

Who is a parent?

Ontario's family laws recognize that:

- there are many ways a child can be conceived, for example, by having sex, by using a donor egg or sperm, or by using a surrogate
- a person who is **not** biologically related to a child may be a parent to the child if they meant to be a parent **before** the child was conceived
- all parents have the same rights and responsibilities, whatever their sexual orientation or gender identity
- a child can have more than 2 parents

Birth parent

A birth parent is the person who gave birth to the child. A birth parent is a parent unless they are a surrogate. See the section called “Assisted reproduction”.

Sexual intercourse

If the child is conceived by sexual intercourse, the person whose sperm resulted in conception is also a parent in most cases. This person will **not** be a parent if they made a written agreement that says they did not want to be a parent that was signed before sex.

In some cases, the law says a person is a parent unless they prove they are not. For example, the law assumes that the birth parent's married or common-law partner is a parent to a child conceived by sexual intercourse. The partner might be able to show that they should not be a parent by taking a DNA test that shows the child is unlikely to be related to them.

Assisted reproduction

Assisted reproduction means the child was conceived in a way that was not sexual intercourse. This includes a child conceived with the help of a sperm or egg donor, in-vitro fertilization, or surrogacy.

If the child was conceived through assisted reproduction, the sperm donor, egg donor, or embryo donor is not a parent.

The birth parent's married or common-law partner at the time of conception is usually a parent. The partner doesn't have to adopt the child or get a court order to say that they are a parent. This means that a married or common-law couple who use donor sperm are both parents of a child that one of them gave birth to.

November 2018

But if the birth parent's married or common-law partner did **not** agree to be a parent before the child was conceived, they are not a parent.

If the child was conceived using a surrogate, the surrogate is not a parent to the child if:

- they sign a written agreement before the child was conceived that says they are not a parent and
 - the agreement is signed by at least one but no more than 4 intended parents
 - everyone who signs the agreement has independent legal advice
- at least 7 days after giving birth to the child, they agree in writing that they are not a parent

If you are thinking of using a surrogate or becoming a surrogate, you should talk to a lawyer.

Number of parents

Sometimes a child can have more than 2 parents. Up to 4 people can agree to be the parents of the child in a written agreement made before the child is conceived. For example, there can be 4 parents if a lesbian couple and a gay couple all agree to be parents to a child where one of them is the birth parent and one of them provides the sperm that results in the child's conception.

If 5 or more people want to be recognized as parents, they need to go to court and get a court order called a declaration of parentage. The court decides whether or not a person is a parent to a child based on a legal test called "the best interests of the child".

If a person does not agree they are a parent

If people disagree about who is a parent, they can go to court. The court decides whether or not a person is a parent to a child based on a legal test called "the best interests of the child".