British Columbia’s Adoption Act –
Key legislative aspects of relevance for prospective adoptive parents

“BC’s new Adoption Act took effect on November 4, 1996, replacing legislation that was written 40 years ago. Based on years of public consultation, the new act is built around four central principles: fairness, balance, freedom of choice, and, above all the best interests of the child.”


Some highlights of the new legislation are:

Eligibility and Choice

- One adult or two adults jointly, regardless or marital status, may apply to adopt.
- There are now licensed adoption agencies and prospective adoptive parents and birth parents can receive service from either government (Ministry for Children and Families) or a licensed adoption agency.
- Provisions for a direct placement allow for birth parents to place their child with someone they know.

Standards and Regulations

- The regulation of all adoptions protects the rights and interests of all parties to adoption.
- The collection and preservation of background medical and social history information on the birth parents is gathered for the child as well as providing prospective adoptive parents with important information about the child before they commit to an adoption placement.
- The legislation ensures that birth parents receive the information they need to help them decide whether an adoption plan is right for them and their child. The government and agencies are required to provide unbiased counseling. There are separate social workers that work with birth parents from the social workers that work with prospective adoptive parents to ensure that there is no conflict of interest.

Openness

- Open adoptions are recognized under this legislation and birth parents and prospective adoptive parents have an opportunity to enter into agreements for ongoing contact or exchange of information.
- An openness agreement may not legally be signed before the birth parent signs consents to the adoption. It is an agreement in good faith and is meant to be flexible and change according to the needs of the child, birth parents and adoptive family.
- If openness is not a part of the adoption, adoptive parents with children under the age of 19 may apply to a passive Post-Adoption Openness Registry, to seek contact with birth family.
Birth Parents Rights and Legal Safeguards

- There is a birth father registry that must be searched for every adoption completed in B.C. This registry allows birth fathers to become involved in planning for their child if the birth mother does not inform them of her plans to place their child for adoption. This registry must be searched for all placements at two times: 1) before the child is placed for adoption and 2) before the adoption is completed. The legislation states that “a birth father may, no later than 150 days after the date of the notice provided by a prospective adoptive parent, under section 12 of the Act, register on the birth father’s registry to receive notice of a proposed adoption.” In effect, if a birth father has not provided consent, there is a legal risk that he may come forward and want to be involved in planning for the child up until 150 days following the placement of a child with prospective adoptive parents.

- Birth mothers have the right to revoke their consent to an adoption placement under two conditions: 1) if the child is not placed in an adoptive home, 2) if the child is under 30 days old. In effect, there is a legal risk for adoptive parents who have a child placed in their home before the child is 30 days old, as the birth mother has the right to change her mind. This is a safeguard for birth mothers and is not a situation that occurs frequently.

- Birth fathers have the right to revoke their consent to adoption only if the child is not placed in an adoptive home.

- Consents to an adoption cannot be signed by a birth mother until the child is at least ten days old (the day of the birth and the day of signing consents are not included). A birth father may sign consents to adoption any time after the child is born.

Access to information

- Any child whose adoption was completed under this Act (since November 1996), will, at age 19, have access to his or her birth name. This information is accessed through a request to the department of Vital Statistics.

- Adults adopted in BC. and their birth parents will be able to have access to identifying information about one another, except where a disclosure veto has been filed.

Overview of the placement process for a local infant placement in B.C.

- A birth mother and or birth father will contact the Ministry for Children and Families or an adoption agency for counselling and support. This contact is usually made two to four months before the baby is due.

- If the birth parent(s) are proceeding with an adoption plan the prospective adoptive parents will usually be chosen before the child is born. The birth mother and or birth father will also usually want to meet with the prospective adoptive parents before the child is born. This meeting will be facilitated through the adoption agency and all parties are supported through this process.

- When the child is born the prospective adoptive parents may or may not be involved. The birth of the child may cause the birth mother to have many strong feelings of grief and loss regarding an adoption plan and at times the birth mother may want more time to
consider her choice of adoption. Sometimes however, the adoptive parents are very involved and they can be present at the hospital and visit the child from the first day.

- The child may be placed with the adoptive parents at any time following birth, as soon as the child is ready to be discharged from hospital. Some birth parents will prefer to have the child placed as soon as possible and others will want the child to remain in hospital to allow them to visit with the child. If adoption is the plan, the child is usually allowed to remain in the hospital until the birth mother can legally sign adoption consents (up to a maximum of about 12 days). If the birth mother chooses to place her child before adoption consents are signed, she transfers care and custody to the agency and the agency will transfer care and custody to the prospective adoptive parents. The birth mother remains the guardian of the child until she signs adoption consents.

- If both birth parents have signed adoption consents there is no legal risk for the placement once the child is 31 days old. This is due to the fact that the birth mother has the right to revoke her consent until the time the child is 30 days old.

- If the birth father has not signed adoption consents there is a legal risk with the placement until the child is 150 days old.

- There is a mandatory six month probationary period with all adoption completed in B.C. During this time the agency will remain as the guardian of the child and the social worker will visit the family to ensure all is well. The finalization papers to complete the adoption can be filed 6 months after the child is placed and an adoption order is usually granted in a month. When the adoption order is granted, Vital Statistics will issue a new birth certificate with the child’s adoptive name and the adoptive parents listed as parents. Congratulations, the adoption is complete.
Adoption: The Meaning and Effect

Adoption Defined

- Adoption as a legal construct:
  “When an adoption order is made, (a) child becomes the child of the adoptive parent, (b) the adoptive parent becomes the parent of the child, and C the birth parents cease to have any parental rights or obligations with respect to the child, except a birth parent who remains under subsection (2) a parent jointly with the adoptive parent.”

  (Section 37[1] of the Adoption Act [1995])

- Adoption as a social construct:
  “Adoption is a means of providing some children with security and meeting their developmental needs by legally transferring ongoing parental responsibilities from their birth parents to their adoptive parents; recognizing that in so doing we have created a new kinship network that forever links those two families together through the child, who is shared by both.”

  (Watson and Reitz, 1992)

Effects of an Adoption Order

- when an adoption order is granted, a legal parent-child relationship is established between the child and the adoptive parents
- the birth parent or guardian of the child ceases to have any legal rights or responsibilities with respect to the child
- laws relating to incest and prohibited degrees of marriage continue to apply to the birth family and the child
- the aboriginal rights of a child continue after an adoption order is made
- any order or agreement for access to the child terminates unless the court orders otherwise
- the adoption order establishes the child’s legal name. The prospective adoptive parents may request a change of the child’s given or family name. A name is closely related to one’s sense of identity so a child over the age of 12 must consent to any change in name. If the child is between 7 and 12 years, their views about a name change must be addressed in a report for the court (i.e., Younger Child’s Views Report)

  (MCF Adoption Policy Manual, 5-1-31)