helping to maintain a child’s historical roots or cultural connections, minimizing loss, and providing children with additional supports during their development (Brodzinsky, 2006). Many adopted persons and birth parents are positively inclined toward openness because it alleviates the secrecy of closed adoptions and allows for the questions and concerns of individuals to be directly addressed (Grotevant et al., 2019). In contrast, arguments against maintaining contact centre around the potential risks to the child and include, but are not limited to, continued coping with rejection from their birth parents, reducing the ability to integrate with their new family, and a sense of identity confusion (March 2015; Petta, 2005). Openness arrangements carry significant implications both at the time of placement and throughout the child’s development into adulthood (Speirs, Dunder, Sullivan, & Grove, 2003).

One of the key considerations in the debate surrounding openness is the interpretation of the risks and benefits of openness with regards to the “best interest of the child”. 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 CYFSA delineate what to consider when making an adoption decision in a child’s best interests. It is defined in most contexts as a decision made with the goal of encouraging and fostering a child’s security, happiness, and mental and emotional health. The application of this principle is much harder to define and can have different meanings for different parties (Chateauneuf et al., 2018). While there is significant case law defining the terms “beneficial” and “meaningful” in the context of determining whether there should be access to a child in care, there has been limited interpretation of the term in the context of openness in adoption.

## 2. Experiences of Birth Parents, Adoptees and Adoptive Parents in Open Adoption

A Canadian study from 1991, investigated a combined total of 300 adoptive parents (N = 76 couples, n = 152), birth mothers (N = 78), adoptees (N = 53), and adoption personnel (N = 17) who were randomly selected from the records of the provincial Department of Social Services

### Search Strategy

Search #	Years	Keywords	Databases	# of Results
1)	2010-2021	(adoption OR “adopted children” OR “adoptive families” OR post?adoption OR permanency planning) AND (open OR “open adoption” OR openness OR “openness order”)	APA Psych Info in ProQuest	1,917
2)	2010-2021	*see above* AND “attitudes” AND	APA Psych Info in ProQuest	402
3)	2010-2021	(adoption OR “adopted children” OR “adoptive families” OR post?adoption OR permanency planning) AND (open OR “open adoption” OR openness OR “openness order”)	Sociological Abstracts in ProQuest	8,652
4)	2010-2021	*see above* AND “quasi-experimental”	Sociological Abstracts in ProQuest	160
5)	<b>Final Search Result:</b> Studies were screened for relevance based on search terms, and duplicate studies were removed. Studies that did not pertain to the effects of openness orders, and did not focus on contact with birth families, were not included.			32

in an Eastern province of Canada. Information was gathered through in-depth interviews using semi-structured questionnaires containing 150 items pertaining to openness arrangements. Birth mothers and adoptees strongly supported the release of identifying information (i.e., names, addresses, place of birth, job title, place of work) to adoptees, with 88.5% and 81.1%, respectively, favouring such release. There were broad areas of agreement among the four groups represented in this study. All agreed, to varying extents, that the adoption information should be made available to the parties involved in the adoption (Sachdev, 1991). The authors noted that each member of the adoption triad demonstrated considerable concern for the other parties’ interests and feelings; each was sensitive to the privacy rights and safeguards of the others against unwanted intrusion in their lives (Sachdev, 1991).

## Birth Parents

Several studies highlighted emerging mental health issues for parents, and particularly birth mothers (Winkler & van Keppel, 1984; Petta, 2005). Several studies have also found birth parents continue to think about their children after they have been adopted in both open and closed adoptions (De Simone, 1996; Townsend, 2003; Rynearson, 1982; Wiley & Baden, 2005). Women who place children for adoption experiences profound loss (Condon, 1986; DeSimone, 1996; Deykin, Campbell & Patti, 1984; Logan, 1996; Rynearson, 1982; Smith, 2006; Wiley & Baden, 2005; Winkler & Van Keppel, 1984). A qualitative Canadian study, conducted by Krahn and Sullivan (2015) explored birth mothers experiences in current day open adoptions. The study sought to understand their loss and grief, and how they processed grief in the context of open adoption. All participants agreed that an open adoption is preferable and assisted in the resolution of loss and grief. Birth parents noted that being open about the adoption in other areas of life has also been helpful with “coping and adjusting, continual growth, and healing” (Krahn and Sullivan, 2015).

In an American qualitative naturalistic inquiry study by Clutter in 2020, ten birth fathers were recruited to explore father’s experiences with open adoption. The findings revealed that some birth fathers felt immediate attachments to their birth children at birth, had noted “magical moments” during hospitalization at birth, and had positive feelings towards the idea of open adoption. The birth fathers expressed deep regard for the adoptive parents and wanted to be a part of the family’s life in some way. The significant contact reflected in this study yielded a lasting positive outcome that appeared to produce wellbeing in the birth father, their birth children, and adoptive families (Clutter, 2020). According to Clutter 2020, open adoption “opens the pathway for a new constellation of family units”; ones with new relationships that include birth fathers (Clutter, 2020).

## Adoptive Parents

The experience of adoptive parents is under-represented in the research literature (Affleck & Steed, 2001). A qualitative study by McLaughlin et al. (2013) examining the experiences of Canadian adoptive parents, found that many of the participants initially

expressed apprehension and doubt towards involving themselves in the lives of their adoptive children’s birth families, but feelings of trepidation soon disappeared once contact was made. In many cases, it was the adoptive parents who desired more contact with their child’s birth family. These findings may provide some tacit evidence that contact should be an ongoing and negotiated process, and post-adoption support may be required to help facilitate openness arrangements and family reunions (McLaughlin et al., 2013).

Hays et al. (2016) conducted a study investigating the process of telling adoption entrance narratives (AENs), the stories of how a child was placed for adoption and integrated into an adoptive family. Participants were 165 adoptive parents who had adopted a child and were currently in an open contact relationship with at least one of the adopted child’s birth parents (Hays et al., 2016). The AENs were developed through open-ended questions on the survey. All items were assessed on a scale of 1 (strongly agree) to 5 (strongly disagree). It was found that adoptive mothers tended to tell the adoptive entrance narrative to younger children more frequently than adoptive fathers, adoptive mothers of *female* children reported higher levels of satisfaction with the birth parents of their adoptive child, and older adoptive mothers had lower relational satisfaction with birth parent contact (Hays et al., 2016).

Macdonald and McSherry (2011) also explored adoptive parents’ experience of talking to their child about adoption, as well as their experiences with post-adoption contact with members of the birth family. Twenty sets of adoptive parents were interviewed as part of the Northern Ireland Care Pathways and Outcomes Study, an ongoing longitudinal study following the outcomes and placement patterns for a group of children who were under five and in care in Northern Ireland. Adoptive parents discussed adoption sensitively with their child but were concerned that difficult and complex family histories would present a risk to the child’s self-esteem and emotional well-being (Macdonald and McSherry, 2011). All forms of contact were reported as emotionally and practically challenging for the adoptive parent; however, all were committed to making the contact experience work for the child’s benefit and were open to increased contact should the child

wish it in the future. The adoptive parents noted that relationships with the birth family did not match their expectations, although they did not have a clear articulation of the relationship they were expecting. The adoptive parents acknowledged that the circumstances influencing contact arrangements could change over time and demonstrated a willingness to remain flexible (Macdonald and McSherry, 2011).

Adoptive parents in New South Wales, Australia are being encouraged to consider open adoption of their child, including face-to-face birth family contact without agency support (Collings et al., 2020). Collings et al. conducted a mixed methods study that included an online survey (n = 76 respondents) and four focus groups (n = 30). Birth family contact was an area of widespread concern for adoptive parents. Many adoptive parents viewed birth family contact as extremely challenging due to its impact on children and interactions with agency staff (Collings et al., 2020). Adoptive parents felt that for open adoption to become the preferred permanency option, carers will need ongoing professional support. Paradoxically, adoptive families did not view current agency practices as sufficient support. These families wish for expert guidance but had a lack of confidence in the agency staff (Collings et al., 2020). There was frustration among participants at the degree of staff turnover and “recruitment of inexperienced case workers” (Collings et al., 2020). The authors note that the finding that adoptive families felt that agency staff were reluctant to change contact arrangements even when they were perceived to be traumatic for children suggests the need to develop and deliver mandatory trauma-informed approaches to training of staff (Collings et al., 2020).

Adoptive parents’ experiences of adoption, and the post-adoption process were studied following a cross-sectional qualitative design by del Pozo de Bolger et al. (2018). Participants were recruited by an invitation emailed to adoption groups in New South Wales, Australia, and eight parents, seven mothers and one father, were contacted to be interviewed. Data were collected via semi-structured telephone interviews that consisted of primarily open-ended questions and were then transcribed and analyzed through a coding framework based on commonly recurring themes (del Pozo de Bolger et al., 2018). Half of

the adoptive parents experienced the adoption process as positive, while the other half described administrative hurdles as a source of frustration (del Pozo de Bolger et al., 2018). The negative experiences were linked to beliefs by the adoptive parents that the agencies were putting excessive focus on the birth family’s requests. Themes emerged from these interviews. One theme was the feeling that the child was “belonging to two families” (del Pozo de Bolger et al., 2018).

In two cases, a strong positive relationship between the adoptive and birth families developed even after earlier tensions. Although there was apprehension from the adoptive families to meet the birth families, after a letter of gratitude from the birth mother, the fears dissipated (del Pozo de Bolger et al., 2018). In most of the cases, despite the abundant contact between these adoptive children and their birth families, none of them reported being confused about the role that person played in their lives. One of the adoptive families described the birth parents to be “part of the child’s life, but with boundaries” (del Pozo de Bolger et al., 2018). A casual approach to contact meant that it was less regular but when it happened, was described as a positive experience (del Pozo de Bolger et al., 2018). These adoptive parents indicated an openness to increasing frequency of contact with the birth parents should the child wish for the contact. Another theme “contact by all means” was reported by three families and was associated with a lack of focus on the child. The adoptive parents reported emotionally harmful experiences for the child during birth family contact, due to the birth parents’ behaviour (volatile, indifferent, or diminishing) (del Pozo de Bolger et al., 2018). Yet, despite the child’s refusal to see the birth family, the agency continued to enforce it. The adoptive parents adhered to the agency’s expectations out of fear of legal repercussions (del Pozo de Bolger et al., 2018).

Sorek, Ben Simon and Nijim-Ektelat explore the relationship between adoptive parents’ motivations for adopting children from the welfare system and their evolving reactions to their open adoption experiences. A qualitative study using semi-structured interviews with 16 Israeli adoptive parents revealed that those who adopted for child-centered reasons, most of whom have their own birth children, feel positive about open adoption and see its benefits for the child (Sorek et al.,

2020). Adoptive parents who adopted for more self-oriented reasons, for example being childless for many years, saw it as a barrier to the development of the child's identity and sense of belonging, and tend to limit communicative openness (Sorek et al., 2020).

## **Adoptees**

Soares et al. (2019) conducted a study on open adoption, and adoption-related gains, losses and difficulties arising from openness arrangements. The authors interviewed 102 children ages eight to ten, who were adopted from care (Soares et al., 2019). This study was part of broader research on Portuguese school-aged adoptees. Data were collected during home visits where adopted children were interviewed by adoption researchers (Soares et al., 2019). When asked about the gains made from adoption, participants identified the benefits of belonging to a family. The authors note that the adopted children expressed that for the first time in their lives, their right to a family had been respected (Soares et al., 2019). When asked about the gains since adoption, the children compared their past and present lives; and because of this, the authors found that children with a more adverse and difficult past identified more adoption-related gains (Soares et al., 2019). Regarding adoption-related losses, over half of the children could not identify a bad experience from being adopted. These findings need to be interpreted cautiously, as the children may not have felt comfortable sharing their negative experiences with the researchers (Soares et al., 2019). One negative aspect to adoption, noted by some children, was the loss of pre-adoption social relationships, such as those with non-relative caregivers in care. This was noted primarily by those who were adopted older. Regarding post-adoption related difficulties, the placement, adaptation, and construction of a relationship with parents seemed to be more difficult for children who were adopted later in their childhood (Soares et al., 2019).

Agnich et al. (2016) analyzed data from the American 2007 National Survey of Adoptive Parents and examined the impact of open adoption on adopted children's mental health, family relationships and delinquent behaviour. Results showed that foster care youth, adopted by a foster family, in open adoptions, have 1.96 times higher odds of

an attachment disorder diagnosis than those in closed foster care arrangements. For private adoption adoptees, the only statistically significant covariate for an attachment disorder was older age at placement. In addition to openness, those whose adoptive parents perceived a history of abuse had much higher odds of an attachment disorder (Agnich et al., 2016). The authors suggest that children in open foster care adoptions are at greater odds of receiving a diagnosis of an attachment disorder. The findings in the Agnich et al. (2016) study regarding the impact of openness must be considered with methodological limitations: Although the data pertains to children, the source of the data were the adoptive parents.

Following changes to Spanish legislation in 2015 from a more restrictive to open approach, adoptees in Spain have the possibility of post-adoption contact with their birth families. Smith et al. (2020) conducted a systematic review, assessing the literature on openness in adoption. The majority of studies focused on adoptees who were adopted before they turned one, or more generally in infancy (Smith et al., 2020). The benefits reported were found to be consistent across many of the studies, and the authors note that this demonstrates that children in open adoptions do not present with more emotional and social problems than their peers in closed ones. Smith et al. note that the results indicate that most adoptees in open adoptions are not prevented from settling into their new families by factors such as fear, anger, or confusion, but these have been barriers for a select few cases. These authors conclude that externalizing behaviour problems do not appear to be related to the type of contact that children have with their birth families (Smith et al., 2020). The authors of this study conclude, following their literature review, that the benefits of open adoptions outweigh the disadvantages but the decision to allow post-adoption contact with birth families should always be made on a case by case basis (Smith et al., 2020).



### 3. Factors Associated with Successful Openness Arrangements

#### Attachment to Adoptive Parents

Farr et al. (2014) used data from a longitudinal study of adoptive families, the Minnesota Texas Adoption Research Project (MTARP), that included a range of openness arrangements. The study examined associations between the strength of attachment and communication between the adoptive family and the birth family during the adoptee's emergence into adulthood (n = 167 adoptees). The study tracked adoptive families from the 1980s until 2014. Using qualitative and quantitative data, factors characterizing contact, satisfaction with contact and the influences of significant relationships were measured and explored. Perceptions of secure parent-child attachment relationships and sensitive and open communication with adoptive parents regarding adoption are important for emerging adult adoptees (Farr et al., 2014). Positive family communication about adoption during adulthood was predictive of feelings of satisfaction with the amount of birth family contact had in childhood (Farr et al., 2014). Openness arrangements in emerging adulthood were associated with adoptees' age. Younger emerging adults were more likely than older children to be in continuously fully disclosed adoptions (Farr et al., 2014). This may reflect trends toward openness in adoption that were increasing in the 1980s, when the Minnesota-Texas Adoption Research Project began (Farr et al., 2014). Neither attachment relationships, nor family adoption communication, varied based on the adoptees' age or sex. These results suggest that there is no considerable difference in the quality of emerging child-parent relationships in adoptive families based on age (Farr et al., 2014).

Adoptees who felt more secure in their attachment relationships reported more positive experiences of communication surrounding their adoption with their adoptive parents (Farr et al., 2014). Specifically, adoptees who perceived closer relationships to their adoptive parents during emerging adulthood reported greater satisfaction with birth father, but not birth mother, contact. This may indicate a distinctively important role of attachment to adoptive parents as related to adult

adoptees' more positive feelings about contact with birth fathers, especially since far fewer adult adoptees had contact with birth fathers than with birth mothers in emerging adulthood (Farr et al., 2014). As well, male adoptees reported being significantly more satisfied than women with their birth mother contact (Farr et al., 2014). Overall, adoptees were most satisfied with contact with both birth parents when that contact included meetings (Farr et al., 2014).

The theory that attachment security and positive adoptive family relationships can mitigate the negative impact of adoptive stressors on adoptees' later functioning is also supported by findings from a study by Balenzano et al. (2018). This study examined information on pre-adoption stressors from official adoption files of 59 adoptees experiencing adoption in Puglia, Italy. Younger age at first placement was found to be directly correlated to adoptee's outcomes, both for well-being and distress (Balenzano et al., 2018). The quality of adoptive family relationships predicted 'positively wellbeing' and 'negatively distress', confirming the important role played by adoptive family environments in adoptees adjustment. These results underline the importance of attachment, both as a risk-factor in the pre-adoptive period and as a protective factor in the post-adoptive period. The authors note that an insecure attachment, along with early adverse experiences, reinforce adoptees maladjustment (Balenzano et al., 2018).

#### Adoptive Identity

The adoptive family is more likely to agree to openness if there is trust in the birth family, although ultimately, no single adoption arrangement works well for every family (Grotevant, 2000); and the relationship depends on both parties accepting the others' role, and the recognition of everyone's contribution to the well-being of the child (Grotevant, 2000).

A study conducted by Grotevant, McRoy, Wrobel, and Ayers-Lopez (2013), found that optimal adjustment of adolescents and emerging adults was best predicted by their satisfaction level with contact, rather than with either simply the existence or type of contact (Grotevant et al., 2011). This study examined the results of the Minnesota/ Texas Adoption

Research Project. The authors found that most adoptees, regardless of age and across all contact arrangements, expressed curiosity about their adoptions, although the reasons changed between adolescence and emerging adulthood. Adolescents reported being most interested in understanding why they had been put up for adoption while emerging adults reported being most interested in their birth parents' health histories (Wrobel & Dillon, 2009; Wiley, 2017). Adoptees with no contact had interest in what their birth parents looked like and where they lived. Knowledge about these areas assist adopted individuals with what is referred to as the "construction of adoptive identity" (Baden & Wiley, 2007).

In the practice of domestic infant adoptions, some form of contact between adoptive and birth family members is common and expected (Siegel, 2012). Large-scale longitudinal studies of adoptees are limited; however, one US study examined experiences with different types of contact among adoptive families over a period of 27 years (Grotevant et al., 2011). Data was examined from the Minnesota Texas Adoption Research Project, a study of 190 adoptive families and 169 birth mothers followed across four longitudinal waves (middle childhood, adolescence, emerging adulthood, and young adulthood). Group-based trajectory modeling revealed four distinctive groups: No Contact, Stopped Contact, Limited Contact, and Extended Contact. Findings revealed the interplay among frequency of contact, satisfaction with contact, and participation in the four distinct groups. Although across the full sample there was a positive association between contact and satisfaction with contact (Grotevant et al., 2011), satisfaction varied across the trajectory groups. Results suggest that neither contact with a child's birth mother nor an adoptive parent's openness to discuss adoption-related issues can account for variance in adolescent externalizing behaviour (Von Korf et al., 2006). However, satisfaction appears to be more important than contact or adoption communicative openness in predicting externalizing behaviour (Grotevant et al., 2019).

Luu et al. (2018) focused on adoptive identity among a sample of 9 young people in New South Wales, Australia, who were adopted from the child welfare system. All participants had been placed into care

before the age of 5 and adopted by their carer(s) between the ages of 4 and 8 and had experienced significant abuse or neglect prior to their permanent removal from their birth families. In-depth qualitative analysis was conducted through interviews with adoptees. The findings of this research support an association among practices for open adoption (communicative openness), and healthy adoptive identity. Open adoption, when determined as the best option, allows young people to have a permanent family while maintaining a connection to their family of origin, ultimately promoting healthy identity development (Luu et al., 2018). Luu et al. (2018) found that the openness by which adoption issues were discussed had a more important role in facilitating identity development than the actual contact itself.

In a UK study, Neil (2012) studied children's experience of being part of their adoptive family, and how they make sense of the connection to their birth family. Forty-three adoptees who had been placed for adoption under the age of four were interviewed when aged between five and thirteen to build an understanding of how they felt about adoption. The mean age of the sample was 8.6 years old when interviewed. Most children were able to identify one or more reasons why adults would want to adopt a child, and these reasons added to their sense of integration within the adoptive family through their conceptualization of adoptive parents as wanting to create a family (Neil, 2012).

Neil (2012) argues that children fall into three main groups in terms of how they can manage the differentiation between their adopted parents and birth parents: unexplored, unproblematic, and complicated (Neil, 2012). Children in the "unproblematic" group expressed mainly positive feelings about their birth parents. They were interested in their birth family, but this was not a topic that preoccupied them. For those children who found adoption "complicated" a whole range of views of birth parents were expressed, including children who avoided thinking about their birth family (Neil, 2012). Over half of the children described difficult experiences in relation to other people knowing they were adopted, such as feeling as though children did not believe them or asked embarrassing or difficult questions that they did not know

the answers to, a finding also reported by Thomas et al. (1999). This supports the idea that adopted children think about their birth families, which in turn suggests a need for openness in adoption practices so that children may have access to that information (Neil, 2012).

Grotevant et al. (2019) is a longitudinal study, while Luu et al. (2018) and Neil (2012) are qualitative studies focusing on a much smaller sample. Overall, these studies lend support to the benefits of openness regarding a healthy adoptee identity. These studies highlight the curiosity about birth families that is common among adoptees and an open adoption arrangement can allow for access to this kind of information. Although an open adoption may not be the best decision for every situation, these studies support the idea that for many adoptees it can be beneficial in strengthening their identity development, and to help create ties to their birth family and background.

### **Caregiving Support Services/Agencies**

Caregiving support services is another factor that has been associated with successful openness agreements. Lalayants (2020) looked at the experiences with adoption support services of caregivers who adopted, or were in the process of adopting, a child from the child welfare system. Qualitative analyses of focus groups and interview data revealed that peer support, as well as participation in support groups, workshops, and community events, were reported as some of the important elements that contributed to caregivers' perceived sense of support, their overall satisfaction with the programs, and their adoption experience (Lalayants, 2020). Evidence suggests that, when in a child's best interests, contact with birth relatives and with previous caregivers can be helpful to ensure transparency, and agencies need to develop plans to facilitate and support this contact (Soares et al., 2019). Transparency also includes the child's right to access their own case records (Soares et al., 2019).

Cashen et al. (2019) examined the perspectives of 167 emerging adult adoptees on adoption agency practices. One theme that emerged was the adoptees desire for agencies to provide access to records and historical information about their background and birth parents.

Responses focused on maintaining information that would provide them with greater understanding of their identity or allow them to contact their birth families should they choose to search for them later in life. Some adoptees spoke specifically about access to medical history records and several responses advocated for open adoption (Cashen et al., 2019). While some participants advocated for open adoption, others advocated against it. Individuals who advocated for open adoption either currently had a good relationship with their birth family or expressed a desire to have this kind of relationship (Cashen et al., 2019). Individuals that did not advocate for open adoption experienced barriers to this kind of relationship such as unreciprocated desire for connectivity or a lack of contact information (Cashen et al., 2019). Negative experiences surrounding contact was a prominent theme for those who advocated for closed adoption (Cashen et al., 2019). Adoptees who advocated for closed adoption did not explicitly state that contact should never occur, but instead highlighted their ability to navigate challenges related to contact. These results were similar to Siegel's (2012) findings, where all participants believed that adoptions should be open, noting the benefits of having access to background information and having a greater number of family members who could provide love and support, but cited similar challenges to the process (Siegel, 2012).

### **Perspective of Agency Workers**

Robinson (2017) conducted a study exploring child welfare social workers attitudes toward open adoption. In 2012, in Maryland United States, 355 study packets were given to child welfare social workers for participation in the study and 97 were returned (Robinson, 2017), a 27.3% response rate. The study included a demographics questionnaire and an "Open Adoption Scale" created by the researchers to determine the participants agreement with open adoption myths and their attitudes towards openness (Robinson, 2017). It was determined that many of the adoption workers did not believe in or perpetuate any "myths" surrounding open adoption and were overall in support of open adoption practices. As well, most child welfare social workers (56.7%) indicated that they did not believe that their peers, or supervisors,

hindered them from facilitating open adoptions (Robinson, 2017). It was found that a positive attitude and approach to open adoptions led to more seamless transitions.

#### **4. Challenges Associated with Successful Openness Arrangements**

Grotevant (2019) purports that there will be cases in which any level of openness is not an appropriate option. These include instances where the relationship with the biological family would not be meaningful and beneficial to the child. The safety and well-being of the child must be a primary consideration in decisions surrounding openness and must involve a careful assessment of potential risks to the child or their adoptive family. Some of these risks and challenges to all parties involved in open adoption arrangements that have been identified in the literature are discussed below.

##### **History of Maltreatment**

The nature, frequency, and duration of contact between adoptees and birth parents' post-adoption can vary significantly (Grotevant et al., 2019). For example, results from a Canadian study in Quebec examining perspectives of post-adoption contact among a sample of 32 child welfare workers and 16 foster-to-adopt families identified distinctive challenges and dilemmas for open adoption in situations where the child comes from a family with a history of maltreatment (Chateauneuf et al., 2018). Principle factors that were identified by respondents as impacting whether contact should continue after adoption included 1) the characteristics of the birth parents and the foster-to-adopt parents involved, 2) the type of contact used (such as in person, by phone or email) 3) the best interests of the child, 4) the quality of the relationship between the child and birth parent(s) 5) the child's clearly shown desire to maintain contact and 6) the nature of the relationship between the foster-to-adopt family and the birth family (Chateauneuf et al., 2018). The characteristics of the birth parents and the adoptive parents involved was the most frequently identified. Problems associated with drug or alcohol abuse, mental health problems, deficiencies in parenting skills or negative reactions to placement are seen as being prejudicial

to factors to the maintenance of post-adoption contact (Chateauneuf et al., 2018). When birth parents are reasonably comfortable with their child's placement, consistently maintain contact and have a level of interaction, they are usually more prone to maintaining post-adoption contact (Chateauneuf et al., 2018).

##### **Fear of Rejection**

In 1997, a Canadian study (March, 1997) observed, over a 15-month period, participants attending meetings held by two self-help search groups in Ontario and conducted in-depth interviews with 60 adult adoptees who achieved contact with their birth mothers. This study examined and described the contact relationship of six female adoptee-birth mother pairs. During the interviews, three themes emerged: uncertain contact identity, fear of rejection, and a sense of dissatisfaction with contact outcome. It was believed by both parties that contact would remove the element of secrecy in the adoption, however it could not "bridge the gap of time and experience" created by the years of separation before contact occurred (March, 1997). The fear of being rejected was reported by both adoptees and birth parents, and was linked to a persistent reluctance to engage. It took a significant period of time for the women to overcome this fear, and to start revealing their identity. Although the parties noted they were happy to have met, they expressed dissatisfaction with the contact outcome (March, 1997). The negative stereotypes attached to their social position of adoptee and birth mother made each woman hesitant to bring those identities to the contact relationship. In this way, fear of rejection, and the practice of secrecy constrained their ability to communicate about contact needs (March, 1997).

Petta et al. (2005) conducted a qualitative study of 21 adoptive parents in Australia, examining the experiences of adoptive parents when faced with an adult child's searching, or reunion, with their birth family; their place in this process, and the factors that have shaped their experience. The major themes identified included fear of losing their child, entitlement and role definition, responses to the birth mother, lack of recognition of needs, and awareness raising of adoption issues (Petta, 2005). It was felt that the reunion of birth parent and child marked the occasion at which their failings and inadequacies as adoptive parents

would be revealed in the eyes of both the birth family and their adopted child (Petta, 2005). Many participants believed that a possible outcome of search and reunion was the adoptee's realization that the adoptive family was not as interesting, beautiful, wealthy, or "good" as the birth family, and feared that the adoptee might withdraw from the adoptive family. Participants also feared that the adoptee would re-evaluate them as inadequate or not necessary any longer given the presence of the birth parent. For some participants, this fear manifested itself as concern that the adoptee would be physically or emotionally taken by a birth relative (Petta, 2005; Modell, 1997).

### **Institutionalized Involvement**

The study conducted by Chateauneuf et al. (2018) links openness with the child's initial reaction to contact: if the child does not initially react positively, or simply shows no desire to meet with their birth parent in early contact, caseworkers tend to end contact completely (Chateauneuf et al., 2018). Furthermore, courts make most adoption orders without fully understanding the dynamics of the relationship and without the consent of the birth parents (Chateauneuf et al., 2018). This often leads to negative feelings after court involvement and can directly influence the nature of the ongoing contact (Chateauneuf et al., 2018). The foster families in this study reported that they were more inclined to be open to maintaining contact if it would benefit the child. Because there is no consensus regarding the definition of "best interest of the child", this leads to a wide range of interpretations (Chateauneuf et al., 2018). The authors note that this creates room for subjective opinions, and an indirect influence of personal values playing into decisions. No contact is sometimes viewed by a foster parent as being in the best interests of the child (such as if the parent makes inappropriate remarks to the child or if the contact is erratic) (Chateauneuf et al., 2018).

### **Boundary Ambiguity**

Another Canadian study, (March, 2015), describes how stereotypical notions of motherhood influence post-adoption reunion outcomes and emphasizes the birth mother's tenuous position in the adoptive family context, where it is the adoptive mother who holds the status of mother and performs the mother role (March, 2015). Data was collected

primarily from in-depth interviews with 33 reunited Canadian birth mothers. Collectively, the participants perceived themselves to be the mothers of a child lost to them through adoption (March, 2015). Adoption, thus, creates a social paradox for birth mothers who live in a culture where the preservation of biological ties predominates, and maternal instinct is assessed through caretaking (March, 2015).

Relinquishing the caretaking role contradicts the maternal instinct undergirding essentialist images of motherhood and undermines the birth mothers claims to motherhood. This paradox subjects birth mothers to a sense of boundary ambiguity that is expressed as confusion over how they should behave towards their placed child, and uncertainty over their entitlement to contact (March, 2015). March found that rather than making their own contact expectations clear to the adopted adult, participants tried to follow the adoptee's lead. Birth mothers felt that their position had placed them on the periphery of their child's life, but they accepted their socially constructed role because they found being on the periphery of motherhood was perceived as more advantageous than having no contact at all (March, 2015).

Adoptive parents have also been noted to struggle with boundary ambiguity. In the Australian study conducted by Petta (2005), some participants described a change in their relationship after the reunification and grieved for the past relationship. When participants revealed their fear of losing their child, they expressed it as resentment and anger directed at the search process or the birth family rather than overt antagonism toward the adoptee. Some parents expressed struggles with their identity. Participants noted questioning their role definition as an adoptive parent, given that there are no explicit guidelines for how to handle reunion (Petta, 2005).

The participants feared that the adoptee might withdraw from the adoptive family, however this withdrawal was noted as a different fear than being "taken" by the birth relative. Participants noted that there was a sense that the birth relative might entice the adoptee into believing that the birth family was the adoptee's "real" family (Petta, 2005). However, despite having these fears, the majority of participants did not reveal them to the adoptee, and instead continued in their role to support (Petta, 2005).

## Conclusion

This literature scan reveals that there is no “one-size fits all model” for openness arrangements, but the nature of the contact should be based on the individual needs of the child on a case-by-case basis. Overall, the evidence is inconclusive on whether contact between children and their birth families is beneficial, however, the literature scan unveiled factors associated with successful openness arrangements: attachment to adoptive parents, adoptive identity, and caregiving support services. There will be cases in which any level of openness is not an appropriate option; when a relationship with the biological family would not be beneficial to the child. The safety and well-being of the child must be the first concern in decisions regarding openness. Challenges associated with successful openness arrangements were noted in the literature scan: A history of child maltreatment, fear of rejection, institutionalized involvement, and boundary ambiguity. Many adopted people, birth parents and adoptive parents are positively inclined towards openness as it alleviates secrecy and allows for adoptees questions to be addressed. Multiple studies discussing birth parents noted that open adoption arrangements were beneficial to parents’ mental health. Several studies found birth parents continue to think about their children after they have been adopted, and openness allows for the interaction and knowledge about their children that they seek. Children having positive adoptive family relationships with open communication surrounding their adoption can mitigate the negative impact of adoptive stressors, and aid in more seamless open adoption arrangements. The relationship between the birth and adoptive families depends on both parties accepting their roles and recognizing everyone’s contribution to the child’s well-being. This literature scan demonstrates that the decision to pursue openness in adoption is a complex, ongoing process that requires flexibility, commitment on the part of both families, and continuing communication.

## Case Law and Social Science Synthesis

Judicial considerations of openness are generally embedded in litigation around access in extended society care. The assumption at law that open adoption is beneficial to children is unsupported by social science literature: there are no conclusive longitudinal studies that confirm the long-term benefits of post-adoption openness.

Another notable disconnect between law and social science involves the application of the “best interests of the child”. There is a lack of consensus regarding the definition of this overarching principle which in turn leads to a wide range of interpretations across the two sectors. For instance, while the *CYFSA* requires courts to consider the views and preferences of the child, this factor is sometimes omitted from judicial discussions about access in extended society care even in cases involving children as old as 7 or 8. The Ontario Court of Appeal in *J.G.* held that there is a “predictive element” in all decisions about the child’s best interests which calls for a more holistic analysis of the child’s relationship with the access seeker that includes considerations about the child’s future. While children’s views and preferences remain unexplored within the predictive framework of openness orders, social science data on the impact of post-adoption openness on children supports the view that children as young as 8 are able to express well-formed views with respect to openness. Additionally, while courts are also required to consider the child’s heritage and their connection to their Indigenous community or their cultural and linguistic background, there is a dearth of social science research investigating the experiences of adopted Indigenous and other racialized children involved in the child welfare system.

When applying the statutory “best interests of the child” factors, courts emphasize in their analysis permanence, stability, and security of the child, leaning towards strengthening the child’s sense of identity and their relationship to the alternate caregiver. Grounding the “best interests of the child” framework in concerns about identity formation is supported by social science literature which establishes a positive association between open adoption and the construction of a healthy

adoptive identity in children. Furthermore, courts have frowned upon parental involvement that frustrates the integration of the child within the adoptive family, a concern that aligns with social science data confirming the importance of attachment as a protective post-adoption factor. While judicial discussions of risk to the adoptee-adoptive parents’ relationship are restricted to considerations of biological parents’ behaviours and belief systems, social science literature identifies caregiving support services as a salient factor that correlates with successful openness agreements. Research suggests that adoptive parents who view contact with birth parents as extremely challenging need ongoing expert guidance that is trauma-informed and prefer institutional flexibility that allows for seamless changes to contact arrangements.

Social science literature also links openness to a child’s initial reaction to contact: if the child does not initially react positively or simply does not show a desire to meet with their birth parent in early contact, then caseworkers tend to end contact completely. At the same time, research suggests that a strong positive relationship between adoptive and birth families may develop even after early tensions, particularly in cases where the motivations of adoptive parents for adopting children from the child welfare system are child-centered – they identify the intrinsic benefits of contact to the development of the child’s strong sense of identity. Both case law and social science literature support the view that most openness orders are made without a fulsome understanding of the relationship between children and their biological parents, and without the consent of the birth parents. Yet, social science research points to a positive association between frequency of contact and satisfaction with contact, suggesting that decision-makers may consider drafting openness arrangements that include individualized supports to allow for extended contact that fosters relationship growth between adoptive and biological parents, as well as between adopted children and their biological parents.

In conclusion, successful post-adoption openness arrangements require flexibility, sustained commitment, and communication between birth parents and adoptive families. Courts have identified a set of attributes of birth parents that may impair a child's prospects for adoption, including a lack of support for the alternate caregiver. Many of these factors are reflected in social science research: substance abuse, mental health challenges, poor parenting skills and negative reactions to adoption have been found to negatively impact the maintenance of post-adoption contact. Yet, little is known on whether community supports might mitigate the risk these characteristics pose to successful openness arrangements during adoption. Lastly, while social science research has noted that openness is beneficial to biological parents' mental well-being, courts have not taken into consideration this factor, and how it interacts with the long-term well-being of the child, when drafting openness arrangements. This consideration is particularly relevant to older adoptees who may maintain contact with birth parents outside of openness orders, through social media.



## Appendix A

Relevant sections of the Child, Youth and Family Services Act, 2017 (CYFSA) are reproduced below.

### No access order in effect

#### Application for openness order

**194 (1)** If a child who is in extended society care under an order made under paragraph 3 of subsection 101 (1) or clause 116 (1) (c) is the subject of a plan for adoption, and no access order is in effect under Part V (Child Protection), the society having care and custody of the child may apply to the court for an openness order in respect of the child at any time before an order for adoption of the child is made under section 199.

### Openness order

- (4)** The court may make an openness order under this section in respect of a child if the court is satisfied that,
- (a) the openness order is in the best interests of the child;
  - (b) the openness order will permit the continuation of a relationship with a person that is beneficial and meaningful to the child; and
  - (c) the following entities and persons have consented to the order:
    - (i) the society,
    - (ii) the person who will be permitted to communicate with or have a relationship with the child if the order is made,
    - (iii) the person with whom the society has placed or plans to place the child for adoption, and
    - (iv) the child if they are 12 or older.

### Termination of openness order if extended society care order terminates

- (5)** Any openness order made under this section in respect of a child terminates if the child ceases to be in extended society care under an order made under paragraph 3 of subsection 101 (1) or clause 116 (1) (c) by reason of an order made under subsection 116 (1).

### Access order in effect

#### Notice of intent to place for adoption

**195 (1)** This section applies where,

- (a) a society intends to place a child who is in extended society care under an order made under paragraph 3 of subsection 101 (1) or clause 116 (1) (c) for adoption; and
- (b) an order under Part V (Child Protection) is in effect respecting a person's access to the child or the child's access to another person.

### Notice

**(2)** In the circumstances described in subsection (1), the society shall give notice to the following persons:

1. Every person who has been granted a right of access under the access order.
2. Every person with respect to whom access has been granted under the access order.

### Access order in effect

#### Application for openness order

**196 (1)** A person described in paragraph 1 of subsection 195 (2) may, within 30 days after notice is received, apply to the court for an openness order.

### **Limitation on placement**

- (4) A society shall not place the child for adoption before the time for applying for an openness order under subsection (1) has expired unless every person who is entitled to do so has made an application for an openness order under this section.

### **Information before placement**

- (5) Where an application for an openness order under this section has been made, a society shall, before placing the child for adoption, advise the person with whom it plans to place the child of the following:
1. The fact that such an application has been made.
  2. The relationship of the applicant to the child or, if the child is the applicant, the relationship of the child to the person with whom the child will be permitted to communicate or have a relationship if the order is made.
  3. The details of the openness arrangement requested.

### **Outcome of application**

- (6) Where an application for an openness order under this section has been made, a society shall advise the person with whom the society has placed or plans to place the child for adoption or, after an adoption order is made, the adoptive parent, of the outcome of the application.

### **Openness order**

- (7) The court may make an openness order under this section in respect of a child if it is satisfied that,
- (a) the openness order is in the best interests of the child;
  - (b) the openness order will permit the continuation of a relationship with a person that is beneficial and meaningful to the child; and
  - (c) the child has consented to the order, if they are 12 or older.

### **Same**

- (8) 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 or, after the adoption order is made, the adoptive parent, to comply with the arrangement under the openness order.

### **Consent of society required**

- (9) The court shall not, under this section, direct a society to supervise or participate in the arrangement under an openness order without the consent of the society.

### **Termination of openness order if extended society care order terminates**

- (10) Any openness order made under this section in respect of a child terminates if the extended society care order made under paragraph 3 of subsection 101 (1) or clause 116 (1) (c) to which the child was subject terminates by reason of an order made under subsection 116 (1).

### **Temporary orders**

- (11) The court may make such temporary order relating to openness under this section as the court considers to be in the child's best interests.

### **Openness order – band and First Nations, Inuit or Métis community**

197 (1) This section applies where a society intends to place a First Nations, Inuit or Métis child who is in extended society care under an order made under paragraph 3 of subsection 101 (1) or clause 116 (1) (c) for adoption.

### **Notice**

- (2) In the circumstances described in subsection (1), the society shall give notice to the following persons:
1. A representative chosen by each of the child's bands and First Nations, Inuit or Métis communities.
  2. The child.

### **Application for openness order**

- (5) A person described in paragraph 1 or 2 of subsection (2) may, within 30 days after notice is received, apply to the court for an openness order.

### **Same, society**

- (6) The society may, within 30 days after notice is given, apply to the court for an openness order.

### **The Openness order**

- (9) court may make an openness order under this section in respect of a child if it is satisfied that,
- (a) the openness order is in the best interests of the child;
  - (b) the openness order will help the child to develop or maintain a connection with the child's First Nations, Inuit or Métis cultures, heritages and traditions and to preserve the child's cultural identity and connection to community;
  - (c) the child has consented to the order, if they are 12 or older.

### **Application to vary or terminate openness order before adoption**

198 (1) A society or a person with whom a child has been placed for adoption may apply to the court for an order to vary or terminate an openness order made under section 194, 196 or 197.

### **Time for making application**

- (2) An application under this section shall not be made after an order for the adoption of the child is made under section 199.

### **Notice of application**

- (3) A society or person making an application under this section shall give notice of the application to,
- (a) the child;
  - (b) every person who is permitted to communicate with or have a relationship with the child under the openness order;

- (c) any person with whom the society has placed or plans to place the child for adoption, if the application under this section is made by the society; and
- (d) any society that supervises or participates in the arrangement under the openness order that is the subject of the application.

### **Method of giving notice to a child**

- (4) Notice to a child under subsection (3) shall be given by leaving a copy with,
- (a) the Children's Lawyer;
  - (b) the child's lawyer, if any; and
  - (c) the child if they are 12 or older.

### **Order to vary openness order before adoption**

- (5) The court shall not make an order to vary an openness order under this section unless the court is satisfied that,
- (a) a material change in circumstances has occurred;
  - (b) the proposed order is in the child's best interests; and
  - (c) either,
    - (i) the proposed order would continue a relationship that is beneficial and meaningful to the child, or
    - (ii) in the case of an openness order made under section 197, the proposed order would help the child to develop or maintain a connection with the child's First Nations, Inuit or Métis cultures, heritages and traditions and to preserve the child's cultural identity and connection to community.

### **Order to terminate openness order before adoption**

- (6) The court shall not terminate an openness order under this section unless the court is satisfied that,
- (a) a material change in circumstances has occurred;
  - (b) termination of the order is in the child's best interests; and

- (c) in the case of an openness order made under section 194 or 196, the relationship that is the subject of the order is no longer beneficial and meaningful to the child.

### **Consent of society required**

- (7) The court shall not, under this section, direct a society to supervise or participate in the arrangement under an openness order without the consent of the society.

### **Alternative dispute resolution**

- (8) At any time during a proceeding under this section, the court may, in the best interests of the child and with the consent of the parties, adjourn the proceedings to permit the parties to attempt through a prescribed method of alternative dispute resolution to resolve any dispute between them with respect to any matter that is relevant to the proceeding.

### **Temporary orders**

- (9) The court may make such temporary order relating to openness under this section as the court considers to be in the child's best interests.

### **Varying or terminating openness orders after adoption**

207 (1) Any of the following persons may apply to the court to vary or terminate an openness order made under section 194, 196 or 197 after an order for adoption has been made under section 199:

1. An adoptive parent.
2. The adopted child.
3. A person who is permitted to communicate or have a relationship with the child under the openness order.
4. Any society that supervises or participates in the arrangement under the openness order that is the subject of the application.

### **Leave**

- (2) Despite paragraphs 2 and 3 of subsection (1), the child and a person who is permitted to communicate or have a relationship with the child under an openness order shall not make an application under subsection (1) without leave of the court.

### **Jurisdiction**

- (3) An application under subsection (1) shall be made in the county or district,
  - (a) in which the child resides, if the child resides in Ontario; or
  - (b) in which the adoption order for the child was made if the child does not reside in Ontario, unless the court is satisfied that the preponderance of convenience favours having the matter dealt with by the court in another county or district.

### **Notice**

- (4) A person making an application under subsection (1) shall give notice of the application to every other person who could have made an application under that subsection with respect to the order.

### **Method of giving notice to a child**

- (5) Notice to a child under subsection (4) shall be given by leaving a copy with,
  - (a) the Children's Lawyer;
  - (b) the child's lawyer, if any; and
  - (c) the child if they are 12 or older.

### **Order to vary openness order**

- (6) The court shall not make an order to vary an openness order under this section unless the court is satisfied that,
  - (a) a material change in circumstances has occurred;
  - (b) the proposed order is in the child's best interests; and
  - (c) either,

- (i) the proposed order would continue a relationship that is beneficial and meaningful to the child, or
- (ii) in the case of an openness order made under section 197, the proposed order would help the child to develop or maintain a connection with the child's First Nations, Inuit or Métis cultures, heritages and traditions and to preserve the child's cultural identity and connection to community.

#### **Order to terminate openness order**

- (7) The court shall not terminate an openness order under this section unless the court is satisfied that,
- (a) a material change in circumstances has occurred;
  - (b) termination of the order is in the child's best interests; and
  - (c) in the case of an openness order made under section 194 or 196, the relationship that is the subject of the order is no longer beneficial and meaningful to the child.

#### **Consent of society required**

- (8) The court shall not, under this section, direct a society to supervise or participate in the arrangement under an openness order without the consent of the society.

#### **Alternative dispute resolution**

- (9) At any time during a proceeding under this section, the court may, in the best interests of the child and with the consent of the parties, adjourn the proceedings to permit the parties to attempt through a prescribed method of alternative dispute resolution to resolve any dispute between them with respect to a matter relevant to the proceeding.

## Appendix B

It should be noted that while there are a few longitudinal studies, most of the studies are qualitative in nature, with primarily White, middle-class samples.

Reference	Location of Study	Research Design	Sample	Socio-Demographics of Sample	Instrument?
March, K. (1997). The dilemma of adoption reunion: Establishing open communication between adoptees and their birth mothers. <i>Family Relations</i> , 46(2), 99-105.	Ontario, Canada	Drawn from a larger study on adoption reunion (March, 1995)  *see below  Triangulation approach: participant observation, "in-depth" interviewing and literary review	N = 12  6 female adoptee-birth mother pairs	White, single, range from 15 and 19 years of age  Only 1 birth mother of 6 returned to school after the pregnancy	
March, K. (1995). Perception of adoption as social stigma: motivation for search and reunion. <i>Journal of Marriage &amp; Family</i> , 57, 653-660.	Ontario, Canada	15-month period of participant observation held by 2 self-help search groups  Open-ended interviews with reunited adult adoptees  Based on grounded theory approach	N = 60  All had contacted their birth mother at least a year prior to interview	Prominently female  Data analysis reveals no significant relationship between their social characteristics, their search process, or their contact outcome	Open-ended interview questionnaire
March, K. (2015). Finding My Place: Birth Mothers Manage the Boundary Ambiguity of Adoption Reunion Contact. <i>Qualitative Sociology Review</i> , 11(3).	Ontario, Canada	Triangulation approach  In-depth interviews with birth mothers (interviews emerged as part of a larger study on the birth mother's perception of her pregnancy, adoption placement, and post-placement experiences; her sense of self as a birth mother; her desire for contact; and her assessment of the contact outcome)  Used comparative method (Glaser and Strauss 1967) to analyze interview data	N = 33 reunited birth mothers	White  At time of first contact: ages ranged from 27 to 75, modal age of 44  At time of interviews: modal age was 51	Semi-structured interview questionnaire (both open and closed questions)
Chateaufneuf, D., Pagé, G., & Decaluwe, B. (2018). Issues surrounding post-adoption contact in foster adoption: The perspective of foster-to-adopt families and child welfare workers. <i>Journal of Public Child Welfare</i> , 12(4), 436-460.	Quebec, Canada	Detailed examination of 16 cases of children who had been in foster-to-adopt families for less than 18 months.  A follow-up one year later with the foster family was conducted  For each case an analytical framework was created containing info on the child, placement history, problem issues with birth parents and current contact status  Semi-open interview questions designed to have participants express opinions	N = 16  *children still maintaining somewhat regular contact with at least one member of the birth family	Male: n = 6  Female n = 10  Age at time of study: most between 12 and 37 months  Foster to adopt family profile:  Heterosexual: n = 11  Homo-sexual: n = 3  Single-parent: n = 2	Coding of interviews?

Reference	Location of Study	Research Design	Sample	Socio-Demographics of Sample	Instrument?
Decaluwe, B., Jacobson, S. W., Poirier, M., Forget-Dubois, N., Jacobson, J. L., & Muckle, G. (2015). Impact of Inuit customary adoption on behavioural problems in school-age Inuit children. <i>American Journal of Orthopsychiatry</i> , 85(3), 250-258.	Arctic Quebec	School-age assessments conducted between 2005 and 2010 in the three largest villages in Nunavik  Written informed consent obtained from a parent, child provided "oral assent"	N = 277  Adopted children: n = 46  Non-adopted children n = 231	Age: between 8.5 and 14.5  Median age of child = 11.3 years	Behaviour problems assessed on the <b>Teacher Report Form of the Child Behaviour Checklist</b>  112 items rated on a 3 point scale
Krahn, L., & Sullivan, R. (2015). Grief and Loss Resolution Among Birth Mothers in Open Adoption. <i>Canadian Social Work Review</i> , 32(1), 27-48.	British Columbia, Canada	Qualitative research seeking to present birth mothers experiences in everyday terms  Qualitative method, grounded in theory of social constructionism  3 licensed adoption agencies in BC gave approval to post an invitation to birth parents  14 question questionnaire and then a 40 minute, recorded interview  Codes were generated	N = 13  Sampling was purposive, non-randomized	All female (mothers)  age range: 18-34  (majority 20 or 21)	Coding from interviews??
McLaughlin, A. M., Feehan, R., Coleman, H., & Reynolds, K. (2013). A qualitative study of adoptive parents' experience of contact in open adoption. <i>Canadian Social Work Review</i> , 30(1), 5-23.	Western Canada	Participants recruited through a "non-profit, multi-service social agency"  20 semi-structured qualitative interviews lasting approx. 90 minutes conducted with adoptive parents  (spouses interviewed separately)  Data analyzed utilizing qualitative procedures	N = 20	12 adoptive mothers and 8 adoptive fathers  Ranged in age from 30-50  All but 4 were White, and 3 with "Native ancestry"  None divorced	Coding was used to analyze interviews and to create categories  Aided by computer assisted software (Nvivo)
Sachdev, P. (1991). Achieving openness in adoption: Some critical issues in policy formulation. <i>American Journal of Orthopsychiatry</i> , 61(2), 241-249.	Eastern province of Canada	In-depth interviews using semi-structured questionnaires containing 150 items and sub-items	N = 300  Adoptive couples: n = 77  Birth mothers: n = 78  Adoptees: N = 53  Adoption personnel: n = 17	Anglo-Saxons who had adopted a child one year old or younger through the Department of Social Services	Interviews turned into a code book

Reference	Location of Study	Research Design	Sample	Socio-Demographics of Sample	Instrument?
Agnich, L. E., Schueths, A. M., James, T. D., & Klibert, J. (2016). The effects of adoption openness and type on the mental health, delinquency, and family relationships of adopted youth. <i>Sociological Spectrum : The Official Journal of the Mid-South Sociological Association</i> , 36(5), 321–336.	United States (National Survey)	<p>Cross-sectional</p> <p>Examines the impact of open adoption, and other factors on adopted children’s mental health, delinquent behaviour and family relationships by analyzing the 2007 National Survey of Adoptive Parents (NSAP)</p> <p>The adoptive mother or father completed a telephone interview</p>	N = 1,544 adoptive parents	Adoptive parents with children between 5–17	Interview responses coded
Baden and Wiley (2007). Counselling Adopted Persons in Adulthood: Integrating Practice and Research. <i>The Counseling Psychologist</i> . 2007; 35(6):869–901.	New Jersey, United States	<p><b>Literature review</b></p> <p>Began with reviewing the empirical literature on adult adoptees</p> <p>Throughout reading the articles, clinical concepts from our practice and the clinical literature that have not been empirically validated were</p> <p>The integration of both practice and research issues for adult adoptees based on these themes are discussed, and the use of case studies of clients to illustrate each of the categories</p>			
Cashen, K. K., Altamari, D. K., Grotevant, H. D., & McRoy, R. G. (2019). Hearing the voices of young adult adoptees: Perspectives on adoption agency practice. <i>Child Welfare</i> , 97(4), 1–22.	United States	<p>Participants for this study included adoptees from a larger longitudinal study on openness in adoption (Grovetant, McRoy, Wrobel and Ayers-Lopez)</p> <p>Participants were between 20–30 (Wave 3 of study)</p> <p>Participants were interviewed about their experience relevant to their experience being an adoptee</p> <p>Participants’ satisfaction with their current level of openness with their birth mother was coded on a scale from 1–4, with higher scores meaning greater satisfaction</p>	N = 167	All adoptees were adopted into same-race families, majority of participants were White	Coding of Interviews



Reference	Location of Study	Research Design	Sample	Socio-Demographics of Sample	Instrument?
Clutter, L. B. (2020). Perceptions of birth fathers about their open adoption. <i>MCN: The American Journal of Maternal/Child Nursing</i> , 45(1), 26-32.	Central and North West United States	The purpose of the study was to explore birth fathers' experiences of open adoption and contact patterns with birth children  Birth fathers of open adoptions were recruited from two agencies. Birth fathers participated in recorded telephone interviews using naturalistic inquiry.  Verbatim transcripts were analyzed for qualitative content themes.  This qualitative study used naturalistic inquiry methods.	N = 10	Ages 17-30	NVIVO used to analyze transcripts
Farr, R. H., Grant-Marsney, H., Musante, D. S., Grotevant, H. D., & Wrobel, G. M. (2014). Adoptees' contact with birth relatives in emerging adulthood. <i>Journal of Adolescent Research</i> , 29(1), 45-66.	United States	Semi-structured interviews conducted with adoptees  Participants were asked about their birth parents, and satisfaction with openness contact	N = 167 <b>Participants drawn from MTARP</b>	Predominantly White, Protestant and middle-upper class	Interview responses coded
Goldberg, A. E., Tornello, S., Farr, R., Smith, J. Z., & Miranda, L. (2020). Barriers to adoption and foster care and openness to child characteristics among transgender adults. <i>Children and Youth Services Review</i> , 109, 10.	United States	An online survey was distributed by Clark University and the Human Rights Campaign (HRC), with the goal of understanding LGBTQ individuals' attitudes, perceptions, and experiences related to adoption and foster care.  The survey asked demographic questions, as well questions assessing attitudes about adoption and foster care.	N = 2736	Sample were all sexual and/or gender minorities who were open to considering foster care or adoption as a means of family building  Majority of sample was White	Anonymous online survey hosted by <i>Qualtrics</i>

Reference	Location of Study	Research Design	Sample	Socio-Demographics of Sample	Instrument?
Grotevant, H. D., Wrobel, G. M., Fiorenza, L., Lo, A. Y., & McRoy, R. G. (2019). Trajectories of birth family contact in domestic adoptions. <i>Journal of Family Psychology, 33</i> (1), 54.	United States (Minnesota Texas Adoption Research Project)	Participants were recruited from 35 adoption agencies across the United States. The sample included adoptive families and birth mothers whose adoptions varied in post adoption openness arrangements. Wave 1: (1987–1992) Wave 2: (1996–2000) Wave 3: 2005–2008	Wave1: N = 190 birth families N = 169 birth mothers Wave 2: 177 of 190 birth families 127 of 169 birth mothers	Primarily White (93.2% non-Hispanic White, 2.1% Hispanic/Mexican American, 0.5% African American, 4.2% unknown); Protestant or Catholic (84%); and middle class (mother's education: M 15.1 years; father's education: M 16.2 years).  Families included whose adopted child was between 4–12 at the time of first data collection and couples still married	Interview responses coded
Hall, S. F., & Jones, A. S. (2018). Implementation of intensive permanence services: A trauma-informed approach to preparing foster youth for supportive relationships: C & A. <i>Child &amp; Adolescent Social Work Journal, 35</i> (6), 587–598	United States	The purpose of the current study was to explore the perspectives of staff who implemented IPS at Anu, a treatment foster care agency that serves youth throughout Wisconsin and Minnesota, and to identify the key characteristics of the model.  Participants completed an electronic survey that contained questions about the strategies they had used to guide youth through the phases of IPS and what they had learned while implementing the program. The survey consisted of 10 open-response items and was administered via the Survey Monkey website.  Follow-up interviews were conducted. The recordings were transcribed.	N = 7 Study participants were staff who piloted the IPS program at Anu	All of the participants were women and had worked with the agency for at least two years. Four of the participants reported working directly with youth, one was responsible for supervision and oversight, but had prior experience working with youth, and two were administrators.	Electronic survey  Used qualitative data analysis software to analyze the data from the responses and interviews.

Reference	Location of Study	Research Design	Sample	Socio-Demographics of Sample	Instrument?
Hays, A. H., Horstman, H. K., Colaner, C. W., & Nelson, L. R. (2016). "she chose us to be your parents": Exploring the content and process of adoption entrance narratives told in families formed through open adoption. <i>Journal of Social and Personal Relationships, 33</i> (7), 917-937	Missouri, United States	<p>Guided by narrative theorizing, the current study investigated the content and process of telling adoption entrance narratives (AENs)—or the story of how the child was born, placed for adoption, and integrated into their family—in open adoptive families</p> <p>An e-mail was sent to adoption agencies in a large Midwest state (N = 19) requesting that an announcement of the study be sent to all families currently in an open adoption. 15 agreed to participate.</p> <p>Second, participants were elicited through social networks and online forums by first contacting the group administrator and then posting the call for research.</p>	N = 165 adoptive parents	Sample were mostly mothers	<p>In an effort to systematically describe the content of adoptive mothers' Adoption entrance narratives</p> <p>(i.e., themes, role of birth parents, and evaluation of birth parents), inductive thematic analysis of the open AENs was conducted</p> <p>All items were assessed on a scale of 1 (strongly disagree) to 5 (strongly agree), thus high scores indicate high levels of the construct.</p>
Lalayants, M. (2020). Strengthening caregivers' adoption experiences through support services. <i>Child Welfare, 98</i> (3), 25-53.	New York City, United States	<p>Study focused on experiences with adoption support services among caregivers who adopted or were in the process of adoption a child from the child welfare system.</p> <p>Qualitative approach: focus groups and in-person interviews</p> <p>Researchers facilitated focus groups with using standardized questions</p>	<p>N = 19</p> <p>Participants were recruited purposively from the agency's multiple sites</p>	<p>Caregiver age range was 28-62 years old</p> <p>All female</p> <p>9 married, 5 single, 3 no response</p> <p>Respondents were African American/Black (n = 14) and Hispanic/Latina (n = 5)</p>	"The data collection instrument for the caregiver focus groups and interviews followed the same open-ended questions about the services and supports the peer supporters offered"

Reference	Location of Study	Research Design	Sample	Socio-Demographics of Sample	Instrument?
Presseau, C., DeBlaere, C., & Luu, L. P. (2019). Discrimination and mental health in adult transracial adoptees: Can parents foster preparedness? <i>American Journal of Orthopsychiatry</i> , 89(2), 192-200	United States	<p>The current study tested a discrimination-mental health model with racial socialization as a moderating variable for a sample of adult Transracial adoptees adopted by White parents.</p> <p>Participants were recruited online through adoption-related organizations, e-mail listservs from adoption and racial minority professional organizations and agencies, online community groups, and snowball sampling methods through adoption professionals, adopted persons, or persons otherwise involved in the adoptive and transracially adoptive community.</p> <p>The survey was completed online and the order of measures was counterbalanced (i.e., half of participants completed the mental health measures first and the other half completed the mental health measures last).</p> <p>The survey was anonymous and there was no incentive to participate.</p>	N = 206	<p>Sample was adult transracial adoptees between 18 and 61 (primarily internationally adopted adults)</p>	<p>Demographic questionnaire (with questions regarding their age, race etc)</p> <p>Perceived racial discrimination was measured using a modified version of the Recent subscale of the General Ethnic Discrimination Scale</p> <p>Racial socialization was measured using the Racial Socialization subscale of the Ethnic and Racial Socialization of Transracial Adoptee Scale</p> <p>Psychological distress was measured with the Hopkins Symptom Checklist-21 (Green, Walkey, McCormick, &amp; Taylor, 1988), which consists of 21 self-report items that assess level of distress</p> <p>Well-being was measured with the Satisfaction With Life Scale (SWLS; Diener, Emmons, Larsen, &amp; Griffin, 1985)</p>
Robinson, S. (2017). Child welfare social workers and open adoption myths. <i>Adoption Quarterly</i> , 20(2), 167-180.	Maryland, United States	<p>This quantitative nonexperimental study was to examine the efficacy of child welfare social workers' open adoption attitudes and their agreement with open adoption myths in predicting the relationship with their levels of openness toward open adoption.</p> <p>The research packet included the following documents: (a) an informed consent form, (b) a demographic questionnaire, (c) the Open Adoption Scale, and (d) the Levels of Openness Scale (Brown, Ryan, &amp; Pushkal, 2007; Miall &amp; March, 2005).</p> <p>Multiple linear regression was the statistical test used to assess the research question.</p>	N = 97 child welfare social workers	<p>86% of respondents were women</p> <p>More than half of the participants were African America (74%), followed by White (20%)</p> <p>The experience of the participants varied in years, with the majority being employed 10 or fewer years (50.5%), followed by those employed 11 to 20 years (37.1%)</p>	<p>3 instruments were used: (a) Demographics Questionnaire, (b) the Open Adoption Scale, and (c) the Levels of Openness Scale</p>

Reference	Location of Study	Research Design	Sample	Socio-Demographics of Sample	Instrument?
Soares, J., Ralha, S., Barbosa-Ducharne, M., & Palacios, J. (2019). Adoption-related gains, losses and difficulties: The adopted child's perspective: <i>Child &amp; Adolescent Social Work Journal</i> , 36(3), 259–268.	United States	Qualitative approach based on interviews "rather than standardized questionnaires or scales" Semi-structured interview	N = 102	All Portuguese children adopted from care Adoptive families all White Had been living with adoptive families for 5 years on average	Content analysis of interviews performed using NVivo (open coding) Categories entered into the IBM SPSS Statistics Program
Wiley, M. O. L. (2017). Adoption research, practice, and societal trends: Ten years of progress. <i>American Psychologist</i> , 72(9), 985.	Pennsylvania, United States	This article summarizes the social trends and research related to adoption over the last 10 years, including longitudinal and meta-analytic studies, increased research and conceptualization of ethnic and racial identity development, research on microaggressions, and research on diverse adoptive families, including those with gay and lesbian parents.			
Balenzano, C., Coppola, G., Cassibba, R., & Moro, G. (2018). Pre-adoption adversities and adoptees' outcomes: The protective role of post-adoption variables in an Italian experience of domestic open adoption. <i>Children and Youth Services Review</i> , 85, 307.	Puglia, Italy	The study was supported by a formal agreement between Bari University and the city's Juvenile Court (JC), with the aim of conducting a follow-up study on the effectiveness of "mild adoption" Ad-hoc questionnaire filled in by adoptees Case files of all children involved in "mild adoption" were catalogued Drew info on pre-adoption stressors from the official adoption files Through the case file review, the information was coded	N = 59	Adoptees: 30 males, 29 females Adoptive family: Mean = 9.98 years Age: average mother = 46.16 and fathers = 50.24	Questionnaire Information coded

Reference	Location of Study	Research Design	Sample	Socio-Demographics of Sample	Instrument?
Collings, S., Amy, C. W., Spencer, M., & Luu, B. (2020). How foster carers experience agency support for birth family contact. <i>Child &amp; Family Social Work</i> , 25(1), 83–91.	New South Wales Australia	<p>A mixed method study using a survey and focus groups was conducted in NSW.</p> <p>An internet-based survey was conducted with current long-term foster carers in NSW with assistance from the state child protection agency, non-governmental foster care agencies, and foster carer support groups.</p> <p>The survey explored perceptions, motivations, and barriers to adopting children from out-of-home care.</p> <p>Focus groups were conducted to provide a more in-depth exploration of foster carers' views and decision-making about adoption.</p> <p>"The purpose of this paper is to report specifically on findings about carers' views of birth family contact."</p>	<p>N = 76 respondents</p> <p>30 foster carers participated in focus groups (with a facilitator leading the discussion)</p>	<p>92% of respondents were female, majority between 25 and 45</p> <p>The majority had "unpaid work inside home" as their employment status</p>	Survey
del Pozo de Bolger, A., Dunstan, D., & Kaltner, M. (2018). Open adoptions of children from foster care in New South Wales Australia: Adoption process and post-adoption contact. <i>Adoption Quarterly</i> , 21(2), 82–101.	New South Wales Australia	<p>A qualitative study exploring the experiences of the adoption process and post-adoption contact of eight foster parents adopting children in their care through the public welfare agency in New South Wales.</p> <p>Interviews were 1:1 telephone interviews lasting 1 hour. All interviews were audio-recorded and professionally transcribed.</p>	<p>N = 8</p> <p>7 mothers, 1 father</p>	<p>"The only established criteria to participate was to have adopted a child from care through the public welfare agency in NSW"</p>	Coding framework to recognize themes in the interviews was established
Luu, B., de Rosnay, M., Wright, A. C., & Tregeagle, S. (2018). Identity formation in children and young people in open adoptions from out-of-home care in New South Wales, Australia. <i>Adoption Quarterly</i> , 21(2), 120–139.	New South Wales, Australia	<p>Face-to-face semi-structured interviews used to explore identity development for 9 adoptees</p> <p>(adoptions were open, with court-ordered face-to-face contact with birth families) *between 1993 and 2008</p> <p>Qualitative analysis</p> <p>Cross-sectional, exploratory, and descriptive study with semi-structured interviews to capture the depth of interviewees' experiences across a range of ages.</p>	<p>N = 9</p>	<p>Criteria for participants:</p> <ul style="list-style-type: none"> <li>-placed in care before the age of 5</li> <li>-resided in metropolitan area to be available for interviews</li> </ul> <p>Age: 9–23</p> <p>This sample had experienced significant abuse or neglect prior to their permanent removal</p>	

Reference	Location of Study	Research Design	Sample	Socio-Demographics of Sample	Instrument?
MacDonald, M., & McSherry, D. (2011). Open adoption: Adoptive parents' experiences of birth family contact and talking to their child about adoption. <i>Adoption &amp; Fostering</i> , 35(3), 4–16.	Northern Ireland	20 sets of adoptive parents who were interviewed as part of the Northern Ireland Care Pathways and Outcomes Study.  An ongoing longitudinal study following the placement patterns and outcomes for a population of children (n = 374) who were under five years old and in care in Northern Ireland on 31 March 2000.  This article is based on a random sample of 20 of the adoptive parent interviews which were analyzed with a particular focus on openness.	N = 40  (20 sets of adoptive parents)	Of the 20 children referred to in the interviews, 4 were having face-to-face contact  Of the sample, 6 had no contact with birth family at all	Interviews were analyzed following the principles of Interpretative Phenomenological Analysis (IPA)
Neil, E. (2012). Making sense of adoption: Integration and differentiation from the perspective of adopted children in middle childhood. <i>Children and Youth Services Review</i> , 34(2), 409–416. doi: <a href="http://dx.doi.org/myaccess.library.utoronto.ca/10.1016/j.childyouth.2011.11.011">http://dx.doi.org/myaccess.library.utoronto.ca/10.1016/j.childyouth.2011.11.011</a>	Norwich, UK	Forty three English domestic adoptees who had been placed for adoption under the age of four (mean age 21 months) were interviewed when aged between 5 and 13 (mean age 8.6 years). Seventy percent had been adopted from the public care system, and most retained some contact with their birth family.  Qualitative analysis	N = 34	Twenty-five were boys (58%) and 18 were girls. The children were aged between 5 and 13, although only one child was as young as five, and only two children were 12 or older. The mean age of children was 8.6 years (SD = 1.9). Three children had been relinquished for adoption by their teenage birth mothers.	Transcripts were coded using NVivo 9 to separate out what the child had said under each of the three following themes: feelings and views about their adoptive family; feelings and views about their birth family; feelings and views about what it is like to be an adopted child.
Petta, G. A., & Steed, L. G. (2005). The experience of adoptive parents in adoption reunion relationships: A qualitative study. <i>American Journal of Orthopsychiatry</i> , 75(2), 230–241.	Perth, Australia	A semi-structured interview schedule was used as a guide in conducting interviews of between 1- and 2-hr duration	N = 21 adoptive parents whose adoptive children were at least 18 and had participated in reunion with a birth parent	16 adoptive mothers and 5 adoptive fathers  Ages: 50–83	"Using the method detailed by J.A. Smith (1995) and used by Affleck and Steed (2001), we carried out theme analysis. We read the first transcript and studied it in detail several times. This resulted in two sets of annotation"
Smith, M., Lucía González-Pasarin, Salas, M. D., & Bernedo, I. M. (2020). Review of benefits and risks for children in open adoption arrangements. <i>Child &amp; Family Social Work</i> , 25(4), 761–774	Spain	Conducted a systematized review (Lit search)  Inclusion criteria: articles were primary studies examining the benefits and/or disadvantages of open adoption  Only national adoptions considered.	N = 24 articles that were eligible for review  *The search covered the period 1995–2018		

Reference	Location of Study	Research Design	Sample	Socio-Demographics of Sample	Instrument?
Sorek, Y., Ben Simon, B., & Nijim-Ektelat, F. (2020). Motivation matters: Parents' path to adoption as related to their perceptions of open adoption. <i>Children and Youth Services Review</i> , 118, 9.	Israel	A qualitative study using semi-structured interviews (audiotaped and transcribed) A topic guide with specific questions was developed	N = 16 adoptive parents 10 mothers, 6 fathers	Most of the respondents were married; four were single mothers. Four of the adoptive families had birth children.	Coding of interviews
Winkler & van Keppel, 1984 (Book)	Australia	National, cross-sectional study of Australian mothers who placed their first children up for adoption  Analyses of data obtained from volunteers through questionnaires and interviews	N = 213	The women were all single at the time of children's birth	Survey instrument used: "The Questionnaire for Relinquishing Mothers"



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