

Declaration of Parentage in Ontario



LGBTQ Parenting Recognition

This info sheet helps LGBTQ parents to understand the declaration of parentage process in Ontario. This info sheet is intended to guide LGBTQ families seeking a declaration of parentage who approach the court amicably, meaning that all parties are in agreement as to how the family should be recognized.

This info sheet is part of a series on LGBTQ parenting recognition. The other info sheets “Birth Registration in Ontario” and “Second Parent Adoption” are available on our website.

Overview

Similar to adoption, the declaration of parentage is a lifelong unchangeable declaration of parental status that allows a parent to fully participate in a child’s life as a parent. A declared parent has the same rights and responsibilities as a genetic or adoptive parent.

Declarations of parentage and declarations of non-parentage are routinely made for children born through surrogacy in order to recognize the intended parent(s) and to remove the assumption that the gestational carrier is the mother of the child.

A declaration of non-parentage could also be sought by a single parent who is seeking to have a known sperm donor declared to not be a parent.

Declarations of parentage are also made in other circumstances, such as recognizing multiple parents, or recognizing two parents who are not eligible for a second parent adoption.

Declarations of parentage are sought in any situation where there is no process to ensure appropriate and accurate recognition of a family.

A declaration of parentage may be pursued immediately after a child’s birth, or it may be pursued much later. It is important that all parties be in agreement.

Issuing a declaration of parentage is at the discretion of an individual judge, and the guiding principal is the best interests of the child.

Declarations of parentage are sought in surrogacy, to recognize an already existing parenting relationship, to recognize more than two parents, and in other situations. These are all discussed below.

Table of Contents

Overview – 1
Legal Process – 2
Surrogacy – 4
More than two parents – 4
Recognizing an Established Parenting Relationship – 5
Other scenarios – 5
Legal Process – 2
Precedents of interest – 6
Additional Resources & Contacts – 7

Declaration of Parentage in Ontario

Trans Parents

Trans parents who give birth and wish to be listed as “father” or “parent” rather than “mother” are frequently told they must seek a declaration of parentage and are sometimes incorrectly told they must seek an adoption. In fact, you may be able to be recognized through the Office of the Registrar General without a declaration of parentage if you are able to effectively advocate for your family. Birth registration is easier, faster, and is free. For more information on birth registration, please refer to our info sheet “Birth Registration in Ontario” which is available on our website.

Two Parent Families

Two parent families in which one of the parents gave birth to the child have a choice between either a declaration of parentage or a second parent adoption. Some parents prefer the symbolism of a declaration of parentage. Others feel more comfortable with a second parent adoption because it is simpler and internationally recognized. For more information on second parent adoptions, refer to our info sheet “Second Parent Adoption” which is available on our website.

Presenting Amicably to the Court

Declarations of parentage are sometimes sought by one party, usually someone who is not legally recognized as a parent, when a parenting relationship is breaking down.

These proceedings are typically not successful.

Declarations of parentage are best sought when everyone involved is amicable. This means that everyone wants the same decision, everyone agrees on the evidence, and there is no conflict between the parties about the court proceedings.

If all parties are not presenting amicably, it will be more difficult to obtain a declaration of parentage.

Legal Process

The guiding principle of *parens patriae* empowers the government, through the courts, to act in the best interest of a child. The courts must work in a child’s best interest in deciding issues of family recognition. This legal framework means that arguments based on a parents’ right to be recognized are less powerful than arguments about a child’s rights.

This means our intentions in creating our families matter, but not as much as our children’s best interests.

Families in Conflict

This info sheet only addresses declarations of parentage that are sought by parents who are presenting amicably to the court.

Parens patriae

Parens patriae (paa-wrens pat-tree-eye)

Latin for "father of the country," is a legal concept that places the government as the ultimate guardian of children, and dictates that the government, and thus the courts, should protect their best interests at all times.

Declaration of Parentage in Ontario



The courts tend to give weight to stability in the child's life, and the potential for increasing a child's financial resources.

A child's wellbeing is supported by having their family recognized appropriately and accurately.

Proving what is best for the child

Appropriate and accurate family recognition is in a child's best interests.

In the AA v. BB case, the Ontario Court of Appeal accepted several practical ways in which a declaration of parentage benefits a child:

- the declaration of parentage is a lifelong immutable declaration of status;
- it allows the parent to fully participate in the child's life;
- the declared parent has to consent to any future adoption;
- the declaration determines lineage;
- the declaration ensures that the child will inherit on intestacy;
- the declared parent may obtain an OHIP card, a social insurance number, airline tickets and passports for the child;
- the child of a Canadian citizen is a Canadian citizen, even if born outside of Canada (Citizenship Act, R.S.C. 1985, c. C-29, s. 3(1)(b));
- the declared parent may register the child in school; and,
- the declared parent may assert rights under various laws such as the Health Care Consent Act, 1996, S.O. 1996, c. 2, Sched. A., s. 20(1)5.

Courts have also recognized the symbolic value of parental recognition to both parents and children.

Issuing a Declaration

When issuing a declaration of parentage, the judge orders the Office of the Registrar General to amend the child's birth registration and issue a birth certificate recognizing the child's parent or parents as ordered.

Declarations of parentage may also include a declaration of non-parentage that specifically names a donor or former parent and removes their parental status.

Once the declaration is made, the declared parents have the same rights and responsibilities toward the child as any parent.

The Role of a Lawyer

A lawyer helps families present a strong argument, provides information about the law and guides you through the legal process. While it is possible to represent your family on your own, most families will find obtaining a declaration of parentage impossible without a lawyer.

We encourage families to seek legal representation from a lawyer who is experienced in family law or fertility law and who has experience with declarations of parentage for LGBTQ families.

The directory on our website includes many LGBTQ positive lawyers. Please visit LGBTQpn.ca/directory

Surrogacy

In surrogacy, declarations of parenthood are a routine part of the process. Parents do not complete a birth registration until after the declaration of parentage is ordered.

The person who gave birth to the child is not intended to be recognized as a parent to the child.

The regulations of the jurisdiction where the child is born affect how the birth is registered and who is recognized as a parent.

If the child is born in Ontario, the person who gives birth, the gestational carrier is initially registered as the mother of a child in the first part of the birth registration. The birth registration is not completed, and a declaration of parentage is pursued soon after for the infant.

If the birth takes place outside of Ontario, the birth may be registered or not. You may pursue a declaration of parentage in Ontario, but you may also have to pursue another legal process where the birth occurs. Your lawyer will advise you.

Through the declaration of parentage the intended parent or parents are recognized.

In seeking a declaration of parentage, intended parents and gestational carriers typically present documents including some or all of the following:

- Sworn affidavits stating their intentions in conceiving a child
- Copies of their surrogacy or gestational carrier agreement
- Results of DNA testing showing that the child has a genetic link to the parent(s) or not
- Results of DNA testing showing that the child does not have a genetic link to the gestational carrier.
- If the gestational carrier was also the egg donor, in what is typically called “traditional surrogacy” then these documents may be shown as well.

While there is no legal requirement to present DNA testing, most judges prefer to have this evidence available to the court.

More than two parents

People who are parenting in poly relationships, co-parenting with multiple parents, or parenting in community may pursue a declaration of parentage. Some of the parents pursuing a declaration may already be recognized through a prior birth registration or a previous adoption. Through the declaration of parentage, every parent is recognized.

In Ontario, birth registration alone can potentially be used to recognize three parents when all three have a biological connection to the child. Currently, parents seeking recognition of more than two parents must seek a declaration of parentage through the courts.

Recognizing an Established Parenting Relationship

While some declarations of parentage may be sought immediately after the birth, other declarations are sought to legally recognize an already established parenting arrangement. In these cases, one or more parents will already be recognized through birth registration or adoption.

The evidence presented in these cases will establish the current parenting situation, such as documentation of which parents spend time with the child or who has financial responsibilities for the child. Documents that show intent in conceiving the child can also be helpful, if these exist, but the current parenting arrangement carries more weight than the intentions of the parents.

Other Scenarios

A declaration of parentage might also be sought if the parent who gave birth is unable to participate in a second parent adoption due to illness or death. In this circumstance, the remaining intended parent might pursue an order of parentage to be recognized as a parent.

Declarations of parentage are extraordinarily flexible. The granting of an order of parentage is at the discretion of the presiding judge. In granting an order of parentage, the courts should consider only the best interests of the child.

Precedents of Interest

Declarations of parentage are issued quite frequently. The decisions summarized here are simply the first of their types.

First Declaration

R (J) v H (L) 2002 CarswellOnt3445 (Ont.S.C.J.)

In 2002, the Ontario Superior Court of Justice issued the first declaration of parentage for a child born of surrogacy in Ontario. In this case, the applicants were heterosexual common law spouses. In making its decision, the court relied on the surrogacy agreement, as well as DNA evidence. The court noted that all the parties were amicable.

Two Fathers

M. (A.W.) v. S. (T.N.) 2014 ONSC 5420 (Ont. S.C.J.)

In this standard case, two fathers were recognized as the sole parents of a child born through surrogacy. In making its decision, the court relied on the surrogacy agreement and DNA evidence. The court also noted that the child had been in the care of the two fathers since birth.

Single Father

D. (K.G.) v. P. (C.A.), 2004 CarswellOnt 8819 (Ont. S.C.J.)

In 2004, a single father was recognized as the sole parent of a child born through surrogacy. The child was conceived with the father's sperm and a donated egg, and the pregnancy was carried by a gestational carrier. The declaration of parenthood ensured that this family would be recognized appropriately and accurately, with one father, and no mother.

Three Parents

A. (A.) v. B. (B.), 2007 CarswellOnt 2 (Ont. C.A.),

The Ontario Court of Appeal issued a declaration of parentage for a child that recognized three parents for the first time in Ontario in 2007. This case was presented by a mother seeking legal recognition of her role as mother.

Her partner, the recognized mother, had carried the child, conceived with sperm from the father, who was a friend. All parties were in agreement at court and had been parenting together for some time. The family had already decided not to pursue a second parent adoption because they did not wish to rescind the father's parental rights.

While the original attempt to seek a declaration of parentage was unsuccessful, the Ontario Court of Appeal decided that the principle of *parens patriae* applied, and could be used to recognize more than two legal parents.

Declaration of Parentage in Ontario



Additional Resources and Contacts

Please visit our website for additional info sheets and updated resources: www.lgbtqpn.ca

For a directory of LGBTQ positive lawyers, please consult the directory on our website.

Superior Court of Justice – Ministry of the Attorney General

Court Addresses, interactive online listing:

http://www.attorneygeneral.jus.gov.on.ca/english/courts/Court_Addresses/

Office of the Children’s Lawyer

Legal advice for children, services are available across Ontario.

(416) 314-8000

<http://www.attorneygeneral.jus.gov.on.ca/english/family/ocl/default.asp>

About This Info Sheet

This info sheet is part of a series on LGBTQ parenting recognition:

- > Birth Registration in Ontario
- > Second Parent Adoption in Ontario
- > Declaration of Parentage in Ontario

All three info sheets are available on our website: lgbtqpn.ca/recognition

The LGBTQ Parenting Network supports lesbian, gay, bisexual, trans and queer parenting through training, research, resource development and community organizing. We work with individuals, organizations, and communities from the local to the international.

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This information is provided as a community resource by the LGBTQ Parenting Network, a program of Sherbourne Health Centre.

Every effort is made to ensure that this information is as current and accurate as possible, but we cannot guarantee the accuracy of the information. Readers should verify the information before acting on it.

We welcome reports of errors and omissions as well as suggestions.

For updates, visit: lgbtqpn.ca/current

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