



The Law Society of Manitoba

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FAMILY LAW

Chapter 8

Adoption, Assisted Reproduction and Parentage

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A. ADOPTION

1. Introduction

Adoption is the process whereby a child not born to a person is declared, for all intents and purposes, to be the child of that person.

Unknown to the common law, adoption is a creature of statute. As it is capable of permanently altering status, it is strictly construed. *The Adoption Act* (the Act) was proclaimed in March 1999. Prior to that time, adoptions were governed by *The Child and Family Services Act*.

The Act gives the authority to the Director of Child and Family Services to maintain:

- a central adoption registry, which records potential adoptive parents and children available for adoption in the province of Manitoba (s. 7(1));
- a post-adoption registry, which is a listing of adopted children and adoptive families for the purpose of facilitating post-adoption contact and providing information (s. 114); and
- access to the Office of the Children's Advocate, an office authorized and empowered through *The Child and Family Services Act*, to advise the Minister on matters relating to and arising from *The Adoption Act* and to review and investigate complaints relating to and arising from the Act.

Changes to the regulations of the Act and to *The Vital Statistics Act* now allow for more openness with respect to birth records related to adoption. These amendments came into effect in Manitoba on June 15, 2015.

The purpose of the Act is defined in section 2:

to provide for new and permanent family ties through adoption, giving paramount consideration in every respect to the child's best interests.

Section 3 of the Act provides a list of factors to be considered in determining the child's best interests, including:

- (a) *the safety of the child;*
- (b) *the child's opportunity to have a parent-child relationship as a wanted and needed member of a family;*

- (c) *the child's mental, emotional, physical and educational needs and the appropriate care or treatment, or both, to meet such needs;*
- (d) *the child's mental, emotional and physical stage of development;*
- (e) *the child's sense of continuity and need for permanency with the least possible disruption;*
- (f) *the child's cultural, linguistic, racial and religious heritage;*
- (g) *the view and preferences of the child where they can reasonably be ascertained;*
and
- (h) *the effect upon the child of any delay in the final disposition of the proceedings.*

A person (or persons) applying to adopt a person pursuant to the Act must be an adult who resides in Manitoba. Prior to an application for adoption being filed in the Manitoba Court of King's Bench, a child in respect of whom adoption is sought must already be residing in Manitoba with the prospective adoptive parent(s).

There are three basic stages in the adoption process:

1. the linking of a child with an adoptive family or adoptive parent;
2. the placement or prior residency of the child in the home of the adoptive family or adoptive parent; and
3. the formal application to the Court of King's Bench for an adoption order.

An adoption by non-parents makes the adopted child, for all purposes of the laws of Manitoba, a child of the adoptive parents. All pre-existing natural (legal) parental rights and obligations are terminated. After adoption, kindred relationships are determined in accordance with the newly-constituted relation for all legal purposes except consanguinity prohibitions relating to marriage. Indigenous children do not lose their *Indian Act* status nor their aboriginal or treaty rights through adoption.

Adoption is a serious legal judgment. The Act and its regulations detail requirements and procedures for each kind of adoption. These requirements must be scrupulously followed. The required documentary evidence (such as proof of birth, consents, relevant marriage/divorce/death certificates, home studies, sworn affidavits of the applicants, and the original criminal record and child abuse registry checks) will be meticulously scrutinized by the court prior to a judgment being granted. If in doubt, ask the King's Bench registrar in charge of adoptions for help.

Section 88 of the Act, which governs adoption by a person who has married or lives with the child's natural parent, formerly precluded adoption by a same-sex partner. *The Charter*

Compliance Act, S.M. 2002, c.24 received royal assent on August 1, 2002 and resulting amendments to the Act came into force on January 1, 2003. Amongst other things, *The Charter Compliance Act* amended the Act to add a definition of “common-law partner.” A common-law partner of a person may be of the same or opposite sex of that person.

Accordingly, married spouses and common-law partners, whether of the opposite or the same sex, are all now eligible to apply to adopt a child (or children) as legally recognized “spouses.”

2. Categories of Adoption

The categories of adoption are found in Part 3 of the Act, Divisions 1 to 7. For each category of adoption, the Act specifies the procedures required for the completion of the adoption itself, including placement procedures, home studies, obtaining consents, and notice and service requirements. The categories are:

- Division 1: Adoption of permanent ward;
- Division 2: Private adoptions;
- Division 3: Intercountry adoptions;
- Division 4: *De facto* adoptions;
- Division 5: Extended family adoptions;
- Division 6: Adoption by spouse or common-law partner of child’s parent; and
- Division 7: Adoption of an adult.

Adoption of children who are permanent wards of Child and Family Services is one of the more common forms of adoption. The names of children over whom a mandated Child and Family Service agency has a permanent and non-appealable order of guardianship are placed on the central adoption registry and are linked, through the adoption units of the mandated agencies, with families who register to adopt children. These adoptions do not normally involve private lawyers.

Private adoptions are basically stranger-to-stranger adoptions wherein the adoptive family has heard of the availability of a child who is not a ward of Child and Family Services, and the potential adoptive family is in no way related to the adoptive child or its extended family members. Where everyone involved lives in Manitoba, this process is reasonably straightforward.

Intercountry adoptions where a child is a citizen of another country and is a ‘ward of the state’ in their country have special rules and regulations. They require the involvement of the relevant Child Protection Agency in the country of origin, and the Adoption division of the Director of Child and Family Services for the province of Manitoba.

The Act specifies different procedures for international adoptions between countries depending on whether they are signatories to the Hague Convention. Canada is a signatory. This information can be found on the internet or by calling the Family Law Branch (Justice Department) Manitoba.

A party who wishes to adopt a child privately from another country must follow the rules as outlined in both Division 3 (intercountry adoptions) with regard to notice to the Director, as well as all the requirements under Division 2 (private adoptions), assuming that the adoption will be completed in Manitoba.

Applicants who wish to adopt children from other countries must, in all cases, whether state-to-state adoptions or private adoptions, apply to Citizenship and Immigration Canada to sponsor the child.

A Manitoba home study needs to be completed prior to any other processes or arrangements so that the potential adoptive family has been pre-approved by the province of Manitoba, whether their adoption of a child from another country will be finalized in the country of the child's birth or in Manitoba.

Once the Director of Child & Family Services has approved the potential adoptive parents pursuant to Manitoba requirements, at the request of Citizenship and Immigration Canada, they will provide a "letter of no objection" for placement of the child in Manitoba with the potential adoptive parents while awaiting the finalization of the adoption, whether in another country or in Manitoba.

If intercountry private adoptions are to be finalized in the country of the child's birth, the procedures will either be governed by the procedures of the Hague Convention, if the country is a Hague Convention signatory, or the procedures must meet similar or equivalent standards required for the finalization of private adoptions in Manitoba.

Prior to 2008, as 78 countries were signatories to the Hague Convention, the most common adoptions from a non-signatory state were adoptions of children out of the United States of America by Manitobans. However, as the United States became a signatory to the Hague Convention, and its guidelines came into force in all states in April 2008, intercountry adoptions from non-Hague Convention countries are rare.

As the vast majority of intercountry adoptions involving children from foreign countries who are unrelated and unknown to the adoptive parents are facilitated by mandated adoption agencies, they will not usually involve a private lawyer.

***De facto* adoptions** are intended to facilitate adoption by a person or persons who, for whatever reason, have been functioning as *de facto* parent(s) of a child for at least two consecutive years.

With respect to children in care, the potential adoptive parents must have a legal order of guardianship for at least two years before they will be eligible to apply for de facto adoption. Although the child may have been in their care as a foster child, this period of time will not count towards calculating the two-year time requirement, as during this time the applicable Child and Family Services Agency is considered to have care of the child, even though the child was in the physical care of the foster parents (and thereafter potential adoptive parents).

As a result of *The Charter Compliance Act*, married or common-law partners (either opposite-sex or same-sex), or any two other persons, may apply for a *de facto* adoption of a child if, at the time their application was made:

- they were jointly caring for or maintaining the child; and
- one or both of them had been doing so for at least two consecutive years.

In the case of two persons who are not married and not living common-law, along with addressing the standard issues, the agency home study report must assess the stability of their relationship. This category, the adoption of an adult category and the adoption of a permanent ward category are the only types of adoptions that can proceed without seeking the consent of the natural parents.

There are special procedures for **adoptions of children by their own extended family members.**

Extended family members include step-parents, siblings, grandparents, aunts, uncles, cousins, any person *in loco parentis* to the child, and the opposite or same-sex spouse of any of those persons. Also included in this category are aunts, uncles and cousins of a birth-parent, a spouse of any of those persons, and any unmarried adult who is co-habiting in a relationship of some permanence with any of those persons of the opposite or same sex. Either one or two persons may apply.

If the family members are not residing together in a conjugal relationship, the required agency home study must specifically address the stability of their relationship, and their commitment to maintain a joint household and care for the child jointly.

The child must have been in the care of the applicants for at least six months and the application for the order of adoption made no later than 12 months after the child was transferred to the care and control of the adoptive parent(s). Both of these timelines can be extended or reduced by an order of the court under section 84 if it is satisfied it is in the

child's best interests to do so. Extended family adoptions are rarer than some of the other forms of adoption. It is more common to see extended family members obtain guardianship of a child of a member of their extended family,

Where an individual with children remarries and the other natural parent of the children has played a less significant role in the children's lives, it is not uncommon for the new spouse to apply to adopt the children. This applies to opposite-sex and same-sex spouses and common-law partners.

3. Adoption Agencies

Under the Act, private adoption agencies may be established. Under section 9, a duly incorporated body (under *The Corporations Act*) is now permitted to be licensed to provide adoption services. The regulations to the Act detail how such an agency can obtain a license from the Director of Child and Family Services.

Adoption agencies are able to advertise their services, save and except for references to specific children. Prospective adoptive parents may now apply either to a Child and Family Services agency or to a private adoption agency, to assist them in matching with an adoptive child.

Applications to place and receive children for adoption can now be approved either by a mandated Child and Family Services agency, or by a licensed private adoption agency. Both types of agencies are mandated to carry out home studies and to give or deny approval for placement of the child in the adoptive home, as the Act requires.

4. Subsidized Adoptions

Pursuant to section 34 of the Act, a person is not prevented from adopting a child due to financial constraints. A person may apply to the Director of Child and Family Services for a financial subsidy:

- if the child to be adopted has special needs, such as a physical or mental condition which will make caring for that child more expensive than the care usually provided to a child; or
- there are siblings who should be adopted together.

5. Post-Adoption Access and Openness Agreements

There is no automatic right for a biological parent, or for other relatives, to have access to a child once an adoption is finalized. However, in the Act, in the context of a step-parent adoption, a natural parent can apply for access following an adoption of their child by the other natural parent's new spouse (see ss. 92(1) and 92(2) of the Act).

The court may be able to deal with post-adoption access issues through the use of the "exceptional circumstances" provision in section 78 of *The Child and Family Services Act*, but no formal application may be made during the adoption process itself.

Post-adoption access may also be addressed through informal negotiations between all parties involved. It may be resolved by a private agreement between the parties either prior to or during the adoption process, or completed as a separate order filed and granted at the same time as the adoption order.

After an adoption is finalized, if adoptive parents or adoptees file a contact preference (see Section 6 Post-adoption Registry below), the information necessary for any applicant, including a natural parent, to apply for post-adoption access will not be available. Courts will not overturn a contact preference except where there are exceptional circumstances in the best interests of a child.

Open adoptions (meaning some post-adoption contact between children and their natural parents) have become more frequent, particularly for children who are permanent wards of a Child and Family Services agency. The Act allows an arrangement under section 33 called an openness agreement.

Openness agreements permit adoptive parents, and a variety of other people who have "established a meaningful relationship with the child," to make agreements governing post-adoption access. The making of these agreements is conditional (s. 33(2)) upon receipt of the written consents to adoption of the persons entitled to surrender the guardianship of the child (s. 13(a)).

The individuals eligible to be involved in openness agreements, along with adoptive parents, include any of the following (s. 33(1)):

- birth parents;
- where the child is a permanent ward of a Child and Family Services agency, members of the extended birth family of the child approved by the agency;
- prospective adoptive parents or adoptive parents of a minor sibling of that child;

- if the child is or is entitled to be a member of an Indian band, as defined in the *Indian Act*, any member of that same Indian band; and
- any other person who has established a meaningful relationship with the child.

Openness agreements must be provided to the Director of Child and Family Services where they are filed on the post-adoption registry. The openness agreement does not affect the legal status of the adopted child. These agreements may contain provisions to resolve disputes which could arise in the future or with respect to matters which may arise from the contact specified by them.

6. Post-Adoption Registry

Current notions about adoption have changed. There is a growing recognition that many adoptions break down and that many adopted children, particularly once they are in their teens, have a strong need to know, for their own psychological reasons, the identity of their natural parents. The search for “roots” is obsessively compelling for some. Medical history and related risks may be an important dynamic to consider in this area.

The post-adoption registry was established under *The Child and Family Services Act* and is continued under the Act. It is maintained by the Director of Child and Family Services, and is confidential. Access to the registry, and disclosure of information in it, may be given only in accordance with the Act.

Information on the registry is obtained from records relating to the granting of orders of adoption, or given voluntarily by persons entitled to register on the post-adoption registry or by members of their extended families. Its purpose is to facilitate mutually-desired contact between adopted children and their natural parents. The protocol for access to the registry takes precedence over the *Freedom of Information Act*.

Once an adoption order is granted, either under the previous provisions of *The Child and Family Services Act* or the Act, the following are entitled to register on the post-adoption registry under sections 118, 118.1, 119 and 119.1:

- adult adoptees;
- adoptees who are under the age of majority, through their adoptive parents;
- adoptive parents:
 - (i) if the adoptee is an adult, with the adoptee’s consent, or
 - (ii) if the adoptee is deceased;
- adult adoptive siblings of adoptees, if the adoptee is deceased;
- grandparents of adult adoptees, if the birth parent is deceased;
- birth parents of adoptees; and
- adult birth siblings of adoptees.

Previously, all who registered were entitled to file one or both of two types of vetoes along with their name and other information. **A disclosure veto** (s. 112) prevents the release of all identifying information, although other information may be released. A non-identifying letter may be provided with a disclosure veto to share personal, health or family information.

Recent amendments to the regulations of the Act as well as *The Vital Statistics Act* provide that disclosure vetoes are no longer accepted for Manitoba adoptions granted after June 15, 2015. Disclosure vetoes are still available for adoptions completed before that date as well as for adoptions completed outside of Manitoba.

A contact veto (s. 113) is a veto which prohibits other named individuals from contacting, intimidating, or harassing the registered person and, more specifically, prohibits getting someone else to do it. These vetoes may be lifted by the registrant. The new amendments dictate that these vetoes are no longer accepted after June 15, 2015.

Instead, birth parents and adoptees (16 years and older) may file a contact preference. This contact preference specifies the type of contact, if any, requested by a birth parent or adoptee. A non-identifying letter to provide personal, health, or family information, may also accompany the contact preference.

Failure to file any of the applicable vetoes or a contact preference, allows the Director of Child and Family Services to automatically provide all registered information to another person registered with respect to the same adoption. Failure to comply with a contact preference or contact veto can result in a fine up to \$50,000.00.

7. Paying or Accepting Payment for an Adoption

The Act prohibits any person from giving or receiving, offering to give or receive, or agreeing to give or receive any payment or reward, whether directly or indirectly:

- to procure or assist in procuring a child for the purposes of adoption in or outside of Manitoba; or
- to place or arrange the placement of a child for the purposes of adoption in or outside of Manitoba.

This prohibition does not apply to:

1. a birth mother receiving, from a prospective adoptive parent, expenses that do not exceed those allowed under the regulations. The eligible expenses are found in section 32 of the regulations and include:

- (a) the cost of goods or services recommended by a duly qualified practitioner or a psychologist, subject to the approval of the director, if the goods or services are not covered under insurance or a governmental program and are:
 - (i) for a child who is the subject of the adoption, or
 - (ii) for the birth mother in connection with the pregnancy or birth;
 - (b) lawyer's fees and disbursements:
 - (i) for independent legal advice for a person required to consent to an adoption under section 13 of the Act,
 - (ii) for completing a prescribed form,
 - (iii) for completing an affidavit in support of the granting of an order of adoption, and
 - (iv) for representing a litigation guardian who is acting on behalf of a minor birth parent where the birth parent supports the granting of an order of adoption;
 - (c) other expenses approved by the director relating to the health or safety of the child or birth parent;
2. an adoptive parent who received financial assistance under section 34 of the Act, i.e., a subsidized adoption;
 3. a lawyer receiving reasonable fees and expenses for legal services provided in connection with an adoption, whether representing the adoptive parents or the birth parents;
 4. a health care provider receiving reasonable fees and expenses for medical services provided to a child who is the subject or an adoption, or to the birth mother in connection with the pregnancy or birth;
 5. an adoption agency or a Child and Family Services agency receiving fees and expenses that do not exceed those allowed under the regulations attached to the Act; and
 6. by any other person prescribed by regulation.

8. Adoption Procedures: Practical Issues for the Lawyer

For children who are not already residing in the home of the potential adoptive parent or parents (as is the case in extended family adoptions, *de facto* adoptions, adoption by a person who has married or is in a common-law relationship with a child's parent and, in restricted circumstances, adoption of an adult), adoption procedures commence before the involvement of the Court of King's Bench.

Adoption procedures begin with the steps that are required for the initial placement of a child in a prospective adoptive home. A mandated Child and Family Services agency may place a permanent ward in the home of prospective adoptive parents, if the parents are registered on the central adoption registry and the director approves the placement.

However, in private adoptions or adoptions by extended family members, any prospective adoptive parents, and the person surrendering the child must notify either a Child and Family Services agency or a private adoption agency of their respective intentions to receive and place a child, not later than 14 days before receiving the child. These notices are provided on regulated forms.

Having received notifications of intent to receive and place a child for adoption, the agency is under a mandatory obligation to advise the person surrendering the child of the effects of adoption and their alternatives to adoption, and obtain information about the medical and social history of the child from the birth family and share the information with the prospective adoptive parents. The agency is also obligated to conduct a home study to determine the suitability of the prospective adoptive parents to adopt and their capacity and willingness to assume that responsibility.

In the event that the child is already born, an agency must have received the parents' consents to adoption and approved the placement of the child. With the adoption of any child other than a child who is a permanent ward of a mandated Child and Family Services agency, no person can give their consent to the adoption of a child, nor can it be requested, until at least 48 hours after the birth of the child.

This means that if adoptive parents are targeting a child who has been born and is continuing to live with the natural parents, they cannot receive the child in their home until 14 days after they have given notice to a mandated agency. If they are targeting an unborn child, all of the documents should be prepared prior to the birth of the child, leaving only the consents of the natural parents. Consent cannot be requested or given until 48 hours after the birth unless the consent is given pursuant to the governing law in the jurisdiction where the child was born. Subsequently the child can be placed in the adoptive parents' home.

Once the child has been placed with the adoptive parents, with all the appropriate notices, approvals and consents, application to the court can be made no earlier than 30 days and must be made no later than six months after the date the last consent required was given. All deadlines specified in *The Adoption Act* may be reduced, extended or modified by a judge, where there is a valid reason to do so.

Once the child has been living in the adoptive home for the prescribed time, the formal adoption is then commenced by way of application to the Court of King's Bench.

While treated as a family proceeding pursuant to the King's Bench Rules, in practice, adoptions are dealt with somewhat differently than family proceedings. They are assigned AD (rather than FD) preceding the file number. Specific court personnel are assigned to handle all adoption files. Provided that all documents are ultimately complete, accurate and present and the adoption is uncontested (which is generally the case), there is no necessity for personal appearances by any of the parties.

Under the Act, pursuant to section 100(1), court proceedings with respect to adoptions are closed to the general public, but open to the media, unless closed by successful application to a judge. However, this is a narrow window of openness, as it is forbidden to publicly disclose the names of parties to adoption proceedings.

The child's last name cannot be specified on the application. Only the first and middle names and the birth registration number are indicated. All court records and proceedings remain confidential and, therefore, adoption proceedings are not listed on court bulletin boards.

All records of adoptions are maintained in confidence by all agencies authorized to provide adoption services, except as the Act provides. Further, it is prohibited, by virtue of section 100(3), to disclose (report) the names of any parties or witnesses involved in adoption proceedings. If the matter involves a child in the care of an agency, the proceeding is also governed by the privacy/confidentiality rules in *The Child and Family Services Act*.

Each category of adoption carries its own requirements. Careful reference to the Act should be made to ensure that all documentary requirements have been met, that the consents of all required parties can be obtained, and that service on all interested parties has been properly effected. Service on the child in question, and their consent is necessary if they are over the age of twelve years.

In cases where natural parents cannot be located or simply refuse to commit their consent to writing (even though they have been served and are not contesting the adoption application), the Act allows a judge to dispense with consent, if they are satisfied that there are valid reasons to do so (s. 19). Those reasons may include, but are not restricted to, abandonment, inability to care for the child, persistent neglect, failure to have an ongoing parental relationship with the child, or simply that the person cannot be located.

The Act also provides for dispensing with service or substituted service on parties who are normally to be served and to give consent (s. 27). A judge may also dispense with the requirement of consent of a child 12 years of age or older if it is shown that they are unable to understand or give consent (s. 20).

If counsel foresees a problem locating a parent and/or a problem obtaining consent, counsel should request that relief along with their originating application. The court is then prepared to entertain a motion to obtain that relief, prior to the adoption hearing date. The motion must be accompanied by affidavit evidence which meets the onus stated in the law and in the King's Bench Rules. The motion might be set down on the Masters' daily uncontested/without notice list, or on the Masters' child protection docket list.

The adoption application must be served at least 30 days prior to the date of the hearing. For practical purposes, a Monday non-oral hearing date should be chosen at least two to three months from the time of filing in order to ensure that if any difficulties arise, they can be addressed well before the hearing. Normally, the adoption registrar will assign the date. If you want to choose a date, make that request known to the registrar. If the registrar feels that a short oral hearing is necessary, it will generally be scheduled by the court on a Monday afternoon list.

The court will notify counsel of the results of the non-oral hearing by returning (if successful) a certified order of adoption. The court sends the adoption order to Vital Statistics, who will send out an information form for completion for Vital Statistics records. All references to natural parents and the former name of the child will be removed from the birth registration and will be replaced by the names of the adoptive parents and the new name of the child. Subsequently, a new birth certificate may be requested from Vital Statistics and the adoptive parents will be shown as the parents of the child on the new certificate.

The provisions for new birth certificates in accordance with *The Vital Statistics Act* of Manitoba pertain to all adopted children who were born in Manitoba. In accordance with that act, Vital Statistics will forward a certified copy of an order of adoption made by a Manitoba court to the appropriate person or agency in the jurisdiction where the child was born (s. 10(8)). The particulars of any reissued birth certificate for a child born outside Manitoba will therefore depend on the laws of that jurisdiction.

Irrespective of the Manitoba order of adoption, if a child is born outside of Canada, it is not uncommon that the child's birth certificate cannot be changed easily or at all. For children born in, but legally adopted outside Manitoba, section 10(5) of *The Vital Statistics Act* of Manitoba allows for the appropriate changes to be made to the birth certificate. Many other jurisdictions within Canada have similar provisions.

In rare cases, adoption proceedings are contested. The most recent reported case involving a contested adoption is *S.L.A.K. v. A.S.H.*, 2016 MBQB 141 (CanLII). The most recent prior case was *Litke and Litke v. Gwyer*, 1994 CarswellMan 32 (Man. Q.B).

The most common contested situation is where a natural parent has provided consent, but attempts to withdraw that consent after the 21-day time limit, or refuses to provide consent. In these cases, the matter will proceed like any other contested case (i.e., through triage, examinations for discovery, pre-trial and trial). Accordingly, the matter must proceed to a full oral hearing for a final determination.

There is no capacity for an interim order of adoption, however adoptive parents might seek an interim guardianship order until the matter is resolved. The guiding principle in determining these cases remains the best interests of the child. Negotiations along the way may result in settlement involving some post-adoption contact for the natural parents or parent.

If any adoption order is granted after a contested hearing, counsel representing the opposing parents(s) must seek instructions as to whether their clients wish to appeal (assuming grounds for an appeal exist). If an appeal is to be pursued, counsel must seek additional instructions as to whether the clients wish to request a stay of the adoption order, pending appeal. Adoption orders (once the appeal period has elapsed) are final, and cannot be vacated.

There are special considerations when determining when the consent of the natural parent is necessary. This was clarified in *S.L.A.K. v. A.S.H.*, 2016 MBQB 141 (CanLII).

Section 13 of *The Adoption Act* sets out when consent of natural parent is required in all of the various categories for adoption other than Division 1 (adoption of permanent ward), and states as follows:

Consents required for other adoptions

13 Where the child to be adopted is not placed for adoption by a child and family services agency, a judge shall not make an order for adoption of the child unless written consent to the adoption has been given in the prescribed form by

- (a) each person who is entitled to surrender guardianship of a child under section 16 of The Child and Family Services Act; and*
- (b) the child, if the child is 12 years of age or older.*

Section 16(2) of *The Child and Family Services Act* as referenced in paragraph 13(a) of *The Adoption Act* then provides the further direction as follows:

Voluntary surrender of guardianship by mother

16(2) The mother of a child who is

- (a) unmarried and without a common-law partner; or*
- (b) married or had cohabited with a common-law partner, but ceased cohabiting with her spouse or common-law partner 300 days or more before the child was born;*

may, by agreement on a prescribed form, surrender guardianship of the child to an agency

Thus, in reading section 13 of *The Adoption Act* and section 16(2) of *The Child and Family Services Act* together, and as stated in *S.L.A.K. v. A.S.H.*, 2016 MBQB 141 (CanLII), if the conditions of section 16(2) for the mother are satisfied, then the consent of the birth father is not required, and only the mother's consent is necessary for the adoption.

There is an important procedural determination to be made for adoptions where one of the natural parents is and wishes to remain a legal parent.

This applies most commonly to step-parent adoptions (Division 6) where one parent may have remarried and their new spouse wishes to adopt the child. In this case the parent can either be a joint applicant with their new spouse or a respondent. The preferable practice now is to have the new spouse be the sole applicant and the parent be the respondent.

The parent must sign consent to the adoption and be served with the notice of application.

It is important when the parent is signing the consent, that the portion starting at point 5 stating that the parent is consenting to extinguishing their parental rights is crossed out and initialed.

In the alternative, if the parent is a joint applicant, and not a respondent, their criminal record searches and child abuse registry searches will also have to be submitted.

There are important considerations that exist when dealing with an adoption of an Indigenous child. Counsel should be aware of the impact of *An Act respecting First Nations, Inuit and Métis children, youth and families* (Bill C92). This federal legislation came into force in January 2020 and is further discussed and outlined in Chapter 9 - Guardianship and Child Protection. It should be determined whether any Indigenous Governing Body should be served with notice of the adoption.

It is also important that adoptive parents have a plan in place to foster the Indigenous heritage of a child they are seeking to adopt and for this evidence to be presented in the potential adoptive parents' affidavit.

It is most important to note that that norms and practices around adoptions are constantly evolving, and there are many procedures that are not necessarily formalized or even codified in the legislation. For example, in adult adoptions (Division 7) there is no requirement in *The Adoption Act* to serve the natural parents with the notice of application. However, it is now standard for the court to require service on the natural parents even in an adult adoption, unless there are grounds for service to be dispensed with.

Adoptions are very specialized, with many practices constantly evolving, which can make it difficult to navigate unless one has a substantial practice in this area.

B. ASSISTED REPRODUCTION AND PARENTAGE

There have been significant and recent advances with respect to legal parentage for children born by way of assisted reproduction. This involves children born with the assistance of an egg donor, sperm donor, donated embryos, and/or a surrogate/gestational carrier.

A constitutional challenge by seven LGBTQIA2S+ families was brought to the parentage provisions of *The Family Maintenance Act* (now repealed) in 2020. This case, *J.A.S. and C.M.M, A.S.M and A.C, K.M.G and J.S.G, V.C and S.R.T, F.M and E.S.S, A.K.G.G.A.A and S.E.P, and S.J.N and A.J.P. v. Attorney General of Manitoba (J.A.S. et al v. Attorney General of Manitoba)*, resulted in legislative amendments in December 2021 to *The Family Maintenance Act* to account for parentage in assisted reproduction.

Prior to these legislative amendments in December 2021, *The Family Maintenance Act* had not been updated since 1987 and had no provisions recognizing parentage of children born in cases of assisted reproduction. Over the years, medical technology and societal norms advanced such that children are now born with the use of assisted reproduction (egg donors, sperm donors, and surrogates). The outdated legislation not only disproportionately affected people struggling with infertility, but also the LGBTQIA2S+ community who commonly turn to assisted reproduction to build a family.

J.A.S. et al v Attorney General of Manitoba declared several sections dealing with parentage in *The Family Maintenance Act* to be discriminatory on the basis of sexual orientation. Orders of parentage were also granted for the seven parents who were parties to the constitutional challenge. The orders and declaration of unconstitutionality was made ultimately with the consent of the Attorney General of Manitoba.

As a result of this case the Manitoba government had a deadline to amend the discriminatory legislation, and new legislation was proclaimed in December 2021, which introduced a new section in *The Family Maintenance Act* "Parentage if Assisted Reproduction" (s. 22).

As a result of these amendments, if certain conditions are met (and in a surrogacy birth a court order is obtained) the intended parents are legally recognized as the legal parents to their child without having to complete an adoption of their own child.

In cases of non-surrogacy, there is no court order necessary, and if certain conditions are met the spouse of the birth parent is legally recognized as a parent (irrespective of whether they have a biological connection to the child).

On July 1, 2023, *The Family Maintenance Act* was repealed and replaced by *The Family Law Act* and *The Family Support Enforcement Act*. *The Inter-Jurisdictional Support Orders Amendment Act* also came into force. The provisions of *The Family Maintenance Act* which dealt with parentage are now found in *The Family Law Act* in sections 13-24.

Section 20(2) of *The Family Law Act* sets out that if the spouse was married or in a marriage like relationship with the birth parent at the time the child was conceived, the spouse or other person is also the child's parent. However, that section will not apply if there is proof that before the child was conceived the spouse or other person did not consent to be the child's parent or withdrew consent to be the child's parent.

A donor is defined as a person who provides reproductive material or an embryo for use in assisted reproduction, other than for the donor's own reproductive use. When a donor is used, although the donor has a biological connection to the child, the donor is not automatically a legal parent simply because of this biological link (s. 18 of *The Family Law Act*). This does not eliminate the necessity and importance of having a proper donor contract in place prior to conception.

In cases of surrogacy, if certain conditions are met and a sufficient surrogacy contract is in place, a court may make a declaratory order that the intended parents are the legal parents and the surrogate is not a legal parent, without an adoption (s. 23 of *The Family Law Act*).

There are certain conditions that need to be met in order to obtain the court order, including that there is a proper and sufficient pre-conception legal agreement. The child must be conceived by way of assisted reproduction. There are special requirements for the content of the surrogacy contract which are further outlined in s. 22 of *The Family Law Act*.

Further, the surrogate must provide their consent, which can be signed no earlier than 2 days following the birth. The application must be made within 30 days of the child's birth (s. 23 of *The Family Law Act*), and evidence must be submitted that no party withdrew from the agreement.

After the court makes a declaratory order of parentage/non parentage pursuant to *The Family Law Act*, a process has to be initiated to amend the child's birth registration accordingly and obtain a new birth certificate.

It is important to note that being listed as a parent on a birth certificate does not equate to legal parentage. This is a common misunderstanding. Being listed on a birth certificate is governed by *The Vital Statistics Act* while legal parentage is governed by *The Family Law Act*.

Even if one is able to be listed as a parent on a child's birth certificate, a court order may still be necessary to declare a person a legal parent pursuant to *The Family Law Act* in order for them to have legal parentage.

Legal parentage confers important rights that overlap with various legislation (such as *The Intestate Succession Act*), and as such legal parentage as per *The Family Law Act* is confirmed for all purposes of the law of Manitoba (s. 16(1)).

The law surrounding assisted reproduction is constantly evolving and involves various types of families. Therefore, it is important to understand the nuances of applying the law to families' individual circumstances. For example, in some cases intended parents may still choose to proceed with an adoption rather than a declaration of parentage, such as in a case of traditional surrogacy where the surrogate's eggs are used and she has a genetic connection to the child.

C. ASSISTED REPRODUCTION AND DEATH

1. Assisted Human Reproduction and Death; Legal Considerations

It is becoming increasingly common for people to have a child with the use of third-party assisted reproduction. There has been a steady increase in the use of assisted human reproduction since the first baby was born by in vitro fertilization in 1978.¹ This is due, in part, to an increase in infertility. In Canada, roughly 1 in 6 couples experience infertility, which is a number that has doubled since the 1980s.²

It is also due to the significant advancements in medical technology and the changing societal norms around how families are formed. In addition, clients who are ill will often store their reproductive material prior to undergoing treatment which may affect their fertility, such as chemotherapy.

Given this reality, it is inevitable that you will have clients come to you for estate planning that have or intend to store reproductive material.

There are special considerations for these clients of which wills and estates lawyers need to be aware in providing proper advice.

Many clients who have stored reproductive material wish for their spouse or common-law partner to be able to use this reproductive material to have a child after they die. This is especially common when the couple already has a child and the use of this reproductive material is the only manner in which to provide their existing child with a biological sibling, or the only manner in which the surviving spouse can conceive a child.

In order to give effect to this wish of a spouse or common-law partner, proper written consent must be executed in accordance with the federal *Assisted Human Reproduction Act* ("AHRA"). A simple direction in a Last Will and Testament is not sufficient.

¹ Melanie Glanz, "The First Test-Tube Baby Turns 40" (07 July 2018), online: *Canadian Broadcasting Corporation* <<https://www.cbc.ca/news/health/first-test-tube-baby-is-40-1.4736847>>.

² Public Health Agency of Canada, "Fertility" (28 May 2019), online: <<https://www.canada.ca/en/public-health/services/fertility/fertility.html>>.

The area of fertility law is constantly developing, and based on the current state of the law as discussed below, it appears clear that reproductive material is not property and cannot be bequeathed in a Last Will and Testament to a spouse or common-law partner. Further, the fertility clinic forms signed by clients are often not sufficient to provide proper consent in accordance with the AHRA.

Many clients desire their spouse to use their stored reproductive material after their death, but are not aware that proper consent in accordance with the AHRA must be executed in order for this to occur. It is extremely important to advise clients of this requirement, after first inquiring whether they have or intend to have any stored reproductive material.

Some clients may not have stored reproductive material, but wish for their spouse or common-law partner to be able to retrieve their reproductive material after their death for the purposes of having a child. This can also be done pursuant to the AHRA, but only if proper consent is executed prior to death.

2. *Assisted Human Reproduction Act*

The *Assisted Human Reproduction Act* is Canada's federal law on assisted human reproduction, which contains prohibitory, administrative and regulatory provisions related to assisted human reproduction and similar health matters.³

In 1989, the federal government created The Royal Commission on New Reproductive Technologies (the "Baird Commission") to research existing and future scientific and medical advances related to new reproductive technologies. As a result of inquiries and significant consultations, the Baird Commission put forth recommendations to the federal government. These recommendations were used to create legislation, culminating in a collection of bills introduced as the AHRA in March 2004.⁴

Section 8 of the AHRA provides that human reproductive materials are not to be used without consent.

8(1) Use of reproductive material without consent

*No person shall make use of human reproductive material for the purpose of creating an embryo unless the donor of the material has given written consent, in accordance with the regulations, to its use for that purpose.*⁵

³ *Assisted Human Reproduction Act*, SC 2004, c 2.

⁴ *Reference re Assisted Human Reproduction Act*, 2010 SCC 61 at paras 5-6.

⁵ *Supra* note 3, s 8(1).

8(2) Posthumous use without consent

No person shall remove human reproductive material from a donor's body after the donor's death for the purpose of creating embryos unless the donor of the material has given written consent, in accordance with the regulations, to its removal for that purpose.⁶

8(3) Use of in vitro embryo without consent

No person shall make use of an in vitro embryo for any purpose unless the donor has given written consent, in accordance with the regulations, to its use for that purpose.⁷

3. Consent for Use of Human Reproductive Material and In Vitro Embryos Regulation

The Consent for Use of Human Reproductive Material and In Vitro Embryos Regulations (the "Regulations") did not come into force until after the AHRA in 2007.⁸

Part 1 of the Regulations is to be consulted when dealing with consent for the use of human reproductive material under section 8(1) of the AHRA for the purpose of creating an embryo.

2 This Part applies in respect of a consent given under subsection 8(1) of the Act to make use of human reproductive material for the purpose of creating an embryo.⁹

3 Before a person makes use of human reproductive material for the purpose of creating an embryo, the person shall have a document signed by the donor of the material stating that, before consenting to the use of the material, the donor was informed in writing that

- (a) subject to paragraph (b), the human reproductive material will be used in accordance with the donor's consent to create an embryo for one or more of the following purposes, namely,*
 - (i) the donor's own reproductive use,*
 - (ii) following the donor's death, the reproductive use of the person who is, at the time of the donor's death, the donor's spouse or common-law partner,*
 - (iii) the reproductive use of a third party,*
 - (iv) improving assisted reproduction procedures, or*
 - (v) providing instruction in assisted reproduction procedures;*

⁶ *Ibid*, s 8(2).

⁷ *Ibid*, s 8(3).

⁸ *Consent for Use of Human Reproductive Material and In Vitro Embryos Regulations*, SOR/2007-137.

⁹ *Ibid*, s 2.

- (b) *if the human reproductive material is to be removed from the donor's body after the donor's death, the material will be used in accordance with the donor's consent to create an embryo for one or more of the following purposes, namely,*

 - (i) *the reproductive use of the person who is, at the time of the donor's death, the donor's spouse or common-law partner,*
 - (ii) *improving assisted reproduction procedures, or*
 - (iii) *providing instruction in assisted reproduction procedures;*
- (c) *if the donor wishes to withdraw their consent, the withdrawal must be in writing;*
- (d) *the withdrawal is effective only if the person who intends to make use of the human reproductive material is notified in writing of the withdrawal*

 - (i) *in the case of human reproductive material to be used to create an embryo for a purpose mentioned in paragraph (a) or (b), other than subparagraph (a)(iii), before the material is used, and*
 - (ii) *in the case of human reproductive material to be used to create an embryo for the purpose mentioned in subparagraph (a)(iii),*

 - (A) *before the third party acknowledges in writing that the material has been obtained for their reproductive use, or*
 - (B) *if the material to be used has not yet been removed or collected but the third party has acknowledged in writing that the material is to be obtained for their reproductive use, before the removal or collection;*
- (e) *the number of in vitro embryos created with the human reproductive material may be in excess of the immediate reproductive needs of the individual or couple for whom they were created;*
- (f) *if the human reproductive material is used to create in vitro embryos for a third party's reproductive use and there are in vitro embryos in excess of the third party's reproductive needs, the excess in vitro embryos will be used in accordance with the third party's consent and, if the use is providing instruction in assisted reproduction procedures, improving assisted reproduction procedures or other research, the consent of the donor in accordance with section 4 or 4.1;*
- (g) *if the human reproductive material is used to create in vitro embryos for the reproductive use of the person who, at the time of the donor's death, is the donor's spouse or common-law partner and there are in vitro embryos in excess of the spouse or common-law partner's reproductive needs, the excess in vitro embryos will be used in accordance with the spouse or common-law partner's consent and, if the use is providing instruction in assisted reproduction procedures, improving assisted reproduction procedures or other research, the consent of the donor in accordance with section 4 or 4.1;*

- (h) if the human reproductive material is used to create in vitro embryos for the reproductive use of a third party who is a couple, along with human reproductive material from an individual who is a spouse or common-law partner in the couple, the use of the in vitro embryos will be subject to the consent of that individual alone if, prior to the use of the in vitro embryos, the individual is no longer a spouse or common-law partner in the couple; and*
- (i) if the donor consents to the human reproductive material being used to create an in vitro embryo for the purpose of providing instruction in assisted reproduction procedures or improving assisted reproduction procedures, no additional consent from the donor is required to permit the use of the embryo for that purpose.¹⁰*

4(1) Before a person makes use of human reproductive material for the purpose of creating an embryo, the person shall have the written consent of the donor of the material stating that the material may be used for one or more of the following purposes:

- (a) the donor's own reproductive use;*
- (b) following the donor's death, the reproductive use of the person who is, at the time of the donor's death, the donor's spouse or common-law partner;*
- (c) the reproductive use of a third party;*
- (d) improving assisted reproduction procedures; or*
- (e) providing instruction in assisted reproduction procedures.*

4(2) A donor's consent stating that the donor's human reproductive material may be used for a purpose mentioned in paragraph (1)(b) or (c) shall also state whether any in vitro embryos that are not required for that purpose may be used for providing instruction in assisted reproduction procedures, improving assisted reproduction procedures or other research.¹¹

Part 2 of the Regulations is to be consulted when dealing with consent for the removal of human reproductive material from a donor's body after death under section 8(2) of the AHRA.

¹⁰ *Ibid*, s 3.

¹¹ *Ibid*, s 4.

6 *This Part applies in respect of a consent given under subsection 8(2) of the Act to remove human reproductive material from a donor's body after the donor's death for the purpose of creating an embryo.*¹²

7 *Before a person removes human reproductive material from a donor's body after the donor's death for the purpose of creating an embryo, the person shall have a document signed by the donor stating that, before consenting to the removal, the donor was informed in writing that*

- (a) the human reproductive material will be removed in accordance with the donor's consent to create an embryo for one or more of the following purposes, namely,
 - (i) the reproductive use of the person who is, at the time of the donor's death, the donor's spouse or common-law partner,*
 - (ii) improving assisted reproduction procedures, or*
 - (iii) providing instruction in assisted reproduction procedures;**
- (b) if the donor wishes to withdraw their consent, the withdrawal must be in writing;*
- (c) the withdrawal is effective only if the person who intends to remove the human reproductive material is notified in writing of the withdrawal before the removal of the material; and*
- (d) human reproductive material removed from the donor cannot be used for a purpose mentioned in paragraph (a) unless the person who intends to make use of the material has the donor's written consent under Part 1 respecting the use of the material.*¹³

8 *Before a person removes human reproductive material from a donor's body after the donor's death for the purpose of creating an embryo, the person shall have the donor's written consent respecting the removal of the material and the donor's written consent under Part 1 respecting the use of the material.*¹⁴

The Regulations do not include a standardized form of consent, and the federal government has acknowledged that many Canadians are unaware of their ability to provide consent or how to provide proper consent. Nevertheless, if consent is not given in accordance with the Regulations, it is likely that a surviving spouse or common-law partner will not be permitted to use a donor's human reproductive material after their death, even by court order.

¹² *Ibid*, s 6.

¹³ *Ibid*, s 7.

¹⁴ *Ibid*, s 8.

4. Developing Case Law

There are two cases to be aware of when dealing with human reproductive material and death of a donor. *K.L.W. v. Genesis Fertility Centre*, 2016 BCSC 1621 involved A.B., the spouse of K.L.W., who had continuing health issues and died intestate.

A.B. and K.L.W. had a strong desire to have a family but had no children at the time of A.B.'s death. A.B. had stored his reproductive material with Genesis Fertility Centre; however, he did not give written consent for K.L.W. to make use of his reproductive material after his death in accordance with the Regulations.

Genesis Fertility Centre refused to release A.B.'s reproductive material to K.L.W. to use to conceive a child.¹⁵ There was extensive evidence from a social worker, nurse, doctor and various family members of A.B.'s consent to allow K.L.W. to use his human reproductive material to conceive a child after his death.¹⁶

The British Columbia Supreme Court decided that A.B. had rights of use and ownership in the reproductive material sufficient to make it property and, therefore, it passed to his surviving spouse as the sole beneficiary on intestacy.¹⁷

A.B. had freely and repeatedly expressed his consent to K.L.W.'s use of his reproductive material after his death.¹⁸ The court held that A.B.'s consent specifically contemplated K.L.W.'s use of his stored reproductive material after his death and was sufficient free and informed consent, despite not being written in accordance with the Regulations.¹⁹ The court ordered that K.L.W.'s stored reproductive material be released to A.B. for her use to create embryos.²⁰

K.L.W. v. Genesis Fertility Centre seemed to stand for the proposition that consent to use reproductive material after a donor's death did not need to be given in accordance with the Regulations. Instead, in specific situations, a surviving spouse or common-law partner could obtain a court order to use reproductive material stored by their spouse before death as long as there was sufficient free and informed consent. However, this changed when *L.T. v. D.T. Estate (Re)*, 2019 BCSC 2130 was decided.

L.T. v. D.T. Estate (Re) did not involve stored reproductive material but rather reproductive material that was extracted from the deceased's body after death. It dealt with the same issue as in *K.L.W. v. Genesis Fertility Centre*, being when consent can be inferred to allow a surviving spouse to use a deceased donor's reproductive material.

¹⁵ *KLW v Genesis Fertility Centre*, 2016 BCSC 1621 at paras 8-39.

¹⁶ *Ibid* at paras 48-52.

¹⁷ *Ibid* at paras 94-105.

¹⁸ *Ibid* at para 131.

¹⁹ *Ibid* at para 136.

²⁰ *Ibid* at para 138.

Mr. T and Ms. T were in a long-term relationship and had one child when Mr. T suddenly died intestate of a heart attack.²¹ Mr. T had expressed his wishes to have more children to his family members and friends, but he did not provide consent for the posthumous use of his reproductive material in accordance with the Regulations prior to his death.²² One day after Mr. T's death, Ms. T obtained an order permitting the extraction and storage of Mr. T's human reproductive material.²³

More than one year later, a substantive hearing was held regarding the use of the reproductive material.²⁴ Ms. T's application was denied as Mr. T's stored reproductive material was not property and did not form part of his estate.²⁵ The British Columbia Supreme Court distinguished *K.L.W.*, since in this case there had been no discussion of the posthumous use of Mr. T's reproductive material, nor prior informed consent by Mr. T for the removal of his reproductive material.²⁶ The Regulations provide clear requirements for free and informed written consent, which did not exist.²⁷

This case went to the British Columbia Court of Appeal, *L.T. v. D.T. Estate (Re)*, 2020 BCCA 328. It was accepted that Mr. T would have consented to the posthumous use of his reproductive material had he considered the issue; however, he did not provide consent prior to his death in accordance with the regulations.²⁸

The Regulations are clear and unambiguous and provide for no exceptions.²⁹ The AHRA and the Regulations, read together, provide a criminal prohibition on the posthumous use of a donor's reproductive material unless the donor gave prior informed, written consent to its removal and use for that purpose.³⁰ It is not possible for other forms of "consent" to have any application in cases such as these. There is also no onus on the government to educate the public or provide a standardized form of consent to be used.³¹

There are no property rights in reproductive material, as this is inconsistent with the prohibition found in section 8(2) of the AHRA.³² The British Columbia Court of Appeal also held that *K.L.W.* should be treated as overruled in terms of the possible use of reproductive material where the statutory conditions have not been complied with.³³

²¹ *LT v DT Estate (Re)*, 2019 BCSC 2130 at paras 10-16.

²² *Ibid* at paras 15-16.

²³ *Ibid* at para 6.

²⁴ *Ibid* at para 8.

²⁵ *Ibid* at para 60.

²⁶ *Ibid* at para 33.

²⁷ *Ibid* at paras 25-30.

²⁸ *L.T. v. D.T. Estate (Re)*, 2020 BCCA 328 at para 9.

²⁹ *Ibid* at para 22.

³⁰ *Ibid* at para 23.

³¹ *Ibid* at paras 48-49.

³² *Ibid* at para 36.

³³ *Ibid* at para 44.

5. What We Now Know

From *L.T. v. D.T. Estate (Re)*, the Court has concluded that human reproductive material is not property. Even if it is considered property, it cannot be used unless consent is given in accordance with the Regulations.

It cannot be bequeathed in a Last Will and Testament. It cannot be gifted.

In order for someone to make use of a donor's reproductive material after their death, informed and written consent in accordance with the Regulations is required. This specified consent is required to retrieve reproductive material from a donor's body after their death.

In addition, the case law warns us to be aware of these types of issues that can arise for clients. It is important to educate ourselves and provide advice to clients so that they obtain the correct information and understand their options in dealing with their reproductive material upon their death.

D. PRECEDENTS – ADOPTION

1. Notice of Intent to Place a Child for Adoption and Request for Approval of an Agency

FORM AA-4

Notice of Intent to Place a Child for Adoption and Request for Approval of an Agency

Manitoba
Family
Services and
Housing

The Adoption Act, Division 2 of Part 3

TO: _____ (the agency)

1. I, _____, hereby certify that I am the _____ of the child:
 - (a) _____ who was born at _____ a.m./p.m. on the _____ day of _____, _____ at _____ (city/town, province) and the child resides at _____ (complete address); or
 - (b) who is expected to be born on or about the _____ day of _____, _____.

2. I reside at _____ (complete address) in the Province of Manitoba.

3. Pursuant to section 54 of *The Adoption Act* I hereby give you notice and request your approval of my intent to place the aforementioned child for adoption in the home of _____ who reside(s) at _____ (complete address) in the Province of Manitoba.

4. The prospective adoptive parent(s) are not related to me.

5. I was referred to the prospective adoptive parent(s) of my child by:

Name

Address

Occupation

6. I understand that:

(a) an approval of the proposed placement by an agency is required before the child may be placed for adoption in Manitoba;

(b) any person who gives or receives, offers to give or receive, or agrees to give or receive any payment or reward, either directly or indirectly, to procure or assist in procuring a child for the purposes of adoption, or to place or arrange the placement of a child for the purposes of adoption in violation of section 120 of *The Adoption Act* commits an offence punishable on summary conviction and is liable to a fine as stated in the Act.

7. I agree to furnish such information as may be required for the purpose of the approval by the agency.

IN WITNESS WHEREOF I have hereunto signed my name this _____ day of

_____, _____.

IN THE PRESENCE OF:

Witness

Signature

Copy 1 – Agency
Copy 2 – Prospective adoptive parent
Both copies must be signed and witnessed

2. Notice to Birth Father

FORM AA-1

NOTICE TO BIRTH FATHER

The Adoption Act — section 26

To _____

(name and complete address)

In the Matter of _____

born at ___ am/pm the ___ of _____, _____, in _____, _____
or
expected to be born on or about the ___ day of _____, _____ (the child)

1. You have been named as a birth father of the child by _____ (the mother).
2. The mother plans to place the child for adoption and placement may occur 48 hours after the birth of the child.
3. You may apply to be named the father of the child under Part 2 of *The Family Law Act*, and notice of this application must be given to the Director of Child and Family Services (the director).
4. If the director receives notice of an application under Part 2 of *The Family Law Act*
 - a) prior to the adoption placement of the child by the director or a child and family services agency, the child will not be placed for adoption until the application is withdrawn or dismissed by a judge, and all appeals from the dismissal have been exhausted; or
 - b) within 21 days of the signing of either a voluntary surrender of guardianship under *The Child and Family Services Act* or the signing of a consent to adoption under section 13(a) of *The Adoption Act*, a judge shall not make an order of adoption unless the application is withdrawn or dismissed by a judge, and all appeals from the dismissal have been exhausted.
5. You may contact the following person to obtain information about the plans for the child:

(Name of agency or lawyer, address, contact person, phone number, facsimile number, e-mail address or Internet address)

6. If you do not take any of the actions noted above, the child may be adopted without further notice to you.
7. If an order of adoption is granted, the effect of such order is to extinguish and terminate all your rights and obligations with respect to the child.

8. If the child is adopted

- a) when the child turns 18, the child may apply to the director for a copy of his or her pre-adoption Manitoba birth registration or information from his or her pre-adoption non-Manitoba birth registration. If you are a parent named on the child's pre-adoption birth registration, the child may obtain identifying information about you;
- b) if you are a parent named on the child's pre-adoption Manitoba birth registration, once the child reaches the age of majority, you may apply to the director for a copy of the child's pre-adoption birth registration and substituted registration of birth;
- c) if you are a parent named on the child's pre-adoption birth registration you may file a contact preference on the post-adoption registry to indicate your preferences concerning contact, if any, with the child when he or she turns 18;
- d) if you file a contact preference you may include with it
 - i) a description of your preferences regarding contact;
 - ii) an explanation for your preferences regarding contact;
 - iii) a brief summary of any available information about the medical or social history of you and your family; and
 - iv) any other relevant non-identifying information;
- e) you may cancel a contact preference at any time by notifying the post-adoption registry in a form and manner acceptable to the director;
- f) whether or not you are named as a birth parent on the child's pre-adoption birth registration, if the adoption was granted in Manitoba you may register on the post-adoption registry to request a search by the director to locate the adoptee when he or she turns 18;
- g) the sharing of identifying information or personal contact will not occur except in accordance with *The Adoption Act*.

Date _____

Signature _____

Print Name _____

Position _____

Copy 1 – Birth father
Copy 2 – Court of King's Bench (Family Division)
Copy 3 – Adoption file
All three copies must be signed

3. Affidavit of Service

FORM AA-2
AFFIDAVIT OF SERVICE

File No. _____

THE KING'S BENCH
(FAMILY DIVISION)
_____ CENTRE

IN THE MATTER OF: *The Adoption Act*

AND IN THE MATTER OF:

_____ (the mother)
-and-

born at ____ a.m./p.m. on ____ day of _____, ____ in _____
or

Expected to be born on or about the ____ day of _____, ____ (the child)

AFFIDAVIT OF SERVICE

I, _____ of the _____ of _____ in the Province of _____,
_____, _____ (occupation),

MAKE OATH AND SAY:

1. On _____, _____ at approximately ____ a.m./p.m. I served _____ with the NOTICE TO BIRTH FATHER by leaving a copy with _____ at _____ in the _____ of _____, in _____.
2. I was able to identify the person by means of _____.

Sworn before me at the _____)
of _____ in the province _____)
of _____)
on the ____ day of _____, _____.)

(Signature)

A Commissioner for Oaths in and for
the Province of _____.
My Commission expires _____.

Copy 1 – Court of King's Bench (Family Division)
Copy 2 – Adoption file
Both copies must be signed and witnessed

4. Notice of Intent to Receive a Child for Adoption and Request for Approval of an Agency

FORM AA-3

Notice of Intent to Receive a Child for Adoption and Request for Approval of an Agency

Manitoba
Family
Services and
Housing

The Adoption Act, Division 2 of Part 3

TO: _____
(the agency)

1. I/We, _____, of _____
(complete address) in the Province of Manitoba pursuant to section 53 of
The Adoption Act hereby give you notice and request your approval of my/our
intent to receive a child in my/our home for the purpose of adoption, and I/we
provide the following information:

(a) the name of the child is _____ and he/she was born at _____
a.m./p.m. on the _____ of _____, _____ at _____
(town/city, province) and the child resides at _____
(complete address); or

(b) the child is expected to be born on or about the _____ day of _____
_____, _____.

2. The names and complete addresses of the parents of the child (or the guardians,
if the parents are deceased) are:

3. The names, occupations and addresses of any persons who arranged or
assisted in the proposed placement of this child are:

4. I/We understand that:

(a) an approval of the proposed placement by an agency, which includes the
completion of a homestudy, is required before the child may be placed with
me/us for adoption;

(b) pursuant to *The Adoption Act* any person who gives or receives, offers to give or receive, or agrees to give or receive any payment or reward, either directly or indirectly, to procure or assist in procuring a child for the purposes of adoption, or to place or arrange the placement of a child for the purposes of adoption in violation of section 120 of *The Adoption Act* commits an offence punishable on summary conviction and is liable to a fine as stated in the Act.

5. I/We agree to furnish such information as may be required for the purpose of the approval by the agency.

IN WITNESS WHEREOF I/We have hereunto signed my/our name this _____ day of _____, _____,

IN THE PRESENCE OF:

Witness

Signature

Witness

Signature

Copy 1 – Agency
Copy 2 – Prospective adoptive parent
Both copies must be signed and witnessed

5. Notice of Receiving a Child for Adoption

FORM AA-5



Manitoba
Family
Services

Notice of Receiving a Child for Adoption

The Adoption Act, Division 2 of Part 3

TO: _____ (the agency)

I/We, _____ of _____
_____ (complete address) in the Province of Manitoba after
receiving the approval of the agency as required by section 62 of *The Adoption Act*, do hereby give
you notice that, on or about the ____ day of _____, _____, I/we received the child _____,
born _____, for purposes of adoption.

I/We acknowledge and agree:

- a) to undertake responsibility for the proper care, maintenance, support and education of the child from the date of placement;
- b) to immediately return the child to the birth parent if that parent's consent to adoption is withdrawn within twenty-one days after the date of that consent;
- c) to pay such fees and expenses approved by regulation for services rendered in relation to the proposed adoption, whether or not an order of adoption is granted;
- d) to furnish to the agency such other information as may be required for supervision of this placement and a report to the court as required by *The Adoption Act*;

I/We also acknowledge that if an order of adoption is made in Manitoba as a result of this placement, I/we have been informed that

- a) adoptive parents may, on behalf of the child, register on post-adoption registry to request a search by the director to locate the adoptee's birth parent or adult birth siblings, provided that if the child is 12 years or older, the child consents;
- b) a registration on the post-adoption registry by an adoptive parent will no longer be valid when the adoptee becomes an adult unless the adoptee consents to the registration being continued;
- c) when the adopted child turns 16, he or she may file a contact preference on the post-adoption registry to indicate his or her preferences concerning contact, if any, with his or her birth parents;

- d) if the adoptee files a contact preference, he or she may include with it
- i) a description of his or her preferences regarding contact;
 - ii) an explanation for his or her preferences regarding contact;
 - iii) a brief summary of any available information about his or her medical or social history and that of his or her family; and
 - iv) any other relevant non-identifying information;
- e) the adoptee may cancel his or her contact preference at any time by notifying the post-adoption registry in a form and manner acceptable to the director;
- f) when the adoptee turns 18, he or she may apply to the director for a copy of his or her pre-adoption Manitoba birth registration (or information from his or her pre-adoption non-Manitoba birth registration, as the case may be);
- g) when the adoptee turns 18, the birth parent(s) named on his or her pre-adoption Manitoba birth registration may apply to the director for a copy of the adoptee's pre-adoption birth registration and the substituted registration of birth, from which will be removed any identifying information about the adoptive parents;
- h) when an adoptee who was adopted in Manitoba turns 18, he or she may register on the post-adoption registry to request a search by the director to locate his or her birth parents and adult birth siblings;
- i) the sharing of identifying information or personal contact will not occur except in accordance with *The Adoption Act*.

IN WITNESS WHEREOF I/we have hereunto signed my/our names this ____ day of _____, _____.

IN THE PRESENCE OF:

Witness

Signature

Witness

Signature

Copy 1 – The agency (within 10 days of date of receiving child)
 Copy 2 – The adoptive parents
 Copy 3 – The director
 All three copies must be signed and witnessed

6. Approval of Agency of Placement for Adoption

FORM AA-13

Manitoba
Family
Services and
Housing

Approval of Agency of Placement for Adoption

The Adoption Act, Division 2 of Part 3

TO:

(prospective adoptive parent)

-and-

(birth parent/guardian)

AND TO the Director of Child and Family Services:

Pursuant to receiving notice from you of your intent to place/receive the child _____, born at ____ a.m./p.m. the ____ day of _____, _____ for the purpose of adoption, this proposed placement has been approved in accordance with section 59 of *The Adoption Act*.

SIGNED at the _____ of _____ in the Province of Manitoba this _____ day of _____, _____.

Signature

Title

Agency

Copy 1 – Prospective adoptive parent
Copy 2 – Birth parent/guardian
Copy 3 – The director
Copy 4 – Adoption file
All four copies must be signed

7. Consent of Parent to Adoption

FORM AA-9

CONSENT OF PARENT TO ADOPTION
THE KING'S BENCH (FAMILY DIVISION)
_____ CENTRE

File No. _____

BETWEEN:

- and -

Applicant,

Respondent.

CONSENT OF PARENT TO ADOPTION

Clause 13(a) of *The Adoption Act*

I, _____, of the _____ of _____
in the Province of Manitoba, hereby certify:

1. I am the _____ of _____ ("the child") who was born at the _____ of _____ in the _____ of _____ at _____ am/pm on the _____ day of _____, and at least forty-eight hours have expired since the time of birth of the child.
2. I have been informed that an application for an Order of Adoption of the child has been made or may be made by _____ of the _____ of _____ in _____.
3. I acknowledge that:
 - (a) I was advised of my right to independent legal advice prior to the signing of this agreement;
 - (b) I have been informed that I may, by notice in writing to the Director of Child and Family Services, withdraw the consent within 21 days after the date of the consent but not thereafter, and if I do so withdraw, the child will be returned to the legal guardian unless there are reasonable and probable grounds to believe that the child is in need of protection;
 - (c) I have been informed that the birth father must be notified of a proposed adoption of the child, unless the birth father also signs a consent to adoption or a court dispenses with the notice to the birth father;

(d) I have been informed of the availability of openness agreements in *The Adoption Act*, and acknowledge that these agreements can only be made with the consent of the adoptive parents of the child;

(e) If the child is adopted

i) when the child turns 18, the child may apply to the director for a copy of his or her pre-adoption Manitoba birth registration or information from his or her pre-adoption non-Manitoba birth registration. I understand that if I am a parent named on the child's pre-adoption Manitoba birth registration, the child may obtain identifying information about me;

ii) if I am a parent named on the child's pre-adoption Manitoba birth registration, once the child turns 18, I may apply to the director for a copy of the child's pre-adoption birth registration and substituted registration of birth;

iii) if I am a parent named on the child's pre-adoption birth registration, I may file a contact preference on the post-adoption registry to indicate my preferences concerning contact, if any, with the child when he or she turns 18;

iv) if I file a contact preference, I may include with it

A) a description of my preferences regarding contact,

B) an explanation for my preferences regarding contact,

C) a brief summary of any available information about my medical or social history or that of my family, and

D) any other relevant non-identifying information;

v) I may cancel a contact preference at any time by notifying the post-adoption registry in a form and manner acceptable to the director;

vi) whether or not I am named as a birth parent on the child's pre-adoption birth registration, if the adoption was granted in Manitoba I may register on the post-adoption registry to request a search by the director to locate an adult adoptee;

vii) the sharing of identifying information or personal contact will not occur except in accordance with *The Adoption Act*.

4. I hereby consent to the making of an Order of Adoption of the child.

5. I acknowledge that I fully understand that the effect of an Order of Adoption is to extinguish and terminate all my rights and obligations with respect to the child.
(This statement may only be deleted pursuant to clause 31(5) of *The Adoption Act*.)

Signed at _____, in Manitoba at _____ a.m./p.m.,

on _____, _____
(day) (month/day/year)

In the presence of

Signature of Witness

Signature of Parent

Affidavit of Execution

I, _____, of the _____ of _____
in the Province of Manitoba.

MAKE OATH AND SAY THAT:

1. My occupation is _____.
2. I was personally present and did see the foregoing consent signed by _____ of _____, Manitoba.
3. I know the said parent _____ (name) who is _____ years of age.
4. Prior to witnessing the consent to adoption I explained fully to the parent the effect of the consent, and advised her/him of her/his right to independent legal advice, in compliance with section 14 of *The Adoption Act*.
5. _____ of her/his own free will and volition decided to sign the consent to adoption.
6. This consent was executed at _____ in Manitoba and I am the subscribing witness to the consent.

SWORN (AFFIRMED) before me)
)
at _____, Manitoba)
)
on _____)
(month/day/year)

Signature of Witness

A Barrister-at-law entitled to practise in Manitoba
or a Notary Public, or a Commissioner for Oaths,
in and for the Province of Manitoba.

My commission expires _____

Copy 1 – Court of King's Bench (Family Division)
Copy 2 – Adoption file
Copy 3 – Parent
Copy 4 – Director
All four copies must be signed and witnessed.

8. Consent of Guardian(s) to Adoption

Adoption Form AA10

File No. _____

THE KING'S BENCH (FAMILY DIVISION)
_____ **Centre**

B E T W E E N:

applicant

-and-

respondent

CONSENT OF GUARDIAN(S) TO ADOPTION
Clause 13(a) of *The Adoption Act*

(name, address, telephone of party filing)

THE KING'S BENCH (FAMILY DIVISION)
_____ **Centre**

B E T W E E N:

applicant

-and-

respondent

CONSENT OF GUARDIAN(S) TO ADOPTION
Clause 13(a) of *The Adoption Act*

I/We, _____, of the _____
of _____ In the Province of Manitoba, hereby certify:

1. I/We am/are the guardian(s) of _____ ("the child") who was born at the _____ of _____ in the _____ of _____ at _____ am/pm on the _____ day of _____, _____.

2. I/We have been informed that an application for an Order of Adoption of the child has been made or may be made by _____ of the _____ of _____ in _____.

3. I/We acknowledge that:
 - a) the parents of the child were:
_____, born the _____ day of _____, _____, died the _____ day of _____, at _____; and
_____, born the _____ day of _____, _____, died the _____ day of _____, at _____;

 - b) _____ is/are the legal guardian(s) of the child by order of _____ in _____ dated _____;

 - c) I/We have provided the agency with proof of a) and b) in a form and manner acceptable to the director;

d) I/We have been advised of my/our right to independent legal advice prior to the signing of this agreement;

e) I/We have been informed that I/we may, by notice in writing to the director, withdraw this consent within twenty-one days after the date of the consent but not thereafter, and, if I/we do so withdraw, the child will be returned to me/us unless there are reasonable and probable grounds to believe that the child is in need of protection;

f) I/We have been informed of the availability of openness agreements in *The Adoption Act*, and acknowledge that these agreements can only be made with the consent of the adoptive parents of the child;

4. I/We hereby consent to the making of an Order of Adoption of the said child and I/we acknowledge that I/we fully understand that the nature and effect of an Order of Adoption is to extinguish and terminate all my/our rights and obligations with respect to the child.

SIGNED at the _____ of _____ in the Province of Manitoba at _____
am/pm this _____ day of _____, _____.

In the presence of

Signature of Witness

Signature of Guardian

Signature of Witness

Signature of Guardian

THE KING'S BENCH (FAMILY DIVISION)
_____ Centre

B E T W E E N:

applicant

-and-

respondent

AFFIDAVIT OF EXECUTION

I, _____, of the _____ of _____ in the Province of Manitoba.

MAKE OATH AND SAY THAT:

1. My occupation is _____
2. I was personally present and did see the foregoing consent signed by _____ of the _____ of _____, in the Province of Manitoba.
3. I know the said guardian _____ (name) who is _____ years of age.
4. Prior to witnessing the consent to adoption I explained fully to the guardian the effect of the consent, and advised her/him of her/his right to independent legal advice, in compliance with section 14 of *The Adoption Act*.
5. _____ of her/his own free will and volition decided to sign the consent to adoption.
6. This consent was executed at the _____ of _____ in the Province of Manitoba and I am the subscribing witness thereto.

SWORN (AFFIRMED) before me at the _____)
_____ of _____)
in the Province of Manitoba)
this _____ day of _____ A.D. _____)

Signature of Witness

A Barrister-at-law entitled to practise in Manitoba
or a Notary Public, or a Commissioner for Oaths,
in and for the Province of Manitoba.
My commission expires _____

Copy 1 - Court of King's Bench (Family Division)
Copy 2 - Adoption File
Copy 3 - Guardian
Copy 4 - Director
All four copies must be signed and witnessed.

9. Consent of Child to Adoption

FORM AA-11
CONSENT OF CHILD TO ADOPTION

File No. _____

THE KING'S BENCH
(FAMILY DIVISION)
_____ CENTRE

BETWEEN:

-and-

Applicant,

Respondent.

CONSENT OF CHILD TO ADOPTION

Section 12 or 13 of *The Adoption Act*

I, _____, of the _____ of _____ in the Province of Manitoba have been informed that an application for an order for my adoption has been made by _____ of the _____ of _____ in Manitoba.

1. It is my wish to be adopted by _____ whom I have known since _____, _____, and with whom I have lived since _____, _____.
2. I understand that if an order of adoption is granted I will become the child of _____ as if I were born to _____, and that my name will be _____.
3. The effect of this consent to the adoption has been fully explained to me prior to the signing of this consent.
4. I have been advised of my right to independent legal advice prior to the signing of this consent.

SIGNED at the _____ of _____ in Manitoba, this _____ day of _____, _____.

IN THE PRESENCE OF

Witness

Signature of Child

AFFIDAVIT OF EXECUTION

I, _____, of the _____ of _____ in the Province of Manitoba.

MAKE OATH AND SAY THAT:

1. My occupation is _____.
2. I was personally present and did see the foregoing consent signed by _____ (the child), who resides at _____.
3. I know the said child, who is _____ years of age.
4. Prior to the signing of the consent I explained fully to the child the effect of the consent, and advised him/her of his/her right to independent legal advice in compliance with section 14 of *The Adoption Act*.
5. The child appeared to fully understand the effect of signing the consent.
6. The consent was executed on the _____ day of _____, _____ at the _____ of _____ in the Province of Manitoba and I am the subscribing witness thereto.

SWORN (AFFIRMED) before me at the)
_____ of _____)
in the Province of Manitoba, this)
_____ day of _____, _____)

Signature of Witness

A Barrister-at-law entitled to practise in Manitoba
or a Notary Public, or a Commissioner for Oaths,
in and for the Province of Manitoba.
My Commission expires:_____.

Copy 1 – Court of King's Bench (Family Division)
Copy 2 – Applicant's Agency
Copy 3 – Guardian Agency
Copy 4 – Child
All four copies must be signed and witnessed

10. Declaration of Commitment

FORM AA-14
DECLARATION OF COMMITMENT

THE KING'S BENCH
(FAMILY DIVISION)
_____ CENTRE

BETWEEN:

Applicant,

-and-

Respondent.

DECLARATION OF COMMITMENT

Agency/Lawyer:

File Number: _____

FORM AA-14
THE KING'S BENCH
(FAMILY DIVISION)
CENTRE

File No. _____

BETWEEN:

-and-

Applicant,

Respondent.

DECLARATION OF COMMITMENT

I, _____ and I, _____, both of the _____ of _____, in the Province of Manitoba do jointly and severally solemnly declare that:

1. The marital status of _____ (name) is _____ and the marital status of _____ (name) is _____ and we both reside together at _____.
2. We have been living together in a conjugal relationship continuously since the _____ day of _____, _____, and we are currently living together and intend to continue to live together in a conjugal relationship on a permanent basis.
3. We understand and are committed to jointly meeting all the responsibilities and obligations of parents to the child we intend to adopt.
4. We make this declaration in support of an application to adopt a child.

Jointly and severally declared _____)
before me at the City of _____)
in the Province of Manitoba _____)
this _____ day of _____, _____)

A Barrister-at-law entitled to practise in Manitoba,
or a Notary Public, or a Commissioner for Oaths,
in and for the Province of Manitoba.
My Commission expires _____.

Copy 1 – Court of King's Bench (Family Division)
Copy 2 – Prospective adoptive parents
Copy 3 – Adoption file
All three copies must be signed and witnessed

11. Notice of Application and Application

FORM AA-15
NOTICE OF APPLICATION AND APPLICATION

THE KING'S BENCH
(FAMILY DIVISION)
_____ CENTRE

BETWEEN:

Applicant,

-and-

Respondent.

(SAMPLE) NOTICE OF APPLICATION

Agency/Lawyer:

File Number: _____

THE KING'S BENCH
(FAMILY DIVISION)
CENTRE

BETWEEN:

Applicant,

-and-

Respondent.

NOTICE OF APPLICATION

Section 65, 73, 81, 88 or 93 of *The Adoption Act*

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing before a judge of The King's Bench (Family Division) on _____, the _____ day of _____, _____, at _____, at _____.

IF YOU WISH TO OPPOSE THIS APPLICATION, you or a Manitoba lawyer acting for you must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but not later than 2:00 p.m. on a day that is at least 4 days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, AN ORDER OF ADOPTION MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

(Date)

Deputy Registrar

NOTE: Complete and serve notice of application in non-ward adoption applications only. Where the notice of application is to be served outside Manitoba without a court order, state the facts and the specific provisions of the Court of King's Bench Rule 17 relied on in support of such service.

TO: _____

(Name and Address of each respondent)

APPLICATION

Section 49, 65, 73, 81, 88 or 93 of *The Adoption Act*

1. The applicant makes application for:
 - (a) an Order of Adoption of first name, last name, who if the order is granted will be known as first name, new last name;
 - (b) (any other Orders: dispensing with Consents or service, substitutional service, etc.)

2. The grounds for the application are:
 - (a) *The Adoption Act*. Section _____; and
 - (b) Based upon the fact that (e.g. the child has resided since date with the Respondent.)

(Specify the grounds to be argued, including a reference to any statutory provision or rule to be relied on.)

3. The following documentary evidence will be used at the hearing of the application: (as needed)
 - (a) Notice of Application and Proof of Service required;
 - (b) Birth Certificate of Child;
 - (c) Notice of Intent to Place a Child for Adoption and Request for Approval of an Agency;
 - (d) Notice to Birth Father;
 - (e) Affidavit of Service;
 - (f) Notice of Intent to Receive a Child for Adoption and Request for Approval of an Agency;
 - (g) Notice of Receiving a Child for Adoption;
 - (h) Approval of Agency of Placement for Adoption;
 - (i) Consent of Parents to Adoption;
 - (j) Consent of Guardian(s) to Adoption;
 - (k) Consent of Child to Adoption and Affidavit of Execution;

- (l) Order of _____ (Dispensing with Service or Consent);
 - (m) Declaration of Commitment (of the Adoptive Parents if not married);
 - (n) Affidavit of _____ (Adoptive Mother);
 - (o) Affidavit of _____ (Adoptive Father);
 - (p) Marriage Certificate of Applicants;
 - (q) Divorce Judgment of _____ (Adoptive Mother);
 - (r) Original Child Abuse Registry Check for all applicants;
 - (s) Original Criminal Record Check for all applicants;
 - (t) Declaration of Family Income;
 - (u) Agency Home Study, etc.
- (List the affidavits or other documentary evidence to be relied on).

(Date of Issue)

(Name, Address and Telephone
Number of lawyer or applicant)

12. Order of Adoption (Material Filed)

FORM AA-16

ORDER OF ADOPTION

THE KING'S BENCH
(FAMILY DIVISION)

_____ CENTRE

IN THE MATTER OF: *The Adoption Act*, Division _____ of Part 3

AND IN THE MATTER OF:

(child's given names and
birth registration number only)

born the _____

Applicant

ORDER OF ADOPTION

Agency or Lawyer:

File Number: _____

THE KING'S BENCH
(FAMILY DIVISION)

_____ CENTRE

The Honourable
Justice

)
)
)

_____ day, the _____ day of _____, _____

Applicant

ORDER OF ADOPTION

UPON THE APPLICATION OF _____ for an Order of Adoption of (child's given names and birth registration number only), born on the _____ day of _____, _____ and upon considering the evidence and the material filed in support of the application,

THIS COURT ORDERS pursuant to Division _____ of Part 3 of *The Adoption Act*.

- (a) that the application for an Order of Adoption be granted;
- (b) that the child will be known as _____.

Date

Judge or Deputy Registrar

13. Declaration of Family Income (*The Adoption Act*)

Adoption Form AA7

File No. _____

DECLARATION OF FAMILY INCOME

The Adoption Act - Clause 127(2)(d)

AGENCY: _____

FAMILY INFORMATION: Give full name(s) and address of applicants.

Applicant(s):

Children: List children and other dependents residing in the home of the prospective adoptive parent; do not include the child(ren) to be adopted.

Full Name of Child	Birth Date	Relationship

Attach separate list if more than six children/dependents in the home.

FINANCIAL INFORMATION: Check only one item below and provide information requested for item.

- Currently in receipt of income assistance under *The Employment and Income Assistance Act* (Manitoba) or a program of the Government of Canada or another jurisdiction outside Manitoba other than an insurance benefit program or a loan program (please indicate which of these income assistance categories apply) _____
(If you complete this item, do not complete Detailed Calculation of Annual Family Income)
- Current annual family income expected to be about the same as per attached copy(ies) of Revenue Canada assessment(s) for the most recent taxation year and receipts for child support payments. (Only complete *totals* of Detailed Calculation of Annual Family Income. Include amount of *child support payments* paid or received for the most recent taxation year.)
- Current annual family income expected to be about the same as for most recent taxation year, but no copy(ies) of Revenue Canada assessment(s) attached. (Complete Detailed Calculation of Annual Family Income)
- Current annual family income expected to be higher/lower than most recent taxation year. (Complete Detailed Calculation of Annual Family Income)

DECLARATION:

1. I/we are the applicant(s) named in this statement.
2. The statements contained herein are true to the best of my/our knowledge and belief and I/we have not concealed or omitted any information respecting my/our family income.
3. I/we agree to provide the agency with copies of documents or receipts in my/our possession to verify my/our current income or income for the most recent taxation year.
4. I/we authorize and give consent to the agency securing information from any source as may be deemed necessary for verification purposes and I/we consent to those sources releasing the information to the agency.

Date: _____

Applicant: _____

Date: _____

Applicant: _____

See next page for Detailed Calculation of Annual Family Income

DETAILED CALCULATION OF ANNUAL FAMILY INCOME:

Sources of Income (As per T1 General Income Tax Form □ Line 150)	Applicant	Applicant	Total Annual Family Income
Employment income			
Other employment income			
Old Age Security			
Canada or Quebec Pension Plan benefits (include disability)			
Other pensions or superannuation			
Employment Insurance benefits			
Taxable amount of dividends from Canadian corporations			
Interest and other investment income			
Net partnership income: limited or non-active partnerships			
Net rental income			
Taxable capital gains			
Spousal support and taxable child support			
Registered retirement savings plan income			
Other income (specify)			
Net business income			
Net professional income			
Net commission income			
Net farming income			
Net fishing income			
Workers compensation payments			
Social assistance payments			
Net federal supplements			
Total Annual Family Income Before Adjustments (As per T1 General Income Tax Form □ Line 150)			

Deductions from Total Annual Family Income	Applicant	Applicant	Total Deductions
Union, professional and other dues and employment expenses			
Excess portion of dividends from taxable Canadian corporations			
Actual business investment losses			
Carrying charges and interest expenses			
Prior period earnings			
Sole proprietorship and partnership income			
Add: All child support payments paid over past year			
Total Deductions from Annual Family Income			

Additions to Total Annual Family Income	Applicant	Applicant	Total Additions
Capital gains			
Payments by a self-employed person to a family member or someone else not at arm's length			
Capital cost allowance for real property			
Employee stock options			
Add: All non-taxable child support payments received over past year			
Total Additions to Annual Family Income			
<i>Subtract:</i> Total Deductions from Annual Family Income above			
Total Adjusted Annual Family Income			