

**Case Comment – N.P.T.S. and CCAS Toronto, et al, 2016 ONCJ 242, 2016 CarswellOnt 6752**

Curtis J as she notes at paragraph 23 is correct that Openness is not defined in the *Child and Family Services Act, R.S.O. 1990, c. C.11*; nor is it defined in the Regulations to the *CFSA*. So what is Openness if it is not defined? Openness as noted by Curtis J in paragraph 27 and in *K. (T.L.) v. Children’s Aid Society of Haldimand Norfolk, [2015] O.J. No. 6235, 2015 ONSC 5665 (Ont. S.C.J.)* is quite different than access pursuant to section 59(2.1) of the *CFSA* after an Order of Crownwardship is made.

Access according the *CFSA* and the Courts (see *Catholic Children’s Aid Society of Toronto v. M. (M.), [2012] O.J. No. 3240 (Ont C.J.)*, para. 198.) is an order that is made where a Court is satisfied that (a) the relationship between the person (usually a biological parent and sometimes a relative who had care of a child immediately before the child was apprehended) and the child is “beneficial”, which the court have defined as a relationship that is significant to the child or youth, and “meaningful”, which the Courts have defined as a relationship that is advantageous to the child or youth and (b) the ordered access will not impair the child’s future opportunities for adoption. Whereas Openness in accordance with section 136(1) of the *CFSA* denotes maintaining some degree of contact between adopted children and youth, their birth families, and other individuals with whom the children or youth have had significant relationships prior to the adoption.

As such as Curtis J states at paragraph 30 “an openness order does not necessarily mean that there will be direct and exclusive contact between the person who previously enjoyed access and the child”. Rather Openness connotes as stated by Curtis J “some contact post-adoption between a child and a member of the child’s biological family (or other person who enjoyed a significant emotional tie with the child) post adoption” through means of things such as the exchange of pictures or letters or perhaps some occasional contact on special occasions, which be usually left to the discretion of the adoptive parents as per *Catholic Children’s Aid Society of Toronto v. M. (M.), [2012] O.J. No. 3240 (Ont C.J.)* at para. 198 and *Children’s Aid Society, Region of Halton v. G.(T.A.) (2012), 2012 ONCJ 746, 2012 CarswellOnt 15621 (Ont. C.J.)*. Therefore, the key thing to remember when dealing with Openness Orders is that they as Curtis J notes at paragraph 32 “must not be confused with access” because after an adoption order is made, the parent child-relationship that previously existed between the child and their biological parents is terminated and as noted above a new legal relationship is created between the adoptive child and their biological parents.

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