

My spouse wants to adopt my child: Navigating the adoption process

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The adoption process in Manitoba is governed by The Adoption Act (the “Act”). Within the Act, there are several “categories” of adoptions. The general categories of adoption are as follows:

1. Division 1 – Adoption of a Permanent Ward;
2. Division 2 – Private Adoption;
3. Division 3 – Intercountry Adoption;
4. Division 4 – De Facto Adoption;
5. Division 5 – Extended Family Adoption;
6. Division 6 – Adoption by Spouse or Common-Law Partner of Child’s Parent;
7. Division 7 – Adoption of an Adult.

The process of completing an adoption varies depending on which category of the Act the adoption falls under. This article focuses on the process of a Division 6 “Adoption by Spouse or Common-Law Partner of Child’s Parent”, when the other biological parent of the child is agreeable to or does not oppose the adoption of the child.

The example that I will refer to throughout this article is that Parent A and Parent B have one child together (the “Child”); Parent A and Parent B are divorced; Parent A’s current spouse, Parent C, wishes to adopt the Child.

If Parent B agrees to or does not oppose Parent C adopting the Child with Parent A, the process of completing the adoption of the Child by Parent A and Parent C requires specific paperwork to be completed and specific processes to be followed.

The end result of an adoption application is an “Order” for adoption, stating that the Child has now been adopted by Parent C. Before an adoption Order can be granted by the court, however, certain steps need to be taken, and certain documents need to be filed with the court.

Once you are connected with a lawyer to assist you with the adoption process, your lawyer will tell you what documents and information they need from you and your spouse to complete the adoption process as this varies depending on circumstances. Your lawyer will need to know some background information from you and your spouse. Your lawyer will also need you to provide them with certain documents, which may include the following:

- The Child's birth certificate;
- Parent A and Parent C's certificate of marriage (if married) or declaration of commitment (if common-law);
- Parent C's recent child abuse and criminal record check;
- Parent A and Parent B's divorce judgment (if divorced);
- The death certificate of Parent B (if they have passed away);
- Parent A and Parent B's court order for custody of the Child (if applicable);
- Income documents.

If the Child to be adopted is 12 years of age or older, the Child's signed consent form will also be required.

Once your lawyer has obtained the necessary information and documents from you, your lawyer will prepare a Notice of Application and Affidavit for you and your spouse (Parent A and Parent C) to sign. These documents will then be filed with the court. Your lawyer will then have to serve the filed court documents on the Child's other biological parent (Parent B), as the court requires that they be given notice of the adoption application and that they be given an opportunity to consent to or oppose the adoption application.

Once your court documents have been filed and served on the other biological parent, and if the other biological parent signs a consent to adoption form or does not oppose the adoption application, your lawyer will submit an Order for adoption to the court. The Order will be reviewed and approved by the Judge on a "desktop" basis, meaning that the Judge will review the Order and documents your lawyer has submitted at their desk, and you and the adopting parent do not need to go to court to obtain the Order.

Once the Order for adoption has been pronounced by the Judge and filed with the court, the Child will need a new birth certificate that lists the adopting parent as their other parent, instead of the other biological parent. If the Child was born in Manitoba, the court will send the Order for adoption to Vital Statistics so that they are notified of the adoption, and you must apply to Vital Statistics to obtain a new birth certificate for the Child. If the Child was born in another province, you will need to contact the appropriate provincial agency to obtain a new birth certificate for the Child. After the Order for adoption has been pronounced, the other biological parent's rights and responsibilities with respect to the Child are terminated.

There is more "behind the scenes" work that is done to complete an Order for adoption, but the above is a general overview of what the adoption process entails for Parent A and Parent C looking to adopt Parent A's child from a previous relationship. You should speak with a lawyer to determine the process and requirements in your particular circumstances, if you are contemplating applying for an adoption Order.

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