

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.

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".

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.

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.

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".

You can find more information about
Family Law at stepstojustice.ca.

This is general legal information for people in Ontario, Canada.
It is not intended to be used as legal advice.

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