

Rule 61 - Adoption

Scope of Rule 61

61.01 A person may bring a proceeding for adoption under the *Children and Family Services Act* in accordance with this Rule.

Application for adoption with consents

61.02 (1) A person who wishes to apply for an adoption order, who obtains all necessary consents, and who believes the proceeding will be uncontested may start the proceeding by filing an application for adoption with consents.

- (2) The application for adoption with consents must contain a standard heading written in accordance with Rule 82 - Administration of Civil Proceedings, be entitled "Application for Adoption with Consents", be dated and signed by the applicant, and include all of the following:
- (a) a statement making the application to a judge in chambers and, if sought, a change of name under the *Children and Family Services Act*;
 - (b) the grounds for the application;
 - (c) a statement that that applicant has obtained or is obtaining all necessary consents;
 - (d) a reference to each affidavit relied on by the applicant;
 - (e) the time, date, and place in chambers when and where the application will be heard or a space in which court staff may fill in the time and date;
 - (f) a designation of an address for delivery of documents to the applicant.
- (3) The grounds for adoption must include all of the following:
- (a) the name, address, age, and occupation of each applicant;
 - (b) the circumstances under which the person to be adopted came to be placed with, or otherwise came to live with, the applicant;
 - (c) the length of time the person has lived with the applicant;
 - (d) information about others who live with the applicant and the person to be adopted;

- (e) information about the applicant's ability and means to care for the person;
 - (f) for the adoption of a person under sixteen, the day on which the applicant filed a notice of proposed adoption with the Minister of Community Services and the day on which the applicant received any acknowledgement from the Minister;
 - (g) an expression of the applicant's desire to become the person's parent.
- (4) An application in which a lawyer's address is given as the designated address must be signed by the lawyer as counsel of record.
- (5) An application for adoption with consents may be in Form 61.02.

When contest arises despite consents

61.03 A judge may convert an application for adoption with consents to a proceeding under Rule 5 - Application, and the judge may give directions for the further conduct of the proceeding.

Application for adoption without consent

- 61.04 (1)** A person who wishes to apply for an adoption, but who does not obtain all necessary consents or who believes there will be a dispute, may start the proceeding under Rule 5 - Application.
- (2) The requirements for the grounds in an application for adoption with consents applies to the grounds in a notice of application filed under Rule 5 for an adoption order.

Evidence in support

- 61.05 (1)** An application for adoption, whether with or without consents, must be supported by all of the following evidence:
- (a) the applicant's affirmation of the grounds stated in the application for adoption or the notice of application;
 - (b) identification of each person who falls within the meaning, in the *Children and Family Services Act*, of "parent" of the person to be adopted;
 - (c) consents that conform with the requirements of the *Children and Family Services Act*, or an adoption agreement with the Minister of Community Services, proven to have been signed by each of the persons identified as a parent, or evidence upon which a judge may dispense with a consent;

- (d) proof that each consent is given freely and with understanding of its effects, including the effect of permanently depriving the person of parental rights;
 - (e) regarding a mother who signs a consent or an adoption agreement, proof that she is the mother including reference to her child's full name, place and date of birth, and birth registration number or an explanation of why there is no registration number;
 - (f) a long form birth certificate issued by the government of Nova Scotia for the person to be adopted, similar evidence issued by a government in another jurisdiction, or evidence providing similar details and an explanation of why an official record is not available;
 - (g) for the adoption of a person under sixteen, a copy of the notice of proposed adoption, evidence that it was sent to the Minister of Community Services, including the day it was sent, and a copy of any acknowledgement received from the Minister;
 - (h) for the adoption of a person who has been placed in the permanent care and custody of an agency or of the Minister of Community Services, a certified copy of the permanent care and custody order.
- (2) A consent that does not clearly identify the person to be adopted or that identifies the person in a way that is inconsistent with a birth certificate, must be supported by evidence that explains the lack of clarity, or the inconsistency, and satisfies a judge that the person is one and the same.
- (3) The application must also be supported by evidence that all required notices have been given, which evidence may be provided by an affidavit of counsel.
- (4) In an application in court, the judge who gives directions may give directions for proof required by this Rule 61 and, in any other application, the proof must be by affidavit or, on the following subjects, by statutory declaration exhibited to an affidavit of the applicant or of the applicant's counsel:
- (a) who are the "parents", within the meaning of the *Children and Family Services Act*, of the person to be adopted;
 - (b) who executed a consent and whether the person did so freely and with understanding;
 - (c) proof of motherhood;

- (d) the identity of a person to be adopted who is identified unclearly or inconsistently in other evidence.
- (5) A consent may be in Form 61.05A.
- (6) A mother's statutory declaration may be in Form 61.05B.

Privacy

- 61.06 (1)** The requirement of the *Children and Family Services Act* that an adoption hearing be held *in camera* may be fulfilled by holding it separate from other applications or motions, by conducting it so that the person to be adopted is identified only by registration number, or by conducting it in another way that a judge finds to provide the privacy required by the Act.
- (2) Rule 84 - Court Records and Rule 85 - Access to Court Records apply to an adoption proceeding only to the extent that they are consistent with the provisions of the *Children and Family Services Act* about records of adoption proceedings.

Adoption Order

- 61.07 (1)** An adoption order may record the findings that support the order, provide that the application is granted, order a change of name if it is requested, and make a declaration of the status of the adopted person as the child of the applicant.
- (2) An adoption order may be in Form 61.07.