MAKING AMENDS:

The importance of exercising discretion fairly

OMBUDSPERSON
BRITISH COLUMBIA

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OMBUDSPERSON
BRITISH COLUMBIA

December 2022

The Honourable Raj Chouhan
Speaker of the Legislative Assembly
Parliament Buildings
Victoria BC V8V 1X4

Dear Mr. Speaker,

It is my pleasure to present the Ombudsperson's Special Report No. 51, *Making Amends: The importance of exercising discretion fairly*.

The report is presented pursuant to section 31(3) of the *Ombudsperson Act*.

Jay Chalke
Ombudsperson
Province of British Columbia

Mailing address: PO Box 9039 Stn Prov Govt • Victoria BC V8W 9A5
Phone in Victoria: 250-387-5855 • Toll-Free: 1-800-567-3247 • Fax: 250-387-0198 • bcombudsperson.ca

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Contributors

Investigator
John Sparks

Report Drafting
Elizabeth Bruch

MESSAGE FROM THE OMBUDSPERSON

Discretion is an essential tool in public administration. The measures taken by the Vital Statistics Agency that led to this report – the narrowing of its own discretion through policy – can happen in any public agency. Public agencies take such limiting steps for various reasons. Some policy interpretation of a public agency's legislative responsibility is helpful – it can support good public administration by promoting consistency in decision-making. However, when such limitations go too far they depart from the role the legislature has assigned to public officials to deliver programs while exercising discretion appropriately to serve the public. The lessons in this report can apply to every public agency in British Columbia.

Our names are a vital piece of who we are as human beings. Whether given at birth, or not, they inform so many aspects of our daily lives. And so, having identification documents reflect our correct name is important. It should be simple to meet this expectation, but this report illustrates how administrative roadblocks can stand in the way of even simple requests.

This report tells the story of Ms. M, a woman in her 70s who was known as Elizabeth her whole life but whose name was spelled incorrectly on her birth certificate – Eliz"e"beth . When Ms. M applied to the Vital Statistics Agency to amend the given name on her birth certificate issued in the 1940s, she had no idea of the arduous months-long process that would ensue. At the core of Ms. M's concern was the fact that the Vital Statistics Agency told her it required two pieces of documentary evidence to support the change in the spelling of her name that were created before she was 12 years old. For Ms. M, finding more than one record from more than six decades earlier proved impossible.

Instead of considering the merits of Ms. M's application as required by the legislation, the Agency rejected it on the basis that she had not met its internal policy requirements. Ms. M was understandably disappointed in the Agency's response. At this point, she came to our office.

The resulting investigation, described in this report, highlights two important lessons for all public agencies that make decisions within a statutory framework.

First, policies must be consistent with the legislation they support. Statutes can be complicated, and public bodies often create detailed policies to support their staff in efficiently making decisions that are principled, consistent and fair. In developing a policy to support employees in efficiently deciding on name amendment applications, the Agency had created a requirement for two separate documentary records that wasn't in the legislation. The Agency had fettered, or limited, its own

discretion, and had therefore unfairly determined that it couldn't consider the merits of Ms. M's application.

Second, public bodies must carefully consider the differential impacts of their policies on people trying to access services. The impacts of the Agency's restrictive policy for Ms. M were more onerous. The Agency's policy requirement for two separate records created before the applicant turned 12 unfairly disadvantages those whose circumstances make finding those records difficult. In Ms. M's case, this disadvantage arose because of her age. It means that the name amendment process is not equally accessible to all.

My recommendations are straightforward: that the Agency reconsider Ms. M's application on its merits, that the Agency change its policy so that it is consistent with the legislation, and that the Agency provide training to staff on fairly exercising their discretion. I am pleased that the Agency has reached out to Ms. M directly to let her know that it has reconsidered and will allow her name amendment application. I am also encouraged that the Agency has agreed to amend its policy to allow members of the public to provide only one record in cases where they are requesting a 'minor amendment' and that the Agency will provide staff training on this policy change.

In its response to our report, we heard about the Agency's need to guard against the risk of fraud and identity theft in adjudicating name amendment applications. These are of course important considerations. Ultimately, however, the Agency needs to place the people it serves at the forefront, by ensuring that its policy guidance is consistent with the governing legislation. I expect that in implementing these recommendations, the Agency will make clear to its staff that they retain the discretion in all cases – minor or major – to consider the specific circumstances of the individuals they are serving in order to make decisions that accord with the statutory framework. Future applicants deserve no less.

We will be monitoring and reporting publicly on the Agency's implementation of the two outstanding recommendations.

Sincerely,

Jay Chalke
Ombudsperson
Province of British Columbia

INTRODUCTION

Names are important. Our given names, recorded on our birth certificates shortly after we are born, are among the most important tools for establishing legal identity and conferring individuals' rights and responsibilities. But names are also more than legal identifiers. Names anchor our social and cultural identity; they give us a sense of who we are. Our names afford us dignity and respect; they connect us to our history, to family, to culture and to community. Over time, our names evolve beyond those simple words first written on our birth certificates. But what if there is a discrepancy between a person's name and what that person's birth certificate recites? This report is about a woman named Elizabeth M, and her efforts to amend the spelling of her first name on her birth certificate (her "given name") to reflect the spelling she has used her whole life – from Elizebeth to Elizabeth.[1]

Our investigation found that the Vital Statistics Agency (the "Agency") was unfair in responding to Ms. M's request to amend her given name. The Agency has broad discretion under the *Vital Statistics Act*[2] but limited – or "fettered" – its discretion by rigidly applying a restrictive policy. The Agency's policy approach in this regard also had an improperly discriminatory effect.

We have recommended that the Agency consider Ms. M's request to amend her given name on the merits based on the evidence she has submitted. We have also recommended that the Agency update its policy and staff training to address the systemic problems with the exercise of discretion that our investigation identified.

[1] It is our usual practice to change the name of affected individuals in public reports in order to protect their identity. In light of the circumstances of this matter, and with the agreement of the person who made the complaint, we are using her actual given name and an initial for her surname to protect her identity.

[2] RSBC 1996 c 479.

BACKGROUND

Amending a given name in B.C.

Every child born in British Columbia must have a "given name" registered with the Vital Statistics Agency at birth. However, many people end up going by names different than their given names. For example, some people may end up using their middle name rather than their given first name. Other people may adopt alternate spellings; for example, "Sean" may end up going by "Shawn." A registered given name may also contain spelling mistakes. In cases such as these, section 10 of the *Vital Statistics Act* allows for a child's guardians, or the child themselves after reaching the age of 19, to apply to the Agency to amend the child's given name as registered upon birth.[3] The full text of section 10 states:

> 10 (1) Subject to section 9 and except in a case to which section 4.1 or 26 applies, this section applies if a child's birth has been registered and an amendment to the registration is desired respecting the child's given name.
>
> (2) A parent having guardianship or another guardian of a child, with the consent of all other guardians of the child, or the child after the child has reached 19 years of age, may apply to the registrar general for an amendment in respect of a child's given name by providing
>
> (a) an affidavit, in the form required by the registrar general, setting out the particulars of the amendment, and
>
> (b) other documentary evidence satisfactory to the registrar general.
>
> (3) On being satisfied that the application under subsection (2) is made in good faith and on payment of the prescribed fee, the registrar general must amend the child's registration of birth.
>
> (4) An amendment under this section may be made only in respect of a name given to the child before the child reached 12 years of age.
>
> (5) An amendment to a registration of birth in respect of a given name must not be made except as provided in this Act.
>
> (6) A birth certificate issued after the making of an amendment under this section must be prepared as if the person's original birth registration had been made containing the given name as amended.
>
> (7) If a person whose signature is required under this section cannot be located after adequate search, the applicant and the registrar general may proceed without the certificate of that person.

[3] *Vital Statistics Act*, s. 10.

> (8) The registrar general is to be the judge of the sufficiency of the evidence that the person cannot be located.

The section 10 amendment process is straightforward. The applicant must swear an affidavit setting out the particulars of the amendment, provide supporting documentary evidence demonstrating that the proposed amended name was given to the child before their 12th birthday, and pay a nominal fee. If the registrar general is satisfied by the evidence and determines that the application is made in good faith, they must amend the registration of birth.

The Agency's administration of section 10 amendment applications is described by their "Amendments to Given Names" policy. The amendment policy specifically provides that an amendment may include changing the spelling of a child's given name or substituting another version of a child's given name.

The amendment policy also sets out what the Agency considers "acceptable evidence" for an application made under section 10:

> A person 19 or over must make their own application to amend a given name(s). Certified documentary evidence of the usage of the name(s) prior to their 12th birthday must be provided. Acceptable evidence may include at least two of the following:
>
> - school records
> - medical records (immunization, dental, hospital requisition)
> - [A]boriginal band records or
> - [b]aptismal certificate

A person may also apply to formally change their name under the *Name Act*.[4] Formally changing a name under the *Name Act* is more complex than amending a name under the *Vital Statistics Act*. It requires fingerprinting, a criminal record check, additional documentation and a more substantial fee.[5] The government's website notes the significance of a name change: "Changing your name is an important decision that can have far-reaching effects on your personal and business relationships".[6] For clarity, it also specifies situations that do not require a legal name change, including amending the given name of a child born in B.C.[7]

Elizabeth, not Elizebeth

In March 2021, Ms. M contacted the Agency about having her given name amended under section 10 of the *Vital Statistics Act*. In an email to the Agency dated March 24, 2021, Ms. M explained that she was born in B.C. in the 1940s and that her birth certificate incorrectly stated her first name as "Elizebeth." According to Ms. M, at all times since birth she has spelled her first name "Elizabeth."

In support of her application, Ms. M provided the Agency with documentary evidence in the form of a school board document containing her elementary and

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[4] RSBC 1996 c 328.

[5] RSBC 1996 c 328, ss. 6.1, 7; Vital Statistics Agency, Legal Change of Name in BC, Form VSA 004, https://www2.gov.bc.ca/assets/gov/health/forms/vital-statistics/vsa004.pdf

[6] https://www2.gov.bc.ca/gov/content/life-events/legal-changes-of-name

[7] Other situations that do not require a legal name change are a name change following marriage and reverting to the use of a birth surname. https://www2.gov.bc.ca/gov/content/life-events/legal-changes-of-name/legal-change-of-name-application

Vital Statistics Agency Baby Name Popularity Data

According to the Agency's baby name popularity data, "Elizabeth" is the sixth most popular girl baby name in B.C.; 10,576 Elizabeths were reportedly born between 1920 and 2019.[8] Conversely, "Elizebeth" is reportedly one of the 377 least popular girl baby names[9] in B.C. According to the Agency's data, there were only five instances of the name "Elizebeth," all of which were, apparently, recorded in a single year. Figure 1 shows the Agency's Baby Name Popularity Tool[10] charting the popularity of both names over one hundred years.

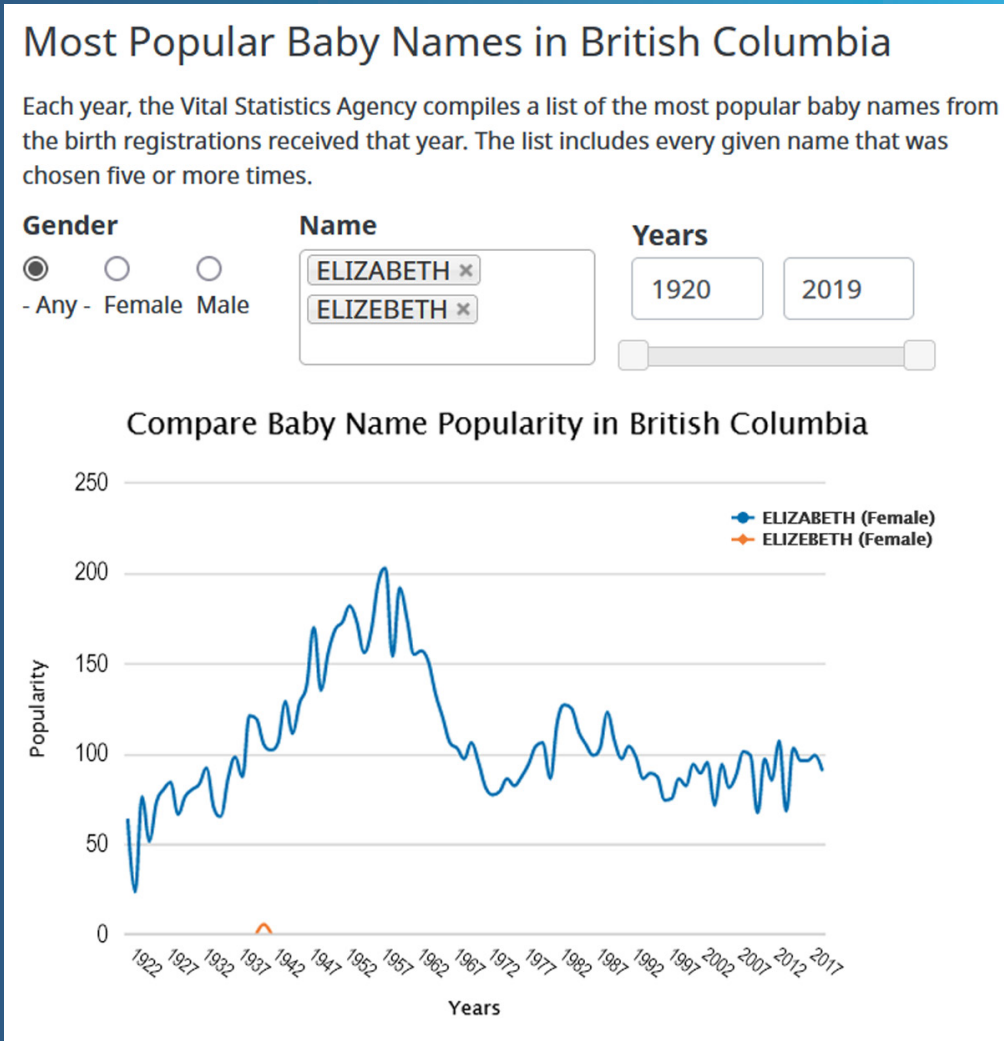

Figure 1. Comparison of Baby Names Elizebeth and Elizabeth in British Columbia, 1920-2019.

[8] Online: https://connect.health.gov.bc.ca/baby-names.

[9] The Agency website characterizes names for girls and boys without further explanation as to whether this is based on sex, gender identity, traditional usage or other criteria, and the search tool references female and male names. Online: https://www2.gov.bc.ca/gov/content/life-events/statistics-reports/bc-s-most-popular-baby-names.

[10] Online: https://connect.health.gov.bc.ca/babynames.

secondary school records showing that she was registered as "Elizabeth" and used "Elizabeth" from Grade 1 to Grade 12.

The Agency accepted the elementary school record, but advised Ms. M that the secondary school record did not meet the evidentiary requirement under section 10(4) of the *Vital Statistics Act*, because it did not demonstrate that she had been given the name before she reached 12 years of age. As a result, the Agency considered Ms. M as having provided only one piece of satisfactory documentary evidence, not two as required under the amendment policy.

Unfortunately, Ms. M was unable to obtain further relevant school records. Ms. M was similarly unable to locate any other third-party records from before she turned 12; she communicated this to the Agency in April 2021, but asked them to keep her file open.

In a further letter to the Agency dated November 29, 2021, Ms. M reiterated her request for a section 10 amendment to her given name. Along with her letter she enclosed a copy of the previously submitted school records, as well as a statutory declaration executed on November 18, 2021, by Ms. M's sister. In her statutory declaration, Ms. M's sister swore that she had always known Ms. M's first name to have been spelled "Elizabeth." However, the Agency did not accept the statutory declaration as evidence.

Ms. M, who is now in her seventies, told us that there are no other records available given the length of time that has passed since she was 12. Ms. M thought it was unfair for the Agency to require a senior citizen to furnish two pieces of record-style documentary evidence from before age 12 in order to amend their given name under section 10 of the *Vital Statistics Act*. She also thought it was unreasonable for the Agency to not accept either the secondary school documents, or her sister's statutory declaration.

In her own words . . .

My name is Elizabeth M and I was born at [a hospital] in B.C. . . . I was registered at Vital Statistics as Eliz'e'beth M Apparently my parents did not want that spelling so registered me in elementary school as Eliz'a'beth. … I was taught from an early age that was my name.

Back in [the 1940s] I imagine my parents didn't think it was a big deal to correct my birth certificate. I carried on through life spelling my name the way I was taught. I have never ever used any other spelling.

All my employment records including my 31 years with [my employer] are recorded as Elizabeth … my Pension is in that name, along with my OAP and CPP. I have been married twice, divorced and widowed using Elizabeth. I also bore two sons, who are registered at birth with a mother named Elizabeth. My S.I.N. Card, Passport and Drivers license are in Elizabeth.

I have purchased and sold my homes under this name as well as had criminal checks for hosting many students. I have given blood, volunteered at local Hospitals and with Seniors, receiving awards and worked at the Government polling stations all using this name.

– Elizabeth M

ANALYSIS: EXERCISING DISCRETION, NOT FETTERING DISCRETION

We investigated whether the Agency acted fairly and reasonably in responding to Ms. M's request to amend her given name under section 10 of the *Vital Statistics Act*. We reviewed and considered Ms. M's account of her dealings with the Agency, records provided to us by Ms. M, and the written response and accompanying records of the Agency. We considered relevant legislation and policy, including the *Vital Statistics Act*, the *Evidence Act*,[11] the *Name Act*, and the Agency's amendment policy.

The Agency's refusal to accept the evidence

The first aspect of Ms. M's complaint was that she thought it was unfair of the Agency not to have accepted her secondary school record as evidence of her name prior to her 12th birthday, as required by section 10 of the *Vital Statistics Act*. Ms. M's secondary school records were created after she turned 12 and therefore do not demonstrate that her name was "Elizabeth" prior to her 12th birthday, as required by section 10(4). Given the strict legislative requirement in this respect, we do not think it was unfair or unreasonable for the Agency not to have accepted Ms. M's secondary school records as satisfactory documentary evidence.

Ms. M also complained that it was unfair that the Agency did not accept her sister's statutory declaration as evidence. The Agency's records do not show that they discussed the statutory declaration with Ms. M. The Agency informed us that it was unclear why Ms. M had submitted the statutory declaration, since no one at the Agency had told her to do so. The Agency also advised us that it is their position that "evidence submitted to support a request for an amendment under section 10 of the Act must be documentary 'records' that were issued prior to the person's 12th birthday and that the submission of a statutory declaration does not align with the intent of the legislation."

The Agency's amendment policy requires that a person 19 or over must make their own application to amend a given name, and that two pieces of certified documentary evidence of the usage of the name(s) prior to their 12th birthday must be provided. The policy states that "[a]cceptable evidence may include at least two of the following: school records, medical records (immunization, dental, hospital requisition), [A]boriginal band records or [b]aptismal certificate."

The Agency confirmed to us that the list of four types of acceptable evidence was non-exhaustive but that two pieces of documentary evidence are required. The Agency suggested that statutory

[11] RSBC 1996 C 124.

declarations were not documentary evidence, and that allowing statutory declarations as evidence in this context would open a "loophole" for individuals seeking to change their names. The Agency's approach to acceptable documentary evidence is to require "record"-type evidence, meaning evidence comprising record(s) of a third-party organization or institution demonstrating usage of a person's name before their 12th birthday.

The Agency provided us with their notes in respect of Ms. M's application. Agency staff entered the following note on December 6, 2021:

> CLIENT HAS SUBMITTED SAME DOCUMENTS AS PREVIOUSLY MENTIONED AND LETTER REQUESTING AMENDMENT TO BE PROCESSED. UNABLE TO PROCESS AS THERE IS NOT 2 PIECES OF ID SHOWING GIVEN NAME AS ELIZABETH SINCE BEFORE 12TH BIRTHDAY. LETTER TO CLIENT ADVISING [CHANGE OF NAME APPLICATION] REQUIRED, WITH [CHANGE OF NAME APPLICATION].

The December 6, 2021, note appears to refer to receipt of Ms. M's November 29th letter and enclosures. It is unclear why the note indicates that Ms. M had submitted the "same documents as previously mentioned." Her sister's statutory declaration was only executed on November 18, 2021, and none of the Agency's preceding notes refer to the statutory declaration. The usage of "ID" in this context seems to reflect the Agency's practice of only accepting third-party institution or organization records as acceptable documentary evidence. The Agency subsequently contacted Ms. M to advise her that there was still insufficient evidence to grant her section 10 amendment request.

In her own words . . .

When I went to Vital Statistics I was told to try to secure another piece of identification. I have tried relentlessly and find it virtually impossible. I am [in my 70s] and everyone is basically dead, doctors, dentists and even childhood immunization records have been destroyed, as well as microfilm from when I had my tonsils out as a child . . . I have searched every avenue from Libraries to Church to Dental and Doctors records. Nothing is retained.

– Elizabeth M

Fairness in discretionary decision-making

Section 10 of the *Vital Statistics Act* includes provisions requiring both discretionary decision-making and mandatory action by the registrar general. Discretion exists when an administrative decision-maker has the power to make a choice about whether to act or not act, to approve or not approve, or to approve with conditions. If only one course can lawfully be adopted, the decision taken is not the exercise of a discretion, but the performance of a duty.

Section 10(2) gives discretion to the registrar general in determining the form of the affidavit[12] and in determining whether the "other documentary evidence" provided is satisfactory.[13] Under section 10(3), once

[12] *Vital Statistics Act* s.10(2)(a).

[13] *Vital Statistics Act*, s. 10(2)(b).

the registrar general is satisfied that the application is made in good faith (another discretionary decision) and the fee is paid, the registrar general must amend the registration of birth (a duty).

The Agency's amendment policy is ostensibly meant to provide guidance for the registrar general to exercise the discretionary responsibilities outlined in section 10. The amendment policy reiterates the legislative requirement for documentary evidence of the usage of the name(s) prior to the aplicant's 12th birthday. It also goes further and stipulates that at least two pieces of evidence are required, and it provides a non-exhaustive list of categories of evidence that may be acceptable.[14] Section 10 of the *Vital Statistics Act* does not specifically require two pieces of documentary evidence; it requires "documentary evidence satisfactory to the registrar general." In fact, a previous version of the statute allowed for an aplication to be granted based on receipt of a single baptismal certificate.[15]

In responding to Ms. M's application, the Agency has fettered its discretion under section 10(2)(b) of the *Vital Statistics Act* by strictly applying its own amendment policy as binding, rather than discretionary, and consequently insisting on two pieces of documentary evidence despite Ms. M's individual circumstances.

In the administrative fairness context, discretion must be exercised on an individual basis. While decision-makers may consider guidelines, general policies and rules, or may try to decide similar cases in a like manner, a decision-maker cannot fetter its discretion in such a way that it mechanically decides without analyzing the particulars of the case and the relevant criteria in the enabling statute.[16] In other words, a body entrusted with discretion must not disable itself from exercising its discretion in individual cases by adopting a fixed rule of policy. The refusal to exercise a discretionary power is considered "fettering" when it results from the inflexible application of the decision-maker's own directives or guidelines.[17]

The existence of discretion implies the absence of a rule dictating the result in each case; the essence of discretion is that it can be exercised differently in different cases. Section 10(2)(b) is clearly discretionary; it gives the registrar general the discretion to determine whether documentary evidence furnished in support of an amendment request is satisfactory for determining whether a person was given the amended name before their 12th birthday. However, in practice the Agency has added a requirement that there must be two pieces of documentary evidence and has limited the type, form, and/or source of acceptable documentary evidence that applicants must provide, thereby fettering its own discretion.

The Agency has asserted that only documentary 'records' issued prior to the applicant's 12th birthday are sufficient to provide assurance that the amended name reflects the name used by the applicant.

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[14] Vital Statistics Agency, Amendments to Given Names Policy.

[15] Until it was amended in 2014, s. 10(2)(b) required "either (i) a baptismal certificate showing the given name under which the child was baptized, or (ii) if a baptismal certificate is not obtainable, other documentary evidence satisfactory to the chief executive officer."

[16] Maple Lodge Farms Ltd. v. Canada, [1980] F.C.J. No. 171, 114 D.L.R. (3d) 634 at 645 (F.C.A.), affd [1982] S.C.J. No. 57, [1982] 2 S.C.R. 2 (S.C.C.).

[17] Capital Cities Communications Inc. v. Canadian Radio-Television and Telecommunications Commission, [1977] S.C.J. No. 119, [1978] 2 S.C.R. 141 at 171.

In fact, during our investigation the Agency told us that it planned to update its amendment policy to formally stipulate that only "record-style" evidence would be accepted in support of amendment requests under section 10 of the *Vital Statistics Act* – a move that would seem to further entrench, rather than remedy, the Agency's fettering of discretion.

Although the statutory declaration submitted by Ms. M represents testimony rather than documentary evidence, the Agency's refusal to consider the statutory declaration in its assessment of her application is also concerning. Statutory declarations are described in section 69 of the *Evidence Act*:

> 69 A gold commissioner, mayor or commissioner authorized to take affidavits, or any other person authorized by law to administer an oath in any matter, may receive the solemn declaration of any person voluntarily making it before him or her in attestation of the execution of any writing, deed or instrument, or of the truth of any fact, or of any account rendered in writing, in the following words:
>
> > I, A.B., solemnly declare that [state the facts declared to], and I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same legal force and effect as if made under oath.

In fact, the Agency even requires an applicant to set out the particulars of their amendment request – the first component of the application to amend, provided in section 10(2)(a)) – in the form of a statutory declaration.[18]

Ms. M's sister swore her statutory declaration using the language stipulated in the *Evidence Act*. In accordance with section 69, her statutory declaration therefore constitutes a solemn declaration in attestation of the truth of the facts therein. This gives it the same legal force and effect as if sworn under oath. Making a false statement in a statutory declaration is perjury under the *Criminal Code*[19] and punishable by a term of imprisonment of up to 14 years.

It is therefore concerning that the Agency would not consider the statutory declaration for the truth and sufficiency of its contents in assessing whether the application was made in good faith, as required in section 10(3).

During our investigation, the Agency sought to justify its approach by stating that exercising its discretion would allow people to use the amendment provisions in section 10 of the *Vital Statistics Act* to accomplish a name change, a process that should occur under the *Name Act*. The Agency also suggested that accepting Ms. M's evidence would not align with the intent of the legislation.

Ultimately, none of these points are persuasive. The Agency must exercise the discretion provided in the *Vital Statistics Act* and assess each amendment application individually. The Agency need not approve all applications, but it must consider each one on its own merits.

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[18] Form VSA 411, Statutory Declaration Re: Amendment of a Given Name on a Birth Record, https://www2.gov.bc.ca/assets/gov/health/forms/vital-statistics/vsa411_fill.pdf

[19] RSC 1985 c. C-46, s. 131(1) (perjury).

The discriminatory impact of the Agency's policy

The older a person is, the more likely it is that physical records created before their 12th birthday have been destroyed or lost or are otherwise inaccessible. Any person – no matter their age or other circumstances – should be able to access the amendment process provided for by section 10 of the *Vital Statistics Act*. Inflexible application of the Agency's policy requirement will disproportionately impact seniors and others who may not be able to obtain at least two historical records. For example, records may be destroyed by flooding or wildfires, such as in 2021 in the village of Lytton.[20] Accessing records may also be traumatic or challenging for victims of abuse, including residential school survivors.[21]

By strictly requiring two pieces of "record-style" historical evidence, the Agency exacerbated the adverse impact caused by the fettering of its discretion under the *Vital Statistics Act*. That has been the case for Ms. M, who has explained that she contacted her childhood doctors, schools and church and various other agencies in her quest to find the required documentation; the only records reportedly still in existence were those from the school board, which she submitted in support of her application. Only in the absence of any other records being available did Ms. M submit a statutory declaration from a family member as additional evidence. As described above, the Agency's failure to consider the merits of the evidence provided was unfair.

As a final point, at a late stage of our investigation, the Agency proposed that it would waive its fee for a legal name change if Ms. M would instead pursue that process under the *Name Act*.[22] Although that might appear to achieve the same result for Ms. M through a process preferred by the Agency, it would not accord with the legislative framework established by the *Vital Statistics Act*. Equally important, in Ms. M's view, there is a matter of principle at stake. To Ms. M, requiring a name change would diminish over 70 years of living as "Elizabeth," undermining her dignity.

In her own words . . .

I am at a loss and can tell you I am a very sad Senior who has always tried to be a good person. I cannot grasp why I am expected to change the name I have used all my life. The person on my original birth certificate never ever existed. They never did one thing in their life. They have no paper trail to their life. It would seem like an insult and make me feel like everything I have accomplished does not exist.

As a person who has lived in [British Columbia] all my life, paid taxes and tried to be a good citizen I would greatly, greatly appreciate your allowing me to do an amendment to my original birth certificate.

– Elizabeth M

[20] https://www.theglobeandmail.com/canada/article-wildfire-destroys-lyttons-governance-records-bc-gives-ok-to-rewrite/

[21] https://www.cbc.ca/news/canada/ottawa/residential-school-records-now-in-rome-researchers-survivors-concerned-1.6241449.

[22] The Agency fee does not include the additional costs of the process, including costs for fingerprinting, criminal record check, witnessing the signature on a statutory declaration, certifying documents, and new identification following the name change. See Government of British Columbia, "Legal Change of Name Application," https://www2.gov.bc.ca/gov/content/life-events/legal-changes-of-name/legal-change-of-name-application#cost.

FINDINGS AND RECOMMENDATIONS

For the reasons identified, the Agency's administration of Ms. M's section 10 amendment request was unfair. By fettering its discretion, the Agency acted in a manner contrary to the *Vital Statistics Act*. Furthermore, the Agency's policy approach also has had an improperly discriminatory effect because of the increased difficulty of locating historical records due to age or other personal circumstances.

Accordingly we make two findings:

Finding 1: The Vital Statistics Agency applied an unfair procedure to Ms. M's section 10 name amendment request by fettering its discretion through literal reliance on its Amendments to Given Names Policy and failing to consider the merits of the application and evidence.

Finding 2: The Vital Statistics Agency's inflexible application of its own amendment policy to Ms. M's section 10 name amendment request was improperly discriminatory because, due solely to the passage of time, Ms. M was not able to locate two distinct historical records to support her amendment request.

We make three recommendations to address the unfair administration of Ms. M's application and the Agency's fettering of its discretion under the *Vital Statistics Act*

Recommendation 1: By December 31, 2022, the Vital Statistics Agency update its amendment policy to better articulate the Agency's discretionary decision-making duty under the *Vital Statistics Act*, removing the requirement for at least two pieces of documentary evidence.

Recommendation 2: By January 31, 2023, the Vital Statistics Agency provide supplemental training to all Agency staff with decision-making power under section 10 of the *Vital Statistics Act* on how to consider alternative types of evidence and discretionary decision-making.

Recommendation 3: By January 31, 2023, the Vital Statistics Agency reconsider Ms. M's section 10 amendment request, including considering the documentary evidence, the statutory declaration and good faith of the applicant, and provide Ms. M with a letter outlining its reconsideration decision.

APPENDIX
CORRESPONDENCE WITH MINISTRY OF HEALTH

BRITISH COLUMBIA

November 21, 2022

Via email

Jay Chalke
Ombudsperson
Office of the Ombudsperson
PO Box 9039 Stn Prov Govt
Victoria BC V8W 9A5

Dear Jay Chalke:

Thank you for your letter dated November 3, 2022, indicating the Ombudsperson's Office has completed their review of the Vital Statistics Agency's (the Agency) policy for amending an individual's given name(s) under section 10 of the *Vital Statistics Act* (the Act). It is noted that the Ombudsperson's Office disagrees with the application of this policy.

The Agency's mandate is to safeguard against the inappropriate usage of foundation identity information. When an individual applies to change a name on a birth registration there is potential that they are attempting a takeover of that identity as birth certificates are not connected to a unique individual through means such as biometric authentication. This is the reason for the Agency collecting corroborating evidence when amending any vital event record. This becomes particularly important when amending a name through Section 10 of the Act as there is not the equivalent level of identity authentication compared to a legal name change under the *Name Act,* which requires a criminal record check and fingerprinting.

That said, the Agency will offer to amend Elizabeth M's given name on a one time, without prejudice basis due to the minor nature of the correction.

Sincerely,

Stephen Brown
Deputy Minister

Ministry of Health Office of the Deputy Minister PO Box 9639 STN PROV GOVT Victoria BC V8W 9P1

OMBUDSPERSON
BRITISH COLUMBIA

November 22, 2022

Stephen Brown
Deputy Minister
Ministry of Health
PO Box 9639 Stn Prov Govt
VICTORIA BC V8W 9P1

Dear Deputy Minister Brown:

Thank you for your letter of November 21 regarding my office's draft report on the name amendment process under the *Vital Statistics Act*.

I am pleased to hear that the Agency has reconsidered its previous position in regards to Elizabeth M.'s name amendment application and will be permitting her to amend her name in accordance with her request. In taking this step, I consider that the Agency accepts Recommendation 3. However, I ask that you confirm the Agency will be communicating with Elizabeth M. about its decision.

In addition, I require clarification as to whether the ministry accepts Recommendations 1 and 2 in the draft report. For your reference, those recommendations are:

> **Recommendation 1:** By December 31, 2022, the Vital Statistics Agency update its amendment policy to better articulate the Agency's discretionary decision-making duty under the *Vital Statistics Act*, removing the requirement for at least two pieces of documentary evidence.
>
> **Recommendation 2:** By January 31, 2023, the Vital Statistics Agency provide supplemental training to all Agency staff with decision-making power under section 10 of the *Vital Statistics Act* on how to consider alternative types of evidence and discretionary decision making.

Please respond in writing no later than Friday, December 2 to indicate whether you accept these recommendations. I intend to include a copy of your response as an appendix to my public report.

Mailing address: PO Box 9039 Stn Prov Govt • Victoria BC V8W 9A5
Phone in Victoria: 250-387-5855 • Toll-Free: 1-800-567-3247 • Fax: 250-387-0198 • bcombudsperson.ca

Should you wish to meet prior to providing the ministry's final response, please feel free to contact me.

Yours sincerely,

Jay Chalke
Ombudsperson
Province of British Columbia

cc: Jack Shewchuk, Registrar General, Vital Statistics Agency

BRITISH COLUMBIA

December 5, 2022

Via email

Jay Chalke
Ombudsperson
Office of the Ombudsperson
PO Box 9039 Stn Prov Govt
Victoria BC V8W 9A5

Dear Jay Chalke:

Thank you for your recent letter dated November 22, 2022, querying whether the Vital Statistics Agency (Agency) has reconsidered its position in adopting the recommendations set out by the Ombudsperson's Office related to case file [redacted].

There are over 3 million active identities that the Agency manages on behalf of the citizens of British Columbia. The Agency's current policy, which requires an applicant to submit a minimum of two pieces of documentary records in existence prior to age 12, coincides with the Agency's responsibility to safeguard against the inappropriate usage of birth certificates and potential theft of identity. When adjudicating name change requests, either through Section 10 of the *Vital Statistics Act* or through a legal name change process via the *Name Act*, the Agency collects substantiating evidence that connects an individual to more than one identifiable marker, such as a name printed on a single record in time. This minimizes the risk of fraud and the adjustment of a foundation identity while ensuring the protection of identity for all individuals.

From an administrative fairness context, the Agency agrees that discretion must be exercised based on the merits of each individual case while adopting a policy that can be reasonably applied to all individuals. The Agency will revise its current policy to allow individuals seeking a minor amendment to their given name(s) to provide a single record of evidence if the amendment does not pose a concern to identity protection for all individuals.

Every application for an amendment under Section 10 is reviewed by an Assistant Regional Manager who has been trained thoroughly to consider alternative types of evidence by utilizing the current policy. This training will now include this policy revision.

…2

Ministry of Health Office of the Deputy Minister PO Box 9639 STN PROV GOVT
Victoria BC V8W 9P1

As requested by the Ombudsperson's office, the Agency will contact Ms. M to assist her with amending her given name under Section 10 of the *Vital Statistics Act*.

Sincerely,

Stephen Brown
Deputy Minister

OMBUDSPERSON

BRITISH COLUMBIA

Office of the Ombudsperson | PO Box 9039 Stn Prov Govt | Victoria, B.C. V8W 9A5

General Inquiries: 250 387-5855 (Victoria) or 1 800 567-3247 (Rest of B.C.) | Fax: 250 387-0198

www.bcombudsperson.ca