

# Adoption Legal Requirements Guide



This guide is intended to assist legal professionals in meeting Saskatchewan's legal requirements for adoption. It is neither comprehensive nor intended to provide legal advice.

## Introduction

Adoption is the legal transfer of rights and responsibilities from a birth parent to an adoptive parent. This occurs through a court proceeding where a judge makes a determination that an Order of Adoption is in the best interests of a child.

Every birth parent has the right to:

- parent his or her own child;
- participate in planning that may include adoption; and
- make application for custody when there is disagreement with the other birth parent on planning.

In Saskatchewan adoptions are governed by:

- *The Adoption Act, 1998*
- The Adoption Regulations (2003)
- *The Intercountry Adoption (Hague Convention) Implementation Act, 1997*

There are different types of adoption including:

- Independent Adoption (*sometimes called a private adoption*)
- Step-parent Adoption
- Adult Adoption
- Intercountry Adoption

Every adoption has requirements that must be met including what processes need to occur, and who is responsible for completing them. The following sections describe each type of adoption, the processes and requirements for each, and the role of the Ministry.

In this document the Ministry of Social Services is called the 'Ministry', and the Director, Adoption Services is called the 'Director'.

Documentation may be served on the Director at Adoptions Services, Ministry of Social Services, 10th Floor, 1920 Broad Street, S4P 3V6.

Permanent Ward Adoptions involve the adoption of a child or youth in care of the minister and are processed by the Ministry. These types of adoptions are not covered in this Guide.

## Independent Adoption

This type of adoption involves a private arrangement between birth parents and someone else, such as a friend or relative, if they choose to adopt their child. Individuals wishing to adopt, along with their lawyer, are responsible for gathering the documentation required for making a court application for an Order of Adoption.

The Ministry becomes involved with the birth parents as part of the counselling process.

## Reference

<b><i>The Adoption Act, 1998</i></b>	Primary sections to review are 3-5, 7, 13, 15 & 16
<b>The Adoption Regulations (2003)</b>	Primary sections to review are 3, 5, 8-11, 13, 16.1 & 18

## Independent Adoption Process:

1. Birth parents make a decision on adoption and choose someone they know to adopt their child.
2. Adoptive applicants generally hire a lawyer to assist them in the process.
3. The Ministry can be contacted for information on Independent Practitioners, who are certified by the Ministry to complete home studies for Independent Adoptions.
4. Each birth parent is referred to the Ministry for counselling.

The Ministry must discuss with each birth parent:

- the possibility of obtaining financial support from the other birth parent of the child;
  - the possibility of parenting the child with the assistance of relatives, the other birth parent, the Ministry or any other available source;
  - the option to explore Income Assistance, including services such as medical coverage;
  - the possibility of voluntary, short-term committal of the child through the Ministry, which can enable birth parents to work on a suitable plan to parent;
  - adoption alternatives, including voluntary committal to the Ministry; and
  - Post-Adoption Registry Services.
5. The Ministry worker prepares a *Certificate of Counselling* for each birth parent if they wish to proceed with an adoption plan.
  6. Birth parents meet with a lawyer to obtain independent legal advice and to sign their consent to the adoption. They cannot sign their consent until at least 72 hours after the child is born.

### **What if one birth parent consents to the adoption and the other does not?**

The adoption cannot take place, and an application for adoption cannot be made, unless a court makes an order to dispense with the other birth parent's consent. With the assistance of a lawyer, the birth parent who wishes to pursue an adoption plan must apply to court for an order dispensing with the other birth parent's consent.

If an order to dispense is made, the parent may appeal the decision within 30 days. No documentation should be sent to the Ministry during this 30 day period.

7. Each birth parent meets with a Ministry worker other than the one who completed the *Certificate of Counseling*, to complete the *Certificate of Independent Advice*. Before completing it, the Ministry worker is required to discuss with the parent:
  - the provisions of *The Adoption Act, 1998*, respecting revocation of consent (i.e. when birth parents change their mind and do not wish to go ahead with the adoption);
  - the effects of an Order of Adoption (i.e. loss of parental rights and responsibilities); and
  - that the birth parent has the right to inquire with the Ministry as to whether or not the child has been adopted.

### **What if birth parents change their mind after signing a consent?**

Birth parents can revoke (withdraw) their consent to the adoption within 21 calendar days from the day they sign. If birth parents sign on separate days, it is 21 days from the day the second parent signed.

Birth parents must make a revocation in writing and provide it to the Director within the 21 day time period. If an order was made dispensing with a birth parent's consent, the other birth parent can still revoke consent within the 30-day appeal period.

The Ministry is responsible to verify whether or not a birth parent's consent has been revoked before the adoption can proceed.

8. Every child 12 years of age or older needs to consent to their own adoption. The child usually completes the consent with their own lawyer after receiving legal advice. The lawyer then completes a *Certificate of Independent Advice*. If a lawyer is not reasonably accessible or available to complete the *Certificate of Independent Advice*, the Director may appoint someone from the same geographical area to complete it.

9. Thirty days prior to submitting the application for the Order of Adoption to court, the lawyer for the adoptive parents must serve copies of all original documentation on the Director (see Independent Adoption Checklist, page 8). The Ministry will review the documentation and:
  - complete a system check for prior child protection involvement;
  - complete a revocation search (period to revoke must have elapsed) and, if no revocation has been made, issue the *Certificate of Non-Revocation*; and
  - issue the *Acknowledgment of Application and Supporting Material for an Order of Adoption*.

If processes have been omitted or documents not included in the service, the Ministry will issue the Certificate of Non-Revocation, but specify what was missing or omitted.

10. Application is made to court for the Order of Adoption.

### **Child Born in Saskatchewan Being Adopted Outside the Province**

A child born in Saskatchewan may be adopted by parents living in another Canadian province or territory.

The birth parent process for consenting/counseling occurs within Saskatchewan according to Saskatchewan legislation. This includes the requirement for each birth parent to provide written and signed consent, or to have this requirement dispensed with through a separate application to court. The same revocation and appeal timeframes apply.

The adoptive parents are required to comply with the adoption legislation and requirements of the province or territory where they reside, including the court process for applying for an Adoption Order.

### Child Born Outside Saskatchewan but Adopted in the Province

When a child is born in another Canadian province or territory, but is being adopted by Saskatchewan residents, the adoption is finalized in Saskatchewan according to Saskatchewan legislation. The adoptive parents are assessed through a home study conducted by an Independent Practitioner, and usually apply for an Order of Adoption with the help of a lawyer.

The birth parent process for consenting/counseling occurs where the birth parents reside according to the legislation and requirements of that jurisdiction. Typically, a lawyer working on behalf of the adoptive parents arranges with the appropriate child welfare authority or agency where they reside to undertake this process.

### Independent Adoption Checklist

Requirements	Act	Regulations
Documents served on director where the applicants reside (30 day notice)	44(2)(a) and 16(16)	13(e)
Extension Beyond one year that the director may allow (if applicable)	16(8)	
30 Day Notice for Inter-provincial placements/other period that the director may allow	(25)	
Application For Order of Adoption	16	Form A-1 3(a)
Certified Copy of the Child's Original Birth Registration (long form)		13(a)
Certified Copy of Marriage Registration or Certificate (long form preferred)	16(2)(a)	
Divorce Decree (if applicable)		
Death Certificate (if applicable)	4(1)(a)(iv)	
Certificate of Counselling (must be completed by director prior to consent)	4(4)(a)(iii), 4(6)	Form F-8



Consent of the Birth Parent	4(1), (2) and (4)	Form C-1 5(1)(a)
Certificate of Independent Advice (must be completed by director after consent)	4(4)(a)(iii) and 4(7)	Form G-9
OR		
Dispensation Order-Notice re application to dispense with requirement of consent and supporting materials must be provided to the director; dispensation order (refer to Step-Parent and do exactly the same)	5(2)(1)  22(2)	
Consent of a child who is 12 years of age or more and acknowledgment with affidavit of execution	7(5) 4(1)(b)	Form C-5 5(3), 13(h), 14(4)
Accompanying the Child's Consent is the Certificate of Independent Advice	4(4)(b)(ii)	Form G 13(h); 14(3)
Child's Social, Medical and Family History		15(1)(b), 16(1), 18(1)
OR		
Request to waive requirement for birth parents		15(2) or 16(2)
Report for the Court (Adoption Study Report)	13(3)	16(1), 18(2)
Financial Statement		Form K 13(c)
Information for the Registrar Pursuant to The Indian Act (Canada)	29.3(3)(c); 29.3(4)	Form M 13(g)
Statement of Fees	16(13)	52(1) and (2)
Particulars of Adoption		Form L 13(f)
Notice of Fiat or Decision	29.3(1)	Form H 10
Order of Adoption	16(1)	Form I-1 11(a)

## Step-parent Adoption

<b>The Adoption Act, 1998</b>	Primary sections to review are 3-5, 7, 15, 16 & 23
<b>The Adoption Regulations (2003)</b>	Primary sections to review are 3, 5, 8-11 & 13

This type of adoption involves situations where an individual wishes to apply to adopt the birth child of a spouse or partner. The child must be living with and cared for by the applicant at the time of making application to adopt.

### Step-parent Adoption Process:

1. Step-parent typically hires a lawyer to assist them in the process.
2. A home study is not required in a step-parent adoption unless the court orders one to be completed. If the court requests one, it is completed by an Independent Practitioner hired by the step-parent.
3. The birth parent the child resides with must consent to the adoption in writing.
4. The other birth parent (the one the child does not live with) must be notified that an application for adoption is being made. If the other birth parent is deceased, a copy of the death certificate must be provided in lieu of written consent.
5. The other birth parent must have independent legal advice about the adoption. If the other birth parent agrees to the adoption they must sign a written consent with a lawyer. The lawyer then completes a *Certificate of Independent Advice*. If a lawyer is not reasonably accessible or available to complete the *Certificate of Independent Advice* with the birth parent, the Director may appoint someone from the same geographical area to complete it.

### **What if the other birth parent will not consent?**

The adoption cannot take place unless the court allows the adoption without the other birth parent's consent. If the other birth parent does not provide consent they will be notified about the court application for the adoption and the opportunity to appear in court and explain why the adoption should not proceed.

To allow the birth parent time to appear in court, proceedings may be delayed for up to 60 days from the time of notification. If the other birth parent does not appear at the hearing, or appears but does not show why the adoption should not proceed, the court can dispense with that birth parent's consent if it is in the best interests of the child. If the court dispenses with the other birth parent's consent, that birth parent has 30 days to appeal the decision.

### **What if a birth parent changes their mind after signing a consent?**

Birth parents can revoke (withdraw) their consent to the adoption within 21 calendar days from the day they sign. If birth parents sign on separate days, it is 21 days from the day the second parent signed.

Birth parents must make a revocation in writing and provide it to the Director within the 21 day time period. If an order was made dispensing with a birth parent's consent, the other birth parent can still revoke consent within the 30-day appeal period.

The Ministry is responsible to verify whether or not a birth parent's consent has been revoked before the adoption can proceed.

6. Every child 12 years of age or older needs to consent to their own adoption. The child usually completes the consent with their own lawyer after receiving legal advice. The lawyer then completes a *Certificate of Independent Advice*. If a lawyer is not reasonably accessible or available to complete the *Certificate of Independent Advice*, the Director may appoint someone from the same geographical area to complete it.
7. The other birth parent may apply for access whether or not they are providing written consent. An application for access must be made prior to the Order of Adoption being granted.
8. Thirty days prior to submitting the application for the Order of Adoption to court, the lawyer for the adoptive parents must serve copies of all original documentation on the Director (see Step-parent Adoption Checklist). The Ministry will review the documentation and:
  - complete a system check for prior child protection involvement;
  - complete a revocation search and, if no revocation has been made, issue the Certificate of Non-Revocation; and
  - issue the Acknowledgment of Application and Supporting Material for an Order of Adoption.

If there are processes that have been omitted, or documents not included in the service, the Ministry will issue the Certificate of Non-Revocation but specify on the Acknowledgment document what was missing or omitted.

9. An Application for an Order of Adoption is made to court. This application cannot be made until the time period in which the birth parents' consent can be revoked has passed and, if the court has dispensed with the consent of one of the birth parents, the time to appeal that decision has also passed. The judge may give the birth parent the child does not live with access to the child, if the court finds this to be in the best interests of the child.

## Stepparent Adoption Checklist

Requirements	Act	Regulations
Documents served on director where the applicants reside	44(2)(a) and 23(4)	
Application for Adoption	23	Form A-2 3(b)
Statement of Fees	16(13)	52(1) and (2)
Notice of Fiat or Decision	29.3(1)	Form H 10
Particulars of Adoption		Form L 13(f)
Information for the Registrar Pursuant to The Indian Act (Canada)	29.3(3)(c); 29.3(4)	Form M 13(g)
Order of Adoption	16(1)	Form I-2 11(b)
Certified Copy of the Child's Original Birth Registration (long form)		13(a)
Certified Copy of Marriage Registration or Certificate (long form preferred)	16(2)(a)	
Divorce Decree if Applicable		
Death Certificate if Applicable	4(1)(a)(iv)	
Consent of Birth Parent who is the spouse of the applicant	4(4)(a)(i)(A) or (B);	Form C-3 5(1) (b)(ii)
with affidavit of execution	23(13)	
Consent of non-custodial birth parent	4(1)(a)(i)(A) or (B)	Form C-2 5(1) (b)(i);
with affidavit of execution	23(14)	
Certificate of Independent Advice	4(4)(c)(ii)	Form G 9
Dispensation Order: (Note: Amendments to The Adoption Act, 1998 in 2004 include Section 5 (2.1) where notice to dispense and supporting materials must be provided to the director.) <input type="checkbox"/> Notice to director and supporting materials	29.6(2)(a); 29.4(4) and 29.3(2)(b)  5(2.1)	
Appeal Period Expires _____		

Proof that notice of the application was served on the other parent	23(2); 5(2.1) or 5(2.2)	13(d)
Note: signed consent of the birth parent who is not the spouse of the applicant can be considered as notice of the application	23(3)	
Consent of a child who is 12 years of age or more and acknowledgment with affidavit of execution	7(5) 4(1)(b)	Form C-5 5(3), 13(h), 14(4)
Accompanying the Child's Consent is the Certificate of Independent Advice	4(4)(b)(ii)	Form G 13(h); 14(3)

### Adult Adoption

<b><i>The Adoption Act, 1998</i></b>	Primary section to review is 24
<b><i>The Adoption Regulations (2003)</i></b>	Primary sections to review are 3 & 13

This type of adoption involves the adoption of someone over the age of 18. The adoptive applicants and their lawyer are responsible for gathering the documentation required for making a court application for an Order of Adoption. A home study is not required.

The only consent required is from the person who is to be adopted (i.e. no birth parent consents are required). This consent may be withdrawn any time prior to the Order of Adoption being granted. If this individual is unable to give or understand consent, the court may dispense with this requirement.

With their lawyer, the adoptive applicants and the adoptee complete written affidavits stating why they believe the adoption should proceed.

Copies of all documentation is served on the Ministry 30 days prior to making an application for an Order of Adoption to court.

## Adult Adoption Checklist

Requirement	Act	Regulations
Documents served on director where the applicants reside	44(2)(a) and 23(4)	
Application for Adoption	24	Form A-3 3(c)
Consent to adoption (by adoptee)	24 (1)	Form C-7
Statement of Fees	16(13)	52(1) and (2)
Notice of Fiat or Decision	29.3(1)	Form H 10
Particulars of Adoption		Form L 13(f)
Order of Adoption		Form I-3 11(c)
Certified Copy of Marriage Registration or Certificate (long form preferred) if applicable	16(2)(a)	
Divorce Decree if Applicable		
Death Certificate if Applicable	4(1)(a)(iv)	
Affidavits (statement by each party as to the reason for the adoption)		

## Inter-country Adoption

Intercountry adoption involves the adoption of a child from outside Canada who is under the age of 18. In these types of adoptions, the Ministry acts as the Central Authority pursuant to The Hague Convention. As Central Authority, the Ministry is required to approve adoptive applicants to:

- proceed with an adoption plan and the use of an agency (if applicable);
- receive a child into their home; and
- agree to the placement of the child with the prospective adoptive applicants.

In most cases, the adoption order is granted in the child's country of origin according to that country's legal requirements. Processes related to an intercountry adoption are typically facilitated with the assistance of an agency, which may be a requirement of the foreign authority. Agencies usually retain their own lawyer, which is included as part of overall services.

The requirements for all intercountry adoption, including the adoption of relatives, are the same, whether a country has signed the Hague Convention or not. Lawyers who are working with individuals adopting a child from another country should ensure the Ministry is involved with the plan or has approved the individuals to proceed. There may be some cases where, according to legislation, the Ministry is not able to become involved or to agree to the proposed plan for adoption.





Questions about inter-country adoption can be directed to:

Intercountry Adoption Program

Ministry of Social Services

Child & Family Services

10th Floor, 1920 Broad Street

Regina, SK S4P 3V6

Phone (306) 787-3654 or toll-free 1-800-667-7539