Submission to NSW Inquiry into Adoption Practice.

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Subject: The Adoption Legislation Review 9 Feb.1976 also known as the McLelland Report.

Preamble.

This submission will examine the recommendations of the McLelland Committee and the subsequent attempt by the Government in 1980 to bring these recommendations into legislation.

The McLelland document and the subsequent 1980 Hansard clearly shows an adoption industry with little concern for the well-being of natural parents of children earmarked for adoption.

The McLelland Review report in particular, shows the mindset of an industry in crisis - that crisis being a diminishing supply and a growing demand for product.

The McLelland Review represents the adoption industry's survival strategies. As with any human endeavour, self interest is the overriding factor, and it is quite clear from the recommendations of the committee, how career longevity and personal philosophical preferences were to take precedence over the rights of natural parents and the responsibilities of consent takers to ensure those rights.

Make Up of Committee.

Miss M. McLelland: Head of Social Work at Sydney University.

Mrs M. MacDonald: Principal Officer Catholic Adoption Agency.

Note: Ms MacDonald, by her own testimony to the current Inquiry, admitted to repeatedly acquiring consents by illegal means. For example, she admitted that she would often only read the last few lines of the consent document to the surrendering mother. (1) She admitted taking consents from mothers who intended revoking their consent. (2) This contravened Social Work practice to gain a firm and reasoned consent before preparing documents (3) and to not take a consent at all "if there is any uncertainty or vacillation". (4) A mother signing a consent with the intention of revoking it, is clearly a mother in need of short-term foster care for her child, an option that she is supposed to have firmly rejected before signing a consent.

The acceptance of consents by Ms MacDonald with the clear knowledge that the mother intended revoking is a very questionable adoption work practice, one that becomes particularly relevant when this submission considers the Review Committee's attitude to revocations.

Mr T. Greenwood: Supreme Court Registrar of Adoptions. Clearly, Greenwood had a vested interest in maintaining the illusion of legality over any adoption orders he had previously signed. In 1992 Greenwood was appointed as judge in the case *W v Department of Community Services,* in which he failed to disclose his conflicts of interest in the case, then subsequently threw out all the clearly documented evidence of drugging and kidnapping, before aborting the trial.

Dr Ferry Grunseit: Hospital Gynaecologist/Obstetrician who is on record as stating in 1973, that any teenage girl who gets herself pregnant, is probably mentally retarded. (5) It is a fascinating commentary on the NSW political system, that a man with such an attitude should be cited in the Wood Royal Commission as the Children's Commissioner.

Rev. W. Payne: Principal Officer Anglican Adoption Agency.

Mr W.C. Langshaw: NSW politician and proponent of the practice known as "rapid adoption." At the 1967 proclamation of the 1965 *Adoption Act*, Langshaw spoke despairingly of the demise of "rapid adoption" under that legislation. (6)

Mr P.E.Quinn: representative of the Department of Community Services (Youth and Community Affairs).

Mrs P Ryall, Mr W. Checkley and Mr R.E. Sallaway are members of the committee unknown to this writer.

However, with 6 out of 10 members clearly committed to adoption as a career path, it is obvious that the Review Committee was stacked with people whose commitment to the well-being of surrendering parents was subservient to their own self-interests.

The Language used in the Introduction to the Review.

The language used by Miss McLelland in her introduction is of great interest.

In the first line she speaks of *"an adoption **programme**"* rather than what might have been more appropriately termed an adoption service.

It is a semantic criticism, but it is a telling insight into the way this committee viewed adoption.

Still on page one, McLelland refers to adoption as a *"complex system"* which needed to *"operate effectively".* What efficient operation might mean and the hindrances to it, in terms of the adoption process, are unveiled later in her review.

McLelland describes the relationship of a newborn child to its natural parents as *"his **own** parents"* juxtaposed against his *"adoptive parents"* clearly defining that the biological parents of the child are the real parents.

McLelland's use of the fairly common term *"surrender"* to describe the act of a natural parent signing a consent, is probably most appropriate as the word conotates that the act was preceded by a war in which the weaker combatant was subdued. In the light of the evidence before the 1998/99 Inquiry, this seems a most accurate description.

The General thrust of the Introduction.

The McLelland Review Report is only onto page 2 when the dominant attitude is revealed. McLelland refers to submissions from adoptees, adoptive parents and natural parents then states:

"They nevertheless have to be placed in the broader, substantial submissions of those groups practising in the field of adoption ... It is the committee, which has, by implication, also considered their rights. They are those of virtually any organization in the welfare field - that is the right to expect sound legislation and regulation of practice, to be able to offer services assured of legal support, freedom from time-consuming unnecessary detail ... and possibly do research of a higher order."

Note how the views of those affected by adoption practice are made secondary to the views of the practitioners.

McLelland justifies this by reference to the comparative numbers of submissions to the committee, but those numbers are probably skewed by the higher profile of the Review Committee among the industry. It is not an indication of the likely interest or value of opinion from the wider community.

The Review Report calls for *"sound legislation"* by which to practice. Later in this submission we will see exactly what the Review Committee considered as sound legislation.

Note also that career longevity and satisfaction for adoption workers by way of ongoing research opportunities, are higher on the McLelland Committee's agenda than the rights of surrendering parents or indeed the interests of the adoptee or adopter. This is reinforced in the tone of the remaining portion of the introduction which states on page three:

"One of the obstacles to effective research has been the way in which the legislation restricts access to information. We consider that although these restrictions are quite proper, they should on no account stop legitimate and authorised professional investigation. The Director should have the power to grant access to records for such research."

A constant complaint from adoption workers is that they were always understaffed, and overworked. How then did they envisage having the copious amounts of time required for meaningful research? Whose interests would be served by the opportunity? The practitioners or their 'clients'?

Further, on page 67 of the McLelland Review Report, the Committee denied access to information to adoptees, adoptive parents and natural parents. The committee therefore, was seeking to place adoption practitioners in a privileged position with respect to information, enabling them to control information regarding adoption and to skew any research according to their own needs and biases. (6a)

While this portion of the Introduction pleaded the consent takers' cause for more funds to conduct research, it also pleaded their cause for more funds to extend services. Whatever the merit of these pleas it is clear that the committee's focus is centred on the needs of adoption practitioners first, while other considerations come a distant second.

In concert with this, the Introduction also recommends a reduction of red-tape, and record keeping, again, serving the needs of the practitioner and not the needs of the 'client.' The plea for *"freedom from time-consuming unnecessary detail"* is of some amusement to this writer, who discovered in 1998 that Catholic Adoption Agency had kept no records of his own face to face meetings with the consent taker. Centrecare blithely excused the oversight saying, "Oh well, record keeping wasn't very good back then." (7)

One wonders what aspects of so-called 'red-tape' were actually administered if records of face-to-face meetings with the natural parents weren't filed.

The Introduction also notes that

"the Department operates one of the largest adoption services in the world."

In a country of Australia's population and in the light of the current Parliamentary Inquiry's revelations regarding some of the methods employed to secure children for adoption, this statement from the McLelland Review Committee's introduction is a telling admission.

Review Page 9: The Preamble.

The philosophy, attitudes and practices of the adoption industry under the 1965 Act are almost offhandedly summed up in the first paragraph of the Review's page 9 preamble. As an admission of how the adoption industry operates, it speaks for itself in great decibels:

"The present Act [1965] *... is based on the philosophy that a couple who are not unacceptable are* ***entitled*** *to a child ... they have an* ***inalienable right*** *to a child when their turn comes up."* [Emphasis added]

Any comment on this as a philosophy by which to be running the adoption industry, would seem superfluous, although Craig Wilson's words to the current Inquiry are poignant in comparative understatement:

"It would seem that there was a bias towards the adopting parents." (7a)

The following paragraphs of the McLelland Review through to page 10 of the Report give the arguments for changing this philosophy. These arguments are not based on greater concern for the rights of the child or the rights of the surrendering mother, but merely based on the 'unfortunate' fact that supply had dried up.

The committee saw nothing wrong with the above philosophy *per se*. It had just become an unworkable philosophy upon which to base work practices, because of changes in the demand/supply ratio.

Since the adoption industry so unashamedly operated on the assumption that every infertile couple had an *"inalienable right"* to another person's offspring, it is little wonder that abuses of surrendering parents rights abounded.

The Tribunal.

Page 11 of the McLelland Review Report is taken up with attempts to justify the removal of the Supreme Court from the adoption process and in order to introduce a streamlined, industry-controlled adoption tribunal.

The main justification is summed up on page 11:

"Those involved in the practice of adoption should also be involved in the decision-making process, not only in relation to individual cases, but also in the determination and the refinement of criteria. Logically then, an expert tribunal rather than the court should make decisions in adoption matters ... [with] *a right of appeal to the Court."*

Self-interest again. Particularly when it is revealed who was to sit on this Tribunal. From

page 14:

(a) Barristers or solicitors

(b) Medical practitioners

(c) Social workers (8)

In a not so amazing coincidence, these three classes of people, very closely parallel the classes of people sitting on the McLelland Review Committee. Equally, these three classes of people are the same as those who are now being exposed as the perpetrators of *"illegal and unethical practices"* (9) in the current Inquiry.

The powers of this Tribunal and the details of its personnel therefore, make disturbing reading, particularly when the logic behind its creation, is shaky and self-serving.

According to page 13 of the McLelland Committee report:

"The Tribunal has jurisdiction in all matters except recognition of foreign orders, applications for discharge of orders, appeals in matters pertaining to consents or on points of law."

Specific powers of the Tribunal are spelt out to include:

"Applications for dispensing with consents;

appeals against revocation by the Director of the licence of an agency;

applications for access to otherwise restricted adoption records ."

Note: for a natural parent to get a fair hearing regarding the dispensation of a consent, she would have to first appeal to this (stacked) Tribunal, then at further expense, appeal to the Supreme Court.

Equally, the Director of the Ministry has to appeal to this (stacked) Tribunal to revoke an adoption agency's licence, thus demeaning the position of the Director to be subservient to (quite possibly) an adoption consent taker.(10)

Furthermore, those who earlier advocated easier access to restricted records for themselves, but not those on whom the records are kept, now set up a system which will assure them of that access.

Again it seems self-interest overrides all other considerations.

The McLelland Committee further recommended that the Tribunal (controlled by those with like-minds as the Committee) should have the power to dispense with the necessity for adoption agencies to be reported on by the Director. (11) Most coincidentally, when this came before the House, it was recommended that the Catholic Adoption Agency and the Anglican Adoption Agency be given a complete exemption from having to report to anybody! (12) As mentioned earlier, Catholic Adoption Agency and Anglican Adoption Agency both had high profile representation on the Committee. Equally coincidental, is the fact that these two agencies seem to be the two most named as unethical in the current Inquiry, so much so that CAA has been forced to offer an apology.

A Day in the Life of the Tribunal

The day to day operation of the Tribunal and descriptions of its make up, can be found on page 14 of the McLelland Report.

The basics are that a Tribunal of just three would decide most matters (one judge, one social worker, one doctor) while policy direction would be set by five members sitting.

This placed the fate of vulnerable newborns and their already traumatised natural parents, in the hands of three people with (probable) vested interests!

With the benefit of hindsight that the current Inquiry revelations give us, can we honestly expect that such a Tribunal would have given an independent hearing to natural parents in an unconstitutional contest to try and prove their worth as parents? How could any decision brought down by this Tribunal ever have been independent when the careers of those sitting on it, relied on a maintenance of supply of adoptable newborns?

And with the veneer of judicial finality to its decisions, was this Tribunal any more than another means of coercing compliance from the ever shrinking ranks of natural parents, to surrender their children to strangers? And remember, we speak here of those surrendering parents who by some quirk of fate had stumbled upon their possible rights of appeal to the Tribunal in the first place. It seems highly probably that this Tribunal was proposed by the adoption industry, for the adoption industry and not for the impartial administration of adoption law.

Control of Practice.

The writer notes in passing the irony inherent on page 33 of the McLelland Review Report, which states:

"All rules which govern the process [of adoption] *must be clear, explicit, unambiguous and made public ... We must be sure that he* [the child to be adopted] *is free to be adopted."*

It is with a certain distaste that we now find out some of the people on that very committee were responsible for the removal of children who were not necessarily *"free to be adopted"* mainly because those self same people chose to keep the *"rules governing adoption"* far from *"clear, explicit, unambiguous and ... public."*

Secrecy and maintenance of client ignorance were the bricks and mortar by which these people built their careers.

To dispense with consents.

The 1965 Act contained certain provisions whereby the need for a consent could be dispensed with.

The McLelland Review Committee sought to extend the dispensation provision to enable the new Tribunal to have the power to dispense with the need for a consent:

"where, in the opinion of the Tribunal, the child has established a stable relationship with his foster parents..." (13)

The opportunity for this power to be abused is in fact, unlimited.

One of the adoption alternatives supposed to be offered to natural parents was the opportunity for short or long term foster care. (14) This was rarely, if ever offered by the consent taker, as the multiplicity of independent submissions to the current Inquiry will testify. (15)

Under the scheme proposed by the McLelland Committee's recommendation 15, a consent taker could suggest foster care to give the traumatised mother some breathing space, then upon her request to have her child returned, the natural mother would be facing years of appeals, by which time the court would inevitably decide that the child had a steady relationship with the foster parents and would therefore remain with them.

This did in fact happen on a number of occasions, even without these provisions. Natural parents would file a suit claiming their child had been adopted illegally, win the case, but because the inevitable appeal would drag on until the child was 5 or 6, the court would rule in the foster/adoptive parents' favour, for sake of the relationship.

In one particular case mentioned in Hansard as having been *"resolved with dignity"* (16) that outcome was in fact, the courts granting custody to a single adoptive mother who beat the child senseless whenever the child mentioned anything about its natural parents. That child consequently grew up in such fear, that in order to survive, she has turned all the anger she feels for the beatings, onto the natural parents who battled for the child's first 6 years, to have their child returned, after winning their suit for illegal adoption. (17)

What hope did a natural parent have of any sort of justice under a Tribunal such as that proposed by the McLelland Committee?

Conversely, the child could be "rapidly adopted" to the selected parents as foster parents, then through process of appeals and so on, win full custody on the grounds that a relationship had been built up with the child from day 5.

Recommendation 16

Page 35 of the McLelland Committee Report contains recommendation 16, a further widening of the provisions to dispense with the need for a consent, on the grounds that a natural parent has not responded to correspondence regarding the intention to dispense with consent. Without going into every possible scenario which would lead to a natural parent inadvertently failing to answer correspondence (eg: sickness, accident or postal misadventure) it is quite clear that this recommendation makes life easier for no one except the adoption practitioner.

It also opens the opportunity for adoption practitioners to gain greater control over the process, especially by way of ambiguous instructions in correspondence. It would not be hard to imagine an unscrupulous or incompetent adoption worker writing to a natural parent but not making it clear that failure to respond would result in the loss of a right to consent to or even contest an adoption. This could even result from failure to answer telephone messages.

This recommendation carries no time period or warning sequence, neither does it require that correspondence be in writing. It is all up to an adoption worker's discretion, a dubious prospect at the best of times.

This scenario becomes increasingly likely when it is realised that the Committee regarded a 'reply to correspondence' to mean a formal contesting of the dispensation. (18) Noting consent takers' systematic failure to inform natural mothers of the machinations by which they could revoke their consents through the Supreme Court, it seems a logical assumption that adoption workers were not likely to inform a natural parent of the machinations by which they would need to contest a dispensation.

Recommendation 16 very quickly can be seen as just another opportunity for the adoption worker to confuse the natural parent who does wish to contest the dispensation, by forcing that natural parent to receive advice only from the adoption agency, which of course, is staffed only with personnel who have a vested interest in the maintenance of the dispensation.

It is of further interest that in this portion, the Committee refers to the natural parent as *"him"* signalling that this provision was aimed firmly at natural fathers, and that those on the committee knew that in certain circumstances, fathers were required to sign consents. This shall be further examined shortly. However, in the light of revelations at the current Inquiry, that natural mothers were not properly informed of their rights and were rarely informed of the procedures by which they could revoke their consents, it becomes increasingly obvious that recommendation 16 was designed to totally defraud fathers of their rights, since adoption work practice actively disenfranchised fathers from any knowledge of their entitlements in adoption proceedings.

'Frivolous' revocations

Pages 39 and 40 of the McLelland Committee Report, are taken up with arguing the recommendation (20) that

"means should also be devised to prevent frivolous revocations which are followed by further consents."

Again, the dangers of abuse of this new provision, far outweighed any benefit, a benefit which accrued only to adoption workers.

The unnerving thing about this particular recommendation from the McLelland Committee, is the complete dismissal of the obvious question: why are these so-called 'frivolous' revocations so numerous, that they were deemed a large enough problem for this committee to move against?

Even more unnerving is the fact that the committee touches upon the reasons without realising. From page 39/40:

"30 days [revocation period] *is not by any means lengthy....*[There is] *difficulty in many circumstances of establishing that a prior consent had been given....*[There is] *the possibility of doubt by the person giving the consent as to his or her rights.*

These statements amount to nothing less than an admission by the upper echelon of the adoption industry that adoption workers were not doing their jobs in informing the prospective surrenderor of their rights and alternatives.

The response of the McLelland Committee members is not to examine the clear dereliction of duty on the part of their own profession, but to seek to change the law to their own advantage. Page 40:

"We feel this problem [of frivolous revocations] *will be solved by the Tribunal being given the power* ***to dispense with consents*** *and that to cover such cases the section of the Act dealing with dispensation (16) should be reworded so as to read 'by dispensing with the consent where adoption would promote the interests and welfare of the child'. This proposed wording, although somewhat broader than the existing terms, would cover such cases. Elsewhere we have recommended that the Tribunal have power to make interim orders - another method of dealing with this problem."* [Emphasis added]

Note: the adoption industry was to be the sole arbiter of whether adoption would promote the interests and welfare of the child.

Note: the McLelland Committee felt that dispensing with consents was not enough, and that the Adoption Industry Tribunal should be given additional powers, ensuring the Tribunal's total domination over the rights of the already traumatised mother.

Quite clearly, the desperation of the adoption industry to access adoptable newborns has overridden any proper perspective on the real problem, that being consent takers who did not explain rights, pressured consents from unwilling surrenderors, and regarded as a nuisance, any desperate mother trying to buy herself some time beyond the admitted paltry 30 days.

The current Parliamentary Inquiry has in fact heard evidence from a witness who did revoke her consent on a couple of occasions in the early 1980s. In her evidence, this surrendering mother had clearly not been availed of her rights and alternatives and was clearly wanting to keep her child if she could only buy herself some time by revoking. That particular girl was in need of short term foster care, not to be regarded as some sort of barrier to a clean-break adoption. As noted elsewhere in this submission, the McLelland Committee was seeking to short circuit the short-term fostering alternative to their own advantage.

Undue Influence

The McLelland Committee Report's disregard for mothers of newborns and its own megalomanic attitude to the rights and powers of adoption workers goes from bad to worse on pages 40/41 as it deals with undue influence.

Not a word is tabled regarding the common and well-known practice of undue influence exerted by both adoption workers and parents of prospective mothers.

Instead the McLelland Committee seeks only to add to the pressure on the mother and those around her, to go through with an adoption:

"Recommendation 21: It should be an offence for a person to exercise undue influence on another person to revoke a consent to adoption."

Astoundingly, the Committee gave no cogent argument as to why this recommendation was a good idea apart from the fact that the Committee considered it so. Clearly, this Committee's priority was not the right of a mother to raise her own child, nor was it the right of a child to be kept within its natural biological sphere. Since retention within the biological sphere was recognised by the United Nations and all the professional literature of the time as being in the best interests of the child, it follows that the McLelland Committee did not have as its highest concern, what was best for the child, but set their own priorities and attempted to influence the law accordingly.

By way of example, a reasonably recent case in which a girl revoked her consent and has gone on to great success, would have, under Recommendation 21, landed a number of people with a criminal record.

To quote Di Wellfare from *Origins Newsletter* December 1999 referring to an article by Sarah Harris in the *Sunday Telegraph* 10 December 1995 (19):

"One of the young mums in this story had unwillingly surrendered her infant for adoption in 1994 at the insistence of her parents and the encouragement of the agency. She had two weeks left of her revocation period when we found her. She had been given neither her options, nor had she or her mother been warned of the long term emotional consequences of surrender. She had already been sent back to school to 'try and forget' but her mother had admitted that she had had suicidal thoughts. I asked her mother if she loved her daughter. She said she did. I then told her if she loved her daughter and if she was not willing to relent and let her daughter keep the child, she should go out and buy a gun and let her daughter blow her brains out. It would be an act of love on her part. Well, she got the message, revoked the consent at the eleventh hour."

Clearly, Di has used “undue influence” to encourage a revocation here, an act which would have had her fronting the courts under the McLelland Report’s Recommendation 21.

And a great shame that would have been, as the *Sunday Telegraph* article highlights both this girl and a number like her who, having been inspired by motherhood to take advantage of Distance Learning facilities and complete their schooling, went on to tertiary studies and entered rewarding careers.

It is indeed pathetic that the McLelland Committee would be so short sighted that they failed to see simple solutions to teenage pregnancies which would have benefited mothers and children immensely.

Instead, the McLelland Committee paid nothing but lip-service to the importance of keeping a child within its biological lineage, and set about inventing practices and manipulating the law for the benefit of no-one but themselves.

Putative fathers

In previous oral and written submissions to the Inquiry, I have made certain statements regarding the rights of ex-nuptial fathers. In this section of this submission I will correct a slight error that has been made in those submissions - an error which does not change the thrust of what I have previously said, merely a matter of chronology, and in fact the writings of the McLelland Committee strengthen the case that certain individuals knew full well, the rights of putative fathers under the *Children (Equality of Status) Act 1976* and not only denied fathers those rights, but actively sought to erode them.

The McLelland Committee commences its appraisal of father’s rights by stating,

“The putative father who is responsible for the birth of a child as a result of a casual relationship should not be accorded any right to consent to adoption...”

The McLelland Committee gives no reason for this belief apart from their own bloody-mindedness and bias, and it is reminiscent of evidence given to the current Inquiry by ‘Steve’ that the advice given to him at the time of his girlfriend’s pregnancy was to “piss off”.

Later in this section of the McLelland Committee Report we are advised that the Committee’s parameters for a non-casual relationship are those where

“immediately prior to the mother of the child giving her consent to adoption, the putative father had had the actual care of the child for a period of 12 months or alternatively, if he had cared for the child for a similar period himself without the assistance of the natural mother.” (20)

One has to pinch oneself when reading this to be reminded that this was 1976 and not the 1950s. It makes a mockery of the consent takers’ defence that they were beholden to the culture of the times. It seems the adoption industry kept itself deliberately ignorant of the culture of the times.

On page 43 of the McLelland Committee Report, it is written that the committee

“considered the discussion paper recently circulated by the Attorney-General relating to the Status of Children.”

The McLelland Report then goes on to discuss the effects of granting an ex-nuptial father the same rights as a married father (21) which indicates that the members of the McLelland

Committee were fully aware of the probable effects the proposed *Status of Children Bill* would have if enacted into law.

Page 44 paragraph 4 of the McLelland Report recommends that if an ex-nuptial father had his paternity declared under the provisions of the proposed *Status of Children Act*, then he should be served with a notice if an adoption consent had been signed.

This sounds laudable in theory but there are a few problems with it.

Firstly, by having his paternity declared under the *Status of Children Act*, the ex-nuptial father became a legal guardian of the child as a result of section 6 of that Act, and therefore was required to consent to the adoption under section 26 of the *Adoption Act*. He therefore should have been served with notice alerting him to the fact that he was required to sign the consent. The McLelland Committee recommends that he merely be served with a notice that a consent had been signed, which clearly downgrades the position and rights of the ex-nuptial father in relation to the proposed *Status of Children Act.*

He also had rights to oppose the adoption under section 23 of the *Adoption Act*. This second right is quite clearly known and understood by the McLelland Committee as it reaffirms this right on page 49 of its report as Recommendation 28.

Why then did consent takers under the auspices of persons sitting on this committee, continue to disregard their duty to inform putative fathers of this right?

Both these rights are quite plain to anyone who reads the first page of the *Status of Children Discussion Paper 1975* - the very paper that this committee purports to have read. On that page, the Attorney-General states his intention that the proposed *Status of Children Act* will grant a legal relationship between fathers and children *"irrespective of whether the father and mother are or have ever been married."*

This, the Attorney-General states on page one of his discussion paper, will apply

*"for **all** purposes of the law of New South Wales"* and *"for the purpose of construing **any** instrument."* (Emphasis added)

In fact in his opening statement in this discussion paper, the Attorney-General declares that the proposed *Status of Children Act* will apply *"to the greatest possible extent."*

The wording can hardly be ambiguous, especially to a Committee considering the consequences of the legislation on its own profession and the careers of those sitting on the Committee. For the McLelland Committee to conclude that adoption agencies and consent takers will have fulfilled their duty to ex-nuptial fathers under the proposed *Status of Children Act* merely by serving a notice, seems to be the height of deliberate naivety.

The second problem with this proposal is that it relies on the consent taker to inform the ex-nuptial father that he has the right to formally declare his paternity under the *Status of Children Act* and to inform him of what that declaration entitles him to. It is clear even in the McLelland Report itself, that consent takers were not properly informing mothers of their rights, let alone adding another layer of complication to the process of adoption by informing fathers of their rights as well.

For the consent taker to avail an ex-nuptial father of his full rights under the *Status of Children Act* would only create another barrier to adoption. Far better in the eyes of the profession it seems, to place into the law an act of deception which relied completely on the discretion of consent takers for its implementation.

So this proposal by the McLelland Review is yet another example where the Committee fails to attack the real problem, preferring only to make life easier for adoption workers.

The third problem with the McLelland Committee's proposal is that it was never enforced. Even when it was brought into legislation in 1982, the consent takers simply ignored it. Equally, by manipulating the involvement of the father (i.e.: telling the girl he was bad for her or in some other way, discouraging his presence in the process) this meagre acquiescence to the rights provided to fathers under the proposed *Status of Children Act* could be easily flouted.

Fourthly, if an ex-nuptial father was persistent, this proposal and the convoluted process it involved, could easily distract the father away from his real rights, especially those granted under section 23 of the *Adoption Act* to oppose the adoption.

The serving of the notice does not inform the father of his right to oppose the adoption, and it certainly doesn't inform him of his probable requirement to sign the consent as a declared guardian of the child. It leaves him with the impression that despite having his paternity declared he is still powerless to stop the adoption and he now has a piece of paper to prove it!

The serving of notice in this way, actually works against the father availing himself of his rights. Equally, it would not be hard for the process of signing and filling out adoption information forms to be construed as having declared paternity.

As the current Inquiry has noted, this was a universal understanding among those who filled out such forms and it came as something of a shock to all, when years down the track, it was discovered that such firm declarations on official looking forms didn't even result in the father's name being placed on the birth certificate.

How easy would it have been for a consent taker, asked by a father to know the means by which he could be officially declared the father of the child, to give the impression that all he need do is put his name on one or other of the information forms being presented at the time. This was definitely the impression being given by many consent takers anyway.

In previous submissions I have argued that after the December 1976 proclamation of *The Children (Equality of Status) Act 1976,* the consent of an ex-nuptial father was required for an adoption, by virtue of section 6 of that legislation and the all-encompassing language used by the Attorney-General both in his discussion paper and in Hansard. (22)

I have also based arguments on the precedents of *G v P,* (23) *Gorey v Griffin,* (24) and *Youngman v Lawson.* (25) I presented these arguments to Richard Chisholm in 1999 and he replied that *"I think that you have stated the arguments in favour of one view very well."* (26)

Justice Chisholm then went on to state the contrary arguments based on *C v Dir-General of Youth.* (27) He also highlighted *Hoye v Neely* (28) which was a decision that agreed with my own assessment that fathers of ex-nuptials are in law, guardians in the full legal sense.

So what do these contradictory decisions say about the law and how does this impact on our assessment of the mindsets of individuals who sat on the McLelland Committee?

For the answer to that question, one must go to the debate which surrounded the 1980 amendments to the *Adoption Act* which were put through Parliament in reaction to the McLelland Review.

Among the amendments was one which did not derive directly from the recommendations of the McLelland Report. It became section 26(3A) and was placed into the *Adoption Act* for no other reason than to nullify the rights given to ex-nuptial fathers via the *Children (Equality of Status) Act.*

Section 26(3A) states:

"A person who is the putative father of a child ... who ... is not deemed to be the guardian of the child ... under a law of the Commonwealth ... is not a guardian of the child ...(for the purposes of applying the consent requirements of section 26 of the *Adoption Act*.)"

Since the guardianship rights of ex-nuptial fathers were granted by a state law and not a Commonwealth Law, this amendment (26/3A) effectively dissolved the rights fathers had gained in every state, territory and in New Zealand, to veto an adoption by not signing a consent.

It can now be seen why, between 1977 and 1981, the courts decided in favour of father's rights in the cases of *G v P, Gorey v Griffin* and *Youngman v Lawson,* and why Justice Waddell decided against father's rights in *C v Director General,* in 1982.

Subsequently, the Commonwealth *Family Law Act* was amended circa 1987, to expressly grant guardianship rights to ex-nuptial fathers, resulting in the *Hoye v Neely* decision in 1992.

Consequently, the guardianship of ex-nuptial fathers impinged on adoption consent proceedings by virtue of section 6 of the *Children (Equality of Status) Act* from 1977 to 1982. From 1982 to 1987, section 26(3A) of the *Adoption Act* nullified these rights, then from 1987, amendments to the *Family Law Act* resurrected them. (29)

Exactly where the section 26(3A) amendment came from is a mystery. It was not recommended by the McLelland Report as virtually all the other 1980 amendments were.

While it is impossible to ascertain the machinations of an individual's mind or the general mood of an entire industry, the facts are extremely suggestive.

Firstly, the adoption industry was extremely lackadaisical regarding the rights of all potential surrenderers.

Secondly, the McLelland Report as noted earlier borders on being contemptuous of the rights of ex-nuptial fathers.

Thirdly, the McLelland Report expresses negative concern and conjectures unfavourably towards the possibility of ex-nuptial fathers gaining any right of veto via a requirement for them to consent to an adoption.

Fourthly, the adoption industry had for years been negligent in not informing ex-nuptial fathers that if they married the surrendering mother before the adoption order was processed by the Supreme Court, the adoption was null and void without his consent.

Fifthly, the adoption industry successfully lobbied the Attorney-General in 1976 to remove this particular impediment to adoption, (30) thus the industry had a history of discharging father's rights to enable speedy adoption procedures, displaying partiality for adoptive parents and consent takers' working conditions to the detriment of natural fathers, without providing clear arguments in the interests of the child. In fact, there had been a number of cases where the Courts had determined in cases where a father married a surrendering mother, that the child should be returned to its natural parents, only for the adoption industry to appeal, dragging the process through the courts for years, until the Appeals Court was forced to concede that in those intervening years the child had built up a relationship with the adoptive parents, and should remain with them, not by point of law, but by expedience due to the enforced passing of time.

Sixthly, it is clear from the Parliamentary debate surrounding the passage of the 1980 amendments, that members of both Houses were in close contact with members of the McLelland Committee.

Specifically Mr Clough, (31) Mr Maher, (32) Mr MacIlwaine, (33) and Mrs Grusovin (34) all make note that they had been lobbied by one individual, Mrs Margaret MacDonald, one in fact stating that he believed Mrs MacDonald had written to every member of the House in the previous week! While I have been unable to retrieve a copy of this correspondence, such fanaticism above and beyond the call of duty certainly indicates that this particular individual had personal ideas she wanted expressed and that she was keen to see Parliament approve those amendments closest to her heart.

Seventhly, in both the Government's main speeches on the amendments (36) the Minister or his representative created a smoke-screen by pretending that the rights of ex-nuptial fathers were being extended by granting them the right to oppose the adoption under section 23 of the *Adoption Act.* However, this right had been there since 1967. Why was the Government pretending to broaden the rights of fathers?

It is reminiscent of the 1965 debate when the Minister pretended that surrendering mothers were being granted extended rights by the introduction of the 30 day revocation period, when in fact, the 30 day revocation period acted only in the interests of the adoption industry and adoptive parents by shortening the revocation period from the previous 6 to 12 months! Again the adoption industry has a history of winding back surrenderors' rights to the benefit of consent takers.

Eighthly, the adoption industry by 1980 was in major crisis, with adoptive parents waiting 5 years, (36) 6 years, (37) even 8 years (38) or longer for an adoptable child. It is simply pure human nature for any person to want legislative change which will make their own life easier, irrespective of its impact on others. The McLelland Report presents such a stance in other areas, (eg: frivolous revocations and dispensation of consents) so it is natural to assume that the idea to remove the need for a father's signature on a consent, should come from the adoption industry hierarchy.

Ninethly, the other influential document in the 1980 Parliamentary debate, the submission by the NSW Council of Social Services chaired by Pam Roberts, spent a mere 5 lines on putative fathers, and is in fact in favour of extending their rights. Clearly, the proposals for section 26(3A) did not come from them.

Putting all these lines of evidence together, it seems highly likely that the idea for section 26(3A) came from the McLelland Committee members, persons close to it, or others in the upper echelon of the adoption industry. This shows that the adoption industry knew that the *Children (Equality of Status) Act* was likely to create problems for the adoption industry once it became common knowledge among ex-nuptial fathers and their lawyers that section 6 granted ex-nuptial fathers full guardianship rights, particularly after the *Gorey v Griffin* precedent.

It would therefore be reasonable to assume that a person in a position of principal officer of an adoption agency in 1980 would be well aware of the full extent of a father's rights in that year, and consequently, for that person to declare ignorance of those rights must surely be questioned as to competence and/or motive.

The McLelland Review makes the following very interesting statement on page 44:

"Until the community is prepared to concede putative fathers equal rights before the law with fathers, then putative fathers should not, in adoption legislation, acquire the right to consent unless he has, under an order of a court, also become the child's guardian."

The putridity of this statement is twofold.

Firstly, the community by way of the *Children (Equality of Status) Act*, its interpretation by the courts and the granting of single parent benefits to fathers in the late 70s, indicated that by 1980, the community was quite definitely prepared to grant equal standing in law, to putative fathers.

Why then were the same people responsible for the above statement also responsible for pressuring the Government to wind back the rights being gained by fathers in adoption proceedings?

Secondly, why were some of those responsible for the above statement also responsible for keeping hidden from putative fathers in the late 70s and early 80s, the process by which they could be granted by the courts, ex-nuptial guardianship, a right which would have stopped the adoption proceedings dead in its tracks, dependent on the consent of the putative father?

Other Issues

The rest of the McLelland Report consists of the Committee drawing all adoption power unto the Tribunal - a Tribunal to be controlled by the same class of persons who sat on the McLelland Committee.

A few examples include:

Page 48, Recommendation 26: *The Tribunal should have the power to dispense with the necessity for the Director to submit a report in relation to applications made by any particular agency where it was satisfied that the standard of applications submitted by that agency warranted such dispensation."*

In other words, complete self regulation. In the light of what has been revealed in the current Parliamentary Inquiry, can we say that these people had earned the right to self regulation?

Page 50, Recommendation 29 prevented evidence not previously submitted to the principal officer of the agency in question, to be tabled before the Tribunal during an appeal against an adoption order or a refusal to allow an application to adopt. Again, more power to the Tribunal, the culling of evidence in favour of the adoption industry and the winding back of rights and options for surrenderors.

Page 52, Recommendation 32 gives the power to the Tribunal to set fees for adoption. The recommendation notes:

"In fixing that fee, the Tribunal should be required to have regard to the actual costs incurred by the agency."

At this stage of reading the McLelland Report one starts to wonder if this document is anything other than an adoption industry benefit.

Considering the remarks made in the introduction to the McLelland Report that it would major on the viewpoint of the adoption industry, it is hardly surprising that the final report should so heavily favour those classes of people who sat on the McLelland Committee, to the detriment of surrenderors. As such, the McLelland Report offers very powerful evidence for the current Inquiry, that the unethical mindsets and illegal work practices exposed by the testimonies of women and men who lost children in the adoption process, were well and truly ingrained throughout every level of the adoption industry and ancillary service providers, even as recently as the late 70s and early 80s, and that the adoption industry in its desperate single-mindedness to access newborns for adoption, saw no reason to change the bias in its

operations, despite those operations falling way below the standards accepted in contemporary society, as seen in contemporary documentation.

It is therefore a nonsense for the adoption industry and its practitioners to appeal to the culture of the times, as a defence for their blatant disregard for the rights of prospective surrenderors.

The McLelland Review Committee's consistent wind-back of natural parents' rights and the Committee's headlong commitment to finding short-cuts in the adoption process, also makes a mockery of its lip-service creed on Report page 33, that the adoption industry must ensure a child *"is genuinely free to be adopted."*

The McLelland Review writers instead sought to provide access to newborns who had become artificially available for adoption through the encouraged criminal behaviour of practitioners.

Footnotes.

1. *Inquiry into Adoption Practices: Interim report - transcripts of evidence*, 27 August 1998 to 19 October 1998, page 78, 3rd paragraph, first sentence.

2. As footnote 1, page 82, 5th paragraph, last sentence.

3. *Child Welfare in New South Wales* 1958, written by the Child Welfare Department and used as the standard child welfare and adoption practice manual throughout the 60s. The full quotes are as follows:

***"Advice is tendered regarding the alternatives, and only when a reasoned and firm decision is made, are the necessary papers prepared."* (Page 58)**

***"The mother is visited by a specialist lady District Officer who fully explains to the mother the facilities which the Department can offer to affiliate the child ... When all these aids have been rejected, and the mother still desires to surrender her child for adoption, the full import of surrendering her child is explained. Only when the mother still insists does the Department's officer prepare a form of surrender."* (Page 30)**

4. *Children in Need* (1956) by Donald McLean. Endorsed by Deputy Premier Heffron, page 54. Again, a standard work practice manual for adoption and social workers throughout the 60s. The full quote is as follows:

***"If there is any sign of uncertainty or vacillation the officer will insist that the mother consider the question further before signing the surrender. A consent is never accepted from a mother until she is quite firm in her decision."* Emphasis added.**

5. Grunseit, F. (Children's Dept. Prince of Wales Hospital) article entitled, *The Adoption of Infants and the Role of the Adoption Advisory Clinic in NSW* published in the *Australian Medical Journal* 1973*.* Full quote as follows:

"Unmarried mothers in NSW tend to be poor, undernourished, of low intelligence, if not actually retarded."

6. Langshaw, deputy director of the Department of Child and Social Welfare is quoted in *Adoption Services of the Department of Child and Social Welfare NSW, Proceedings Seminar, 3 February 1967, to proclaim the Adoption of Children Act 1965.* Pages 26 to 28 contain the following quotes:

"Perhaps one of the most desirable adoptions, and in my opinion the most likely to be successful, can take place when the mother, who for many possible reasons is unable to have further possible pregnancies, has just lost a baby. All the physiological and psychological preparations for the nursing of the baby have taken place, and this woman would be able to breast feed the baby. If an appropriate baby is available for adoption I personally hope that this Act would not prevent such an adoption."

6a. In the light of the general ignorance of the overwhelming research consensus regarding the detrimental effects of adoption, it would seem that the average NSW adoption worker needed to catch up on the previous 30 years research literature on their profession before embarking on research of their own.

7. Letter from Louise Boulter Principal Officer of Centrecare Adoption Agency to author's solicitor, dated 28 October 1998. Copies of letter are held by both parties and can be produced on request. Quote as follows:

"Certainly, record keeping in those years was not as detailed as in current practice ... I do know that the staff resources were very stretched with inadequate staff/admin resources and this may explain the omissions."

7a. *Report of Proceedings before Standing Committee on Social Issues Inquiry into Adoption Practices* at Sydney on Wednesday 16 June 1999, page 6, line 3.

8. Category (d) "*Person suitable in the opinion of the Minister"*, was disallowed in the passage of the legislation through Parliament.

9. Craig Wilson's testimony to the current Inquiry 16 June 1999, as reported in *The Sydney Morning Herald* 17 June 1999, page 2, and in *The Telegraph* 17 June 1999 page 23, wherein Mr Wilson described Catholic Adoption Agency worker practice of days gone by as *"unacceptable".*

10. Page 46 of the *McLelland Review Committee Report* reiterates this demeaning position as recommendation 24.

11. Page 48 of *McLelland Review Committee Report*, recommendation 26.

12. *NSW Assembly Hansard* 27 February 1980, page 4816, second paragraph. Rex Jackson speaking.

13. Page 34 of *McLelland Review Report*.

14. *Child Welfare in New South Wales* 1958 (see footnote 3). Page 30:

"The mother is visited in hospital by a specialist lady District Officer who fully explains to the mother the facilities which the Department can offer to affiliate the child: to assist with monetary allowance (section 27 aid); or by admission to State control until the mother is in a position to resume custody and control of the child."

Also *Children in Need* 1956 (see footnote 4) page 53:

"District Officers are instructed to explain fully to the mother before taking the consent, the facilities which are available to help her keep the child. These include homes licensed under the Child Welfare Act for the private care of children apart from natural parents ..."

15. See Appendix 1, which includes a returned questionnaire sent by the author's solicitor to the natural mother of his surrendered daughter wherein she indicates that no alternatives were discussed with her by the consent taker. The one option discussed regarding single mother's benefits was a discussion instigated by the author and the surrendering mother, not by the consent taker. By 1980, the existence of the single mothers pension was common knowledge. However, the consent taker never indicated that this pension had been extended to single fathers by this time.

16. *NSW Assembly Hansard,* 18 March 1980, page 5389, Mr Maher speaking.

17. This case is known as *Baby K v State of New South Wales 1968* and with appeals from the single adoptive mother, dragged on to 1973 when a bench of 3 appeal judges voted 2 to 1 in favour of keeping the child with the adoptive mother, after the natural parents had won the original case for wrongful adoption in 1968.

18. Page 35 of *McLelland Review Report*.

19. Articles entitled, *"Babies go to the top of the class"* and *"It's back to school for young mums."*

20. Page 44 *McLelland Review Report.*

21. *McLelland Review Report* page 43 paragraph 4, page 44 paragraph 1 and 3.

22. *NSW Assembly Hansard* 16 November 1976, page 2950, paragraph 3.

23. 1977 VR 44.

24. 1978, 1NSWLR 739.

25. 1981 NSWLR 439.

26. Correspondence between the author and the active Family Court judge is held by both parties and can be produced on request.

27. 1982 7 FamLR 816.

28. 1992 15 FamLR 578.

29. It seems the Labor Governments in NSW during the 1970s and federally during the 1980s, sought to extend the rights of fathers, while the NSW Labor Government of 1980 sought to curb those rights.

30. See *NSW Assembly Hansard* 16 Nov. 1976 page 2957, first paragraph. The amendment to the *Adoption Act* became section 26, subclause 7.

31. *NSW Assembly Hansard* 18 March 1980 page 5387.

32. Ibid. page 5389 and notably page 5392.

33. Ibid. page 5402.

34. *NSW Council Hansard* 26 March 1980 page 5918.

35. *NSW Assembly Hansard* 27 Feb 1980 page 4817 and *NSW Assembly Hansard* 18 March 1980 pages 5389 and 5390.

36. *NSW Council Hansard* 26 March 1980, page 5915.

37. *Sydney Morning Herald* June 7, 1976, page 10.

38. *NSW Assembly Hansard* March 18, 1980, page 5390, lines 25 and 26.