



Effective Date: 2018/02/05

Number: FPD - 14

Title:

Practice Direction

Adoption Applications

Summary:

To obtain an order for adoption, the person seeking the order must commence a family law case by petition under Supreme Court Family Rule 17-1 (see Supreme Court Family Rule 3-1(2.2)(a)). This Practice Direction provides direction in relation to:

- uncontested applications for the adoption of a child
- applications to dispense with notice or consent under ss. 11 and 17 of the *Adoption Act*
- adult adoptions.

Direction:

1. This Practice Direction replaces FPD 1 *Adoption Applications* dated July 1, 2010 which is rescinded.

Uncontested application for adoption of a child

2. In a family law case in which an uncontested application for an order for adoption of a child is sought, the following information and material must be included in the application filed with the court:
 - a. the consents required by the *Adoption Act*, the orders dispensing with consent, or an application to dispense with consent
 - b. the reports required by the *Adoption Act*
 - c. the original or a certified copy of the child's birth registration or satisfactory evidence of the facts relating to the child's birth

- d. a list of all persons who have had care of the child and with whom the child has resided since birth, showing the relevant periods
- e. where there is more than one applicant, information on the relationship between the applicants
- f. the age, occupation and residence of the applicant(s)
- g. information regarding the ability of the applicant(s) to bring up, maintain and educate the child
- h. information regarding any other children of the applicant(s) including particulars of their ages and place of residence
- i. the extent, if any, to which any non-adopting natural parent has supported or exercised contact with the child or access to the child,
- j. information regarding:
 - the residency of the child in the preceding six months as required by section 35 of the *Adoption Act*, or
 - the basis upon which an order dispensing with this residency requirement is sought, including any recommendation made by the director or an adoption agency in this regard.
- k. whether there is an order, or an agreement enforceable as an order under the *Family Law Act* in place for contact with or access to the child by a parent or other person
- l. where the petitioner seeks an order pursuant to s. 38(2) of the *Adoption Act*, the adoption application must include the following information relating to the best interests of the child:
 - the history of contact or access between the child and the person seeking contact or access
 - information regarding the relationship between the parties to the agreement
 - a report from the adoption worker as to whether ongoing contact or access is in the best interests of the child.

Applications to dispense with notice or consent (ss. 11 and 17 of *Adoption Act*)

3. Subject to paragraph 5 of this direction, an application under section 11 of the *Adoption Act* dispensing with notice of a proposed adoption to a birth father and an application under section 17 of the *Adoption Act* dispensing with consent to an adoption, may be included in an application for an order for adoption under Supreme Court Family Rule 17-1((24).
4. Where an application is made under section of 17 of the *Adoption Act* to dispense with consent of a child's father to a proposed adoption, the affidavit in support of the application must:
 - a. specify which paragraph of section 26(2) of the *Family Law Act* or of section 13(2) of the *Adoption Act* it is alleged applies to the child's father, and

- b. set out the facts in support of the allegation.
5. In circumstances where the non-disclosure provisions of section 42 of the *Adoption Act* apply, an application under section 11 or section 17 of the *Adoption Act*:
- a. must be commenced by a separate petition filed before the petition seeking the adoption order is filed,
 - b. must be brought in the name(s) of “John Doe”, “Jane Doe” or the Director of Adoption, and
 - c. must not disclose the identity of the prospective adoptive parents in the application or the supporting material.

Explanation of effect of consent to adoption

6. For the purposes of satisfying the provisions of section 9 of the *Adoption Regulation* (that a person giving consent understands the effect of the consent), where the affidavit of consent states that either a lawyer or a social worker explained to the deponent the effect of the consent, it will be presumed that the explanation was satisfactorily given.

Terms of openness agreement not to be incorporated into adoption order

7. The terms of an openness agreement made pursuant to section 59 of the *Adoption Act* may not be incorporated into the adoption order.

Adult adoption

8. On an application for an order for adoption of an adult, the following information must be included in the information filed in support of the application:
- a. age and occupation of the applicant(s)
 - b. date and place of birth of the person to be adopted
 - c. consent of the person to be adopted
 - d. relationship between the applicant(s) and the person to be adopted, including the information required by section 44(2) of the *Adoption Act*
 - e. proof of service on the parents of the person to be adopted and on the spouse of the applicant in accordance with Supreme Court Family Rule 17-1(3), and
 - f. any other relevant circumstances.

Chief Justice C. E. Hinkson