

# Independent Adoption

Adoption is the legal transfer of rights and responsibilities from a birth parent to an adoptive parent. Independent or 'private' adoptions involve adoptions of children where birth and adoptive parents know each other prior to making an adoption plan. Typically, it involves birth parents placing their child for adoption with friends, family or someone significant to them.

This resource provides basic knowledge of the process for independent adoptions in Saskatchewan under *The Adoption Act, 1998*. It does not provide legal advice. Individuals who require legal advice should consult with a lawyer who has expertise or knowledge in adoption.

Individuals wishing to adopt a child, along with their lawyer, are responsible for gathering the documentation required for making an application to court for an Order of Adoption, while the Ministry of Social Services becomes involved with the birth parents as part of the counselling process.

## Limitations on Advertising and Unauthorized Placement

In Saskatchewan, it is against the law to advertise that you wish to adopt or solicit an adoption plan with an expectant birth parent. This includes placing ads in newspapers, bulletins or on social media sites.

As well, third-party individuals, including professionals like doctors, nurses, lawyers, pastors and teachers, may not arrange the placement of children for the purposes of adoption. This means they are not permitted to arrange for birth and prospective adoptive parents who are unknown to each other to meet and develop a plan for adoption. These activities carry penalties including fines and imprisonment.

## Independent Adoption Process

The following steps must be taken in an independent adoption. Adoptive parents generally hire a lawyer to assist them in the process.

Birth parents are encouraged to seek their own independent legal advice, the cost for which may be covered by the adoptive parents.

## Home Study

- Adoptive parents hire an Independent Practitioner (IP) to complete their home study. IPs are approved by the Ministry to complete home studies, and have expertise in preparing applicants for child placement and adoption. Information regarding current IPs may be obtained from the Adoption Support Centre of Saskatchewan.
- The home study includes interviews with the applicant and his or her spouse, as well as any other person residing in their home. A home study typically takes two to six months to complete.
- All individuals in the home who are 18 years of age or older must submit a copy of a Criminal Record and a Child Welfare Background Check to their IP for review. The results of these checks may impact an individual's ability to proceed with an adoption plan.

## Birth Parent Counselling

- Because the adoption process ends the relationship between the birth parent and child, it is important that birth parents have considered all options and have all the information they require to make an informed decision.
- The Ministry worker must discuss with each birth parent:
  - whether the other birth parent of the child could pay child support;
  - whether they could parent the child if relatives, the other birth parent, and/or the Ministry of Social Services helped;
  - whether Income Assistance might be available to help;
  - adoption alternatives, including voluntary committal to the Ministry; and
  - Post-Adoption Registry Services.
- The Ministry worker prepares the *Certificate of Counselling* for each birth parent if they wish to proceed with an adoption plan.

## Independent Legal Advice

- Birth parents are encouraged to meet with their own lawyer for independent legal advice about the adoption.
- Birth parents complete their written consent, usually with their lawyer. They cannot give this 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.

## Certificate of Independent Advice

- After completing their consents, the birth parents meet with a different Ministry worker to complete the *Certificate of Independent Advice*.
- During this meeting, the Ministry worker is required to discuss with the birth parents:
  - revocation of consent (i.e. when birth parents change their minds about the adoption);
  - the effects of an Order of Adoption (i.e. loss of parental rights and responsibilities); and
  - that the birth parents have the right to ask the Ministry if the child has been adopted.

### What if a birth parent changes his/her 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.

## Child's Consent (if over 12 years old)

In addition to the birth parent's consent, every child 12 years of age or older is required to consent to the adoption. The child usually completes the consent with their own lawyer, who 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 region to complete it. A child may withdraw his or her consent at any point before the Order of Adoption is granted.

## Service & Review of Documents

- Thirty days prior to submitting the application for Adoption to court, the lawyer for the adoptive parents must serve all the original documents to the Director, Service Adoption Services. Documentation may be served on the Director at Adoption Services, Ministry of Social Services, 10th Floor, 1920 Broad Street, Regina, SK, S4P 3V6.
- The Ministry will review the documents and:
  - complete a system check for prior child protection involvement;
  - complete a revocation search (all periods to revoke or appeal 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* and *Acknowledgment* and return the original documents to the lawyer, but specify what was missing or omitted.

## Application for Order of Adoption

- After the Ministry has reviewed the documents the lawyer acting for the adoptive parents makes the court application for 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 law. The adoptive parents would apply for an Adoption Order in the province or territory where they live.

### 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 court application for adoption is made in Saskatchewan, usually with the help of a lawyer. A home study of the adoptive parents must be done by an Independent Practitioner in Saskatchewan. The birth parents provide their consent to adoption where they reside, according to the laws or requirements of that jurisdiction.

## AFTER ADOPTION

### Open Adoption

Openness refers to maintaining contact with the child's birth family or other meaningful individuals after the adoption occurs. Openness allows:

- birth families to receive information about the child's health and wellbeing;
- adoptive families to maintain a link to the child's culture and heritage; and
- adoptees to strengthen their identities as a child and later as an adult.

Openness may include ongoing exchange of information, or visits between the birth and adoptive families. Birth and adoptive parents are encouraged to discuss with each other their plan for ongoing communication or contact once the adoption occurs.

In Saskatchewan, plans for communication or contact are not legally enforceable, but it is in a child's best interests for the adoptive parents to maintain some type of communication or contact with the birth family.

### Adoption Expenses

Adoptive parents are responsible for all fees associated with their adoption, including fees for home study reports and legal services. Adoptive parents may be able to claim an amount on their tax return for certain adoption expenses. Contact the Canada Revenue Agency for further information.

### Post Adoption Registry

In Saskatchewan individuals adopted on or after April 1, 1997 are able to receive a copy of their Registration of Live Birth six months after their 18th birthday, unless a veto has been placed on its release by the birth parent(s).

The Registration of Live Birth provides valuable information for the adoptee, including name(s) of their birth parents and place of birth. Adoption documents are available through the Post-Adoption Registry.

### Further Information

Contact the Adoption Support Centre of Saskatchewan. Visit their website at [www.adoptionsask.org](http://www.adoptionsask.org) or call 306-665-7272 or toll free at 1-866-869-2727.