



Community Legal Information Association of Prince Edward Island, Inc.

Becoming a Parent

Introduction

Having a baby can be an exciting and overwhelming time in your life. As you prepare for a baby to arrive, or for a child to join your family, there are legal issues you need to consider.

In this pamphlet, we will discuss some of the common legal issues you may face, including:

- Birth certificates
- Adoption
- Assisted conception
- Naming your child
- Naming a guardian
- Parental responsibilities

Birth Certificates

Within 30 days of the birth of a child in PEI, the birth must be registered with the Department of Vital Statistics. This is usually done in the hospital after the baby is born.

In the case of a home or non-hospital birth, the person assuming responsibility for delivery of a child must, within 72 hours of the birth, provide the Registrar of Vital Statistics with the completed special form. The parent(s) must come in to Vital Statistics within 30 days of the birth to complete and sign the Statement of Birth.

This birth registration form is called the Statement of Birth. It establishes the legal identity of the child. A Birth Certificate is issued only if it is requested from Vital Statistics. The Birth Certificate is a valuable legal identity document.

After the birth is registered, a follow-up letter is sent out to the parent(s). This letter is called a Confirmation of Birth. If this Confirmation letter is received and returned within 30 days of the birth, the parent can make changes to the information on the Statement of Birth form. The letter also provides the opportunity to request a birth certificate.

Depending on the changes requested, the parent(s) may have to make an appointment with Vital Statistics to sign appropriate paperwork.

Do both parents names have to be included on the birth certificate?

The biological father's name does not have to be included on the birth registration. In fact, his permission and his signature are required to include it.

If the father's name is not included, the mother must sign a form called a "statutory declaration" saying that she is not acknowledging the father at this time. The father's name can be added later if both parties agree to this and make an appointment at the Vital Statistics office to complete the appropriate paper work. There is a fee if this is done more than 30 days after the birth.

If a man signs the birth statement stating he is the father of a child, this will cause a presumption of paternity. That means a conclusion is drawn that he is the father of the child because there is no evidence against this conclusion.

If someone is named as the father of a child in any court application, the responsibility lies with the person named to prove he is not the father. This is true whether or not his name is on the birth registration.

A parent's rights to custody, access, and visitation are not affected by what is on the birth registration. Child support obligations are also not affected by what is written on the birth registration.

For births by assisted conception, births to same sex couples or births by surrogacy, please see the Assisted Conception section later in this booklet.

Adoption

Anyone over the age of 18 can apply to adopt a child, as long as they are older than the child being adopted.

The guidelines for adoption are the same for single adults, married spouses, same sex spouses, or spouses who live together but are not married.

The birth parent(s) must sign a "consent to adoption" form after the child is 14 days old. This consent can be withdrawn within 14 days of signing.

The *Adoption Act* on PEI allows for both open and closed adoptions. An open adoption means the birth parent(s) and child have ongoing contact after the adoption. A closed adoption means the birth parent(s) do not have any contact with the child.

If one spouse already has a child, his or her spouse may be eligible to adopt as a step parent. In this case, the permission of the other biological parent may be required. For more information and a complete list of adoption guidelines, contact Adoption Services at 902-368-6511.

Assisted Conception

Assisted conception means conception that took place by a method other than sexual intercourse.

The spouse of a mother who has conceived through assisted conception is presumed to be the lawful parent of the child, even if the spouse has no biological connection to the child.

For same-sex male spouses, the spouse who is not the biological father of the child must adopt the child to become a lawful parent. This is because the law gives rights to the biological mother of the child.

Donating sperm or eggs does not make you the parent of a child. The person who donated would not be legally responsible for the child or considered a parent to the child.

Surrogacy refers to the situation in which a woman carries a child for another person or couple using their egg and sperm or embryo. Upon birth, the child is adopted by the other person or couple and the surrogate mother has no further contact with the child.

The law in PEI does not acknowledge surrogacy. If a woman gives birth to a child, the law recognizes her as the mother of the child, even if she is not biologically related to the child. This means she has rights to the child.

Naming your Child

The choice of first, or “given”, names for a child is usually made by one or both of the parents when the child is born. The last name, or surname, is determined according to the *Vital Statistics Act*.

If both parents’ names are on the birth registration (Statement of Birth), the *Vital Statistics Act* says that the child can be given any one of the following surnames:

- the last name of one of the parents;
- a combination of the last names of the parents, in either order;
- a completely different last name from either parent.

If the parents can’t agree on a last name for the child, the law says the last name must be the parents’ last name (if they have the same last name), or a combination of both parents’ last names in alphabetical order. A combination last name can be made up of two names only.

If only the mother’s name is on the Statement of Birth, the child is given the last name chosen by the mother.

When a child is adopted, the adopting parents have two options:

- A whole new birth registration can be done. The Statement of Birth is changed to new names chosen by the adopting parents and the adopting parents are recorded as the parents of the child. The old birth records are then sealed.
- The original Statement of Birth can be maintained. This requires the permission of the birth parents. The adopting parents are the legal parents of the child and the adopting parents' names are also noted on the original statement of birth.

Naming a Guardian for your Child

With the addition of a child to the family, parents often rewrite their will or create a will for the first time. In a will, a person can name a guardian for their child. If a guardian has been named, the court will know the wishes of the deceased parent. Guardianship must be approved by the court.

You can name a guardian for your child in a will, if you are 18 or over or if you are under 18 and in the Armed Forces or married. If you are under 18 and wish to name a guardian for your child, you will need a legal document drawn up by a lawyer.

If both of the child's parents are known and one parent dies, the other parent automatically gets custody of the child. This may be challenged by anyone with an interest in parenting the child.

If both parents agree in writing that a guardian will be chosen by one parent, and this has been done before the death of that parent, custody may go to the guardian rather than the surviving parent. This must be approved by the court.

If the deceased parent appointed a guardian without the other parent's written agreement, and the surviving parent wants custody, a court will have to decide who has custody. The judge will make a decision in the best interests of the child and will take the deceased parent's wishes into consideration.

If you are naming a guardian for your child in your will, you should see a lawyer. If you want someone to be the guardian of your child upon your death, you need a letter from him or her stating that he or she is willing to serve as a guardian. If the person decides not to take on the responsibility, the judge will not order them to do so.

If only one parent of the child is known and that parent dies without naming a guardian, anyone may apply to the court for custody of the child.

Even if the child has a step-parent, custody does not automatically go to the step-parent. He or she must apply to the court for custody of the child. A judge will decide who gets custody. This is usually done with the help of a professional assessment. The judge's decision will be made in the best interests of the child.

Parental Responsibilities

Parents have responsibilities and rights. There are federal and provincial laws to protect and care for children. Some of these are:

- The *Criminal Code of Canada* says parents have a duty to give their children the "necessaries of life" until age 16. These include food, clothing, shelter, medical care and education. Failure to supply these is punishable by up to 2 years in prison.
- The *Criminal Code of Canada* says it is illegal to abandon a child or expose a child under 10 to danger.
- The PEI *Family Law Act* says that parents have an obligation to provide support to unmarried dependent children under the age of 18 - if the parent has the ability to pay.

When does Child Protection get involved?

The *Child Protection Act* sets out circumstances where a child may be found to be “in need of protection” – for example, if the child is not receiving proper care, education, supervision, guidance or control, or if the child is living in a home with family violence.

When there are grounds to consider a child to be “in need of protection”, the child can be removed from the care of the parents. This can be done by agreement, by apprehension, or by court order. In most cases, a plan is developed and acted upon to help the parents create a better situation for their child.

Removing a child from the parents and putting him or her in the care of Child Protection is called “apprehension”. This means the child is placed in a different home approved by authorities. It could be a relative’s home, a foster home, or a group home.

While a child is in the care of Child Protection, parents no longer have legal custody. This can be temporary or permanent, though a permanent arrangement is usually a last resort. If the parent’s behaviour presents a danger or is harmful to the child, and all attempts to improve the situation have not worked, a permanent arrangement will be considered.

A low-income parent may be able to use a Legal Aid lawyer if he or she wishes to challenge the application for either temporary or permanent custody.

It is also advisable to seek legal advice before signing a Voluntary Care Agreement. This may occur when the Director determines that a child is in need of protection. A Voluntary Care Agreement is an agreement between the Director and the parent(s) whereby the parent(s) transfers temporary custody and guardianship of the child to the Director.

Anyone who suspects a child is being abused or neglected must report it to the Director of Child Welfare or to the police. The report will be investigated. If you know a child is being abused or neglected, and you don’t report it, you could be fined.

You can report suspected child abuse or neglect by calling Child Protection. The number to call on week days: 902-368-5330 or 1-877-341-3101. The number to call on evenings, weekends and holidays: 902-368-6868 or 1-800-341-6868.

Resources for New Parents

Community Legal Information Association can provide you with legal information but not legal advice. Your call is confidential and anonymous. CLIA also runs the Lawyer Referral Service. If you need legal advice, you can use this service to get a consultation with a lawyer to discuss your situation. There is a small fee. **1-800-240-9798 or 902-892-0853**

Positive Parenting From Two Homes provides free parenting education sessions in various Island communities for parents who are separating, divorcing or parenting from two homes. If both parents participate, they will attend separate sessions. There is a program for children in some age groups to help them with their parents' separation or divorce. **1-877-203-8828 or 902-368-4333**

Mi'kmaq Family PRIDE Program provides a holistic and culturally sensitive approach to individual, family and community wellness, and risk reduction through prevention services and protection support. **Abegweit: 902-676-2722; Lennox Island: 902-831-2711**

Family Resource Centres exist in seven locations on PEI. They offer courses and provide help to parents in many areas of childcare and development. Each location has a drop-in centre for parents and children. More information is available online at www.gov.pe.ca by searching Family Resource Centres or by calling:

- Families First, in Montague: 902-838-4600.
- Family Place, in Summerside: 902-436-1348.
- Kids West Family Resource Centre, in Alberton: 902-853-4066 or 1-800-778-3444.
- Main Street Family Resource Centre, in Souris: 902-687-3928.
- CHANCES, in Charlottetown: 902-892-8744.
- Cap enfants, in Wellington: 902-854-2123.
- Mi'kmaq Family Resource Centre, Charlottetown: 902-892-0928.

Community Legal Information Association of PEI, Inc. (CLIA) is a charitable organization that receives funding from Justice Canada, the PEI Department of Environment, Labour and Justice, the Law Foundation of PEI and other sources. CLIA provides Islanders with understandable and useful information about the law and the justice system in Prince Edward Island.

For more information, you can visit our website at www.cliapei.ca, telephone CLIA at 902-892-0853 or 1-800-240-9798, or email us at clia@cliapei.ca. You can also find us at: www.facebook.com/CLIAPEI, www.twitter.com/CLIAPEI and www.youtube.com/CLIAPEI.

You may support CLIA by volunteering, becoming a member or making a donation.

Non-commercial reproduction of this document is encouraged.

Charitable registration number: 118870757RR0001

ISBN: 978-1-897436-66-0

August 2013