



## Checklist for Crown Ward Adoption Files

Children's Aid Societies are required to consider openness for all Crown wards and it is crucial to the adoption process that proper procedures are in place. Below are the steps you should follow to ensure the process is adhered to. Openness has legal requirements as defined by the CFSA, and as such a close partnership with your legal department is crucial.

The steps outlined in this document pertain to the legal requirements under the 2011 amendments related to the serving of notices to terminate an access order and the resulting process. These steps are in addition to many other legal requirements in the adoption process specified under the CFSA that are not included in this document. For example, under s. 141.2 when a Society intends to plan for the adoption of an "Indian or native" child, a Society is required to provide written notice of its intention to plan for adoption to a representative chosen by the child's band or native community. The Society is unable to place a child for adoption until 60 days after notice is provided unless the band or native community submits a plan of care earlier and it has been considered by the Society.

There are a wide range of options for openness arrangements and this is only a checklist to ensure that the legal requirements under the Child and Family Services Act are met. This is not meant to address the clinical planning around openness which will include a number of considerations including whether openness is in the best interests of the specific child, the type of openness that may be appropriate and preparation of the adoptive family, the birth family and children for openness.

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### Initial Steps: Planning Stage

- Consider the benefits of an openness order or agreement when adoption planning begins for a child who is a CW [CFSA s. 141.1(2)]
- Review the Crown wardship order and any related legal documents to determine whether there is an access order (including between siblings) which will require you to serve notices under s. 145.1.1 of the CFSA before proceeding with an adoption
  - If there is an access order, you cannot proceed to place the child for adoption until you either:
    - (a) Serve the appropriate notices regarding intent to place for adoption and termination of the access on placement [Form 8D.2, 8D.3, or 8D.4]; or
    - (b) Bring a Status Review or Application General to terminate the access order.

- Consult with legal counsel as access orders are not always clear. Ideally the lawyer with the carriage of the file at the Crown wardship stage should be consulted as they are in the best position to give the context to the order

### **Service of Notices of Intention to Place for Adoption**

- Determine who the holder of the access is, and who the recipient (subject) of the access is. An access holder has the right to apply for an Openness order; an access recipient/subject does not.
- Consult legal counsel to determine the appropriate notices that need to be served.
  - If the access holder is an adult they are served with a Form 8D.2
  - If the access holder is a child they are served with a Form 8D.3
    - See *CFSA s. 145.1.1(2) and (3) and Rule 34(17)(e) and (f)*
  - The access recipient is served with a Form 8D.4 whether they are an adult or a child
    - See *CFSA s. 145.1.1(2) and (3) and Rule 34(17)(g)*
- The CFSA only requires service of a notice (Form 8D.2/3/4) on the access holder and the subject of an access order, so a child's band or native community would not be served unless they are specifically referenced in the access order. However, whenever considering openness for a First Nation child, the child's band or native community should be included in that process. It should be remembered that a member of the child's band can also be a party to an openness agreement (see s.153.6)
- Save copies of the Notices and Affidavits of Service for future use when compiling documents to finalize the adoption

### **Involvement of the Office of the Children's Lawyer**

- If the child is an access holder, give notice to the OCL on the **same business day** as the child is served (this does not replace service on the child)
  - required by a MCYS protocol
- Provide the OCL with the following:
  - A copy of the notice served on the child
  - A copy of the access order and any other child protection order that is currently in force with respect to the child who has the right to apply for an openness order
  - A copy of the "Notice to the Office of the Children's Lawyer that a Child is Being Served with Form 8D.2 or 8D.3" which will list a designated contact person from the CAS
- If the child is an access recipient, you do not need to serve the OCL
- Consider involving the OCL at an earlier stage. There are two ways to request the involvement of the OCL prior to notices being served:
  - Make an ADR referral; or
  - If the OCL has previously represented a child, request that the file be reopened

## Adoption Placement

- Wait for one of two events to occur before placing the child for adoption:
  - (a) 30 days have passed; or
  - (b) all access holders have served openness applications on the Society. [CFSA s. 145.1.2(3)]
- The existing access order continues until you place the child for adoption. The notices (Form 8D.2/3/4) do not terminate the access order; it is the placement for adoption that terminates the access.

## Involvement of Prospective Adoptive Parents

- Keep the prospective adoptive parents informed of any applications for openness **before placement**. The CFSA requires the Society to tell the adoptive parents the following:
  - That an application has been brought
  - The relationship of the applicant to the child
  - The details of the openness arrangement requested [CFSA s. 145.1.2(4)]
- Note that the prospective adoptive parents are not automatically parties to an openness proceeding
- Speak to your legal department about Independent Legal Advice for the adoptive parent(s)

## Responding to an Openness Application

- When the Society is served with an Application for Openness [Rule 34(19)] you need to serve and file an Answer within 30 days.
- Consider whether or not the ongoing contact with the person seeking openness is beneficial and meaningful to the child, and the ability of the prospective adoptive parents to comply with the arrangements for openness.

## Finalizing Adoption Orders

- Refer a child age seven years and older to the OCL for Independent Legal Advice regarding their consent to the adoption and provide the assigned OCL with a copy of the Crown wardship order
- Include the following documents in the Adoption Application Continuing Record if an access order was made under s. 58(1): [Rule 34(6)1.1]:
  - Copies of the Form 8D.2 , 8D.3, and 8D.4
  - Proof of service for each notice in accordance with s. 145.1.1(4) or (5) or a copy of an order under s. 145.1.1(6) that notice is not required
  - An affidavit (Form 34G.1) stating that:
    - (a) No application for openness has been filed;
    - (b) If application(s) for openness has/have been filed, the status of all applications, including details of any openness orders that have been made.