



Community Legal Information Association of Prince Edward Island, Inc.

Young Single Parent Kit: Proof of Parentage

The law says both fathers and mothers have legal rights and obligations to their child, so it is often important to know the identity of both parents. It is usually easy to establish maternity, or the identity of the mother of a child. Deciding paternity, or the identity of the father of a child, is sometimes more difficult.

A man may make a joint application with a child's mother, to be filed with the Director of Vital Statistics, stating that he is the father of a child.

It is possible for any person who has an interest in parenting a child to apply for a court order that legally recognizes him or her as being a parent of the child. The other parent's consent or approval is not required to make this application.

Sometimes a man may be uncertain or may deny that he is the parent of a child. In some cases the law will presume that an individual is the child's father, unless he can prove that he is not. (As a legal term, "presume" means "to draw a conclusion because there is no evidence against the conclusion".) The PEI *Child Status Act* lists a number of circumstances in which a man will be presumed to be the father of a child. These include:

- if he was married to or living with the child's mother when she became pregnant (within 300 days of the birth)
- if he was married to or living with the child's mother when the child was born
- if he marries the mother of the child after the birth and states that he is the natural father
- if he signs the birth registration form (Statement of Birth) as the child's father

A man may provide proof in court that this presumption is not correct, but unless he does so, the judge may make an order naming him as the father.

If a presumption of paternity can be made for more than one male under the circumstances listed in the Act, then no order can be issued. This means that if it can be shown that more than one man could be the father, the order naming one man as the father can't be made. However, this may not end the matter.

If none of the circumstances exist that will allow the presumption that a man is the father, and the man denies being the father, a judge can decide the issue. An application can be

made to the court for a Declaration of Paternity. The judge will hear evidence in court to decide who is the father of the child.

In addition to hearing evidence, the judge may “give leave to obtain testing” to prove or disprove paternity. A person cannot be tested without his or her consent. However, if a man refuses to take a test or tests when “leave to obtain testing” has been given, the judge has the right to conclude that that person is the father. If the mother refuses to allow the child to be tested, the judge has the right to conclude that the man is not the father of the child. The judge can make an order stating either of these to be the case.

If the mother of a child is denying that a man is the father, the responsibility lies with the man to prove that he is the child’s father. The same court process and getting “leave to obtain testing” can be used to prove that a man is the father of a child. See a lawyer for advice if you are in this situation.

Tissue tests, regular blood tests and DNA tests are available to prove or disprove paternity. Regular blood tests cannot prove that someone is a parent of a child, but they can show if a person **is not** the parent. Tissue tests and DNA tests are done on a body tissue or blood sample. Both permit a very accurate assessment of parentage (father and mother), although DNA testing is the most accurate assessment available.

Either party may make a request for blood or DNA testing. DNA testing is expensive – cost depends on which test is used and how many people need to be tested. If the tests are requested by the court, the court will also specify who will pay for them. If “leave to obtain testing” has not been given, the parties will have to decide between themselves about how to pay for testing.

To arrange for DNA testing, you must call a lab where testing is carried out. For more information on DNA testing, call Community Legal Information Association at 892-0853 or 1-800-240-9798.

If evidence later becomes available that proves an order about paternity was incorrect, the order can be changed. This is done by applying to the court for a variation or a discharge of the order. If you are in this situation, you should speak to a lawyer for advice.

This pamphlet contains general information about the law. It is not a complete statement of the law in this area and is not a substitute for legal advice. To receive legal advice, you need to speak to a lawyer. Community Legal Information Association of PEI Inc. (CLIA) is a charitable organization funded by the Department of Justice Canada, Office of the Attorney General, the Law Foundation of PEI, and other funding sources. CLIA provides Islanders with understandable and useful information about the law and the justice system in PEI.

For more information, call CLIA at 892-0853 or 1-800-240-9798
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