



Community Resources

Child and Family Services

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Ref: #0368(M822-14)

July 26, 2006

Ted Merriman, MLA
Saskatoon Northwest Constituency
#102 - 294 Venture Crescent
SASKATOON SK S7K 6M1

Dear Mr. Merriman:

This letter is in response to your letter received by fax on July 12, 2006 at Minister Belanger's office regarding the matter concerning [REDACTED]. Minister Belanger has asked me to investigate this matter and provide a response on his behalf, ensuring he is copied on this correspondence. I am the Provincial Director of Post Care Services and have responsibility for program, law and policy within the Adoption Program of Saskatchewan on behalf of the Minister.

In regards to your questions, I have undertaken a review with Sharon Procyshen, Area Service Manager in Saskatoon, and as well, have contacted other regional staff.

I am able to provide you information in regard to the questions you have asked based on a signed consent form from [REDACTED] included in your correspondence. I will answer the questions in the format you have provided as follows:

1. *Why, when Social Services, Child Protection Services, Family Services, Children's Advocate and the social worker at RUH, were advised of the situation of the baby at hand, did they not act on it?*

Response: In responding to this question, I will speak for the authority of Child Protection Services and not for the Children's Advocate nor the Royal University Hospital officials. Child Protection Services were advised of the matter of a baby being born with potential concerns that the mother was using substances that would have a significant negative impact on the child at birth. Since the mother chose to not parent this child, child protection concerns were not present. The Department had no information that stated the source that the mother chose to care for the baby had any child protection concerns. Therefore, the Department of Community Resources Child Protection Services had no further authority pursuant to *The Child and Family Services Act* to be involved with this matter.

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2. *How did the baby leave the hospital without the appropriate people or agencies notified?*
Response: There is no law in Saskatchewan that compels "appropriate people or agencies" to be notified other than if it is a child protection matter. Following the birth of a child, a mother can either take the child home with her (unless child protection becomes involved) or make private plans for alternate custody arrangements. If the biological father disagrees with the planning, there are provisions within *The Children's Law Act* legislation that he can utilize through retaining legal counsel and presenting his case in court.
3. *Who signed the baby out to the couple who have custody?*
Response: The Department of Community Resources has no specific information on who was signatory to any written custodial agreement. Department officials are aware that the baby does not reside with the mother but rather the source she has chosen to care for the baby.
4. *Was a home study done on the couple who have custody of the baby?*
Response: There is no law in Saskatchewan that compels a home study to be completed when the matter is a private custodial arrangement, unless the matter has been placed before the court and a judge requests a home study be completed. There are most likely numerous arrangements made privately between parents and other parties regarding the care of children where there is no official documentation completed. The ability for parents to select someone to care for a child is a private matter and no authority becomes involved unless there are child protection concerns that come to the attention of our Department or one party disputes the plan and engages legal and court processes to seek resolution on matters of dispute.
5. *Who was the person who authorized the home study?*
Response: The Department officials have no knowledge that a home study was authorized in this matter.
6. *Why does the baby have their last name, as they only have custody?*
Response: The Department staff were not involved with the matter regarding procedures undertaken in naming the baby. The legislation that governs registration processes of vital statistics including birth registrations and change of names are *The Vital Statistics Act, 1995* and *The Change of Name Act, 1995*.
7. *Now that the paternity test has come back positive, why does the couple still have the baby?*
Response: The Department staff are not involved with this private custodial matter, nor do they have a mandate to become involved in any private custodial matter. Typically, when a birth father feels strongly that he wants to be a part of his child's life and wants to be involved in planning for the child, and the birth mother has arbitrarily and unilaterally undertaken planning without his involvement, the birth father engages legal counsel to work on his behalf utilizing the provisions within *The Children's Law Act* to bring relevant

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matters before the court. Decisions by the judge are made in the best interests of the child. In this matter, the birth father has the option of consulting with his legal counsel regarding the paternity test results and to consider making application to the court for a custodial arrangement of the child.

8. *Why have government authorities not recognized the biological father of the baby?*

Response: The paternity test results have been provided to our Department recently which confirms that [REDACTED] is the biological father of the child. At this time,

Mr. [REDACTED] does not have any involvement with government authorities such as the Department of Community Resources as it relates to matters concerning this child. Should the birth mother try to proceed with an adoption plan, our Department staff have been advised of the status of the birth father, and would ensure he is involved with the matter of planning for a child whose plan by the birth mother is adoption.

Amendments were made to *The Adoption Act, 1998* in 2004 that ensure that both birth mother and birth father are assessed equitably within the definition of "birth mother" and "birth father" in the *Act*. The Department recognized the importance of both birth parents being involved in planning for the child and that ultimately it is in the child's best interests to ensure there are processes in place in adoption legislation that support involvement from both parents. Department staff have not been contacted by the birth mother yet for planning regarding adoption, therefore, the Department has no role or authority to intervene in this private matter at this time.

9. *Why, as the biological father of the baby, can [REDACTED] not have the baby in his home?*

Response: This is an important question and the Department does not have an answer to this question due to the fact that our staff are not involved in this private custody matter.

This is a question that perhaps needs to be redirected to Mr. [REDACTED]'s legal counsel.

The option for the birth father is to make a case in court under the authority of *The Children's Law Act* for custody of the child.

10. *Why have the requests by the biological father to place the baby in foster care (neutral ground), until this matter can be resolved, been denied?*

Response: As stated previously, the Department is not involved with this matter as at this stage, it is a private custody matter dispute. The Department does not provide foster care services for the purposes of the child being placed with an alternate family during private custodial disputes as Child Protection and Family Services are governed under the provisions of *The Child and Family Services Act*. Private custodial matters are governed under *The Children's Law Act*. The role of the Minister of Community Resources does not have any legal authority as it relates to the provisions within *The Children's Law Act*.

11. [REDACTED] was told that he had to get a paternity test in order to have any rights as a father. With a positive paternity test in hand [REDACTED] went to Social Services to attempt to gain custody of his baby. He was told that he does not have any rights to the baby because the baby is not at any risk in his current home. Why was he told he would have rights as a father and then those rights were denied?

Response: In consultation with the staff involved with this matter at the Saskatoon regional office, I am advised that typically, if there is an apparent disagreement with custody of a child between the parents and the birth mother has acted unilaterally in privately planning for the child, it is recommended to birth fathers that their case will be stronger for the court processes as it relates to *The Children's Law Act*, if there is a higher level of confirmation regarding paternity. The Department, as stated previously, is not involved with the child's current placement arrangement. This arrangement was conducted by the birth mother independently. The Department's primary concern was safety of the child. At this stage, as a private custodial matter, the Department has no authority to interact with this child, nor the child's present family. The birth father's option is to take this matter before the court under the authority of *The Children's Law Act*, present compelling case evidence that he is entitled to the child, and the judge will decide accordingly.

12. Why, as the biological father of the baby, has [REDACTED] been denied the chance to meet his son?

Response: I acknowledge the frustration of the biological father in this matter. Since the Department is not involved with this matter, the birth father's options are to consult with his legal counsel on how to expedite this matter before the court so that a judge can rule on the matter of communication with his son.

13. [REDACTED] has taken every step necessary to gain custody of his son. He has followed the direction of Social Services, the Children's Advocate, etc. Why is he having so much trouble gaining custody of his son?

Response: The Department staff provided information to Mr. [REDACTED] as it pertained to the role, scope and authority in the involvement of this matter. The Children's Advocate's role is that of advocacy and not providing specific direction in a case matter. The Children's Advocate does not have the authority to "direct" matters, but rather investigate and make recommendations. The last question regarding the matter of why Mr. [REDACTED] has not been able to gain custody of the child is an important question that the Department is not able to answer as there is no authority for our staff to be involved. As suggested before, this question perhaps should be redirected to Mr. [REDACTED]'s legal counsel as the options available to the birth father include getting this matter before court for a judge to make a decision under the authority of *The Children's Law Act*.

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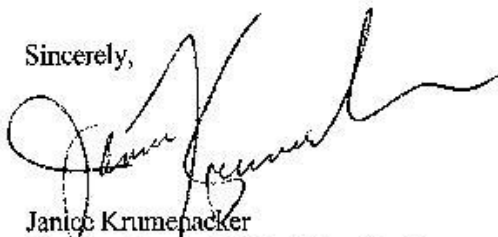
14. ■■■ has exhausted his savings and accumulated debts by diverting funds to pay for his lawyer. He does not have the financial means to sustain a lengthy court battle with the couple who have his child. Does this mean that all is lost?

Response: The Department has experienced situations like this before where our staff become aware of private custody disputes. Although our staff do not hear back from parties on all matters that are resolved within court under the authority of *The Children's Law Act*, our staff are aware of some resolutions and typically those matters are resolved fairly timely in court. It would be more unusual to have a lengthy court process, particularly, when there is a birth parent able and willing to care for the child. It is unfortunate that considerable funds have been paid already and there has not been a determination of custody entitlement. The Department has no legal authority to provide any funds to parties involved in private custody disputes. The options available to Mr. ■■■ include obtaining an assessment through the Legal Aid Commission to determine whether he would qualify for legal services provided without requirement of funds paid, discuss his options with his lawyer regarding payment, determine whether there is the possibility of a pro bono offer by any law firm, or determine whether he is able to represent himself in court.

Thank you for taking the time to put together these questions in regards to the matter of Mr. ■■■. I acknowledge that this is a very difficult and emotional matter. It is in the best interests of the child to obtain resolution to this matter under the authority of *The Children's Law Act* as soon as possible.

If you have any further questions, please contact me at (306) 787-5698.

Sincerely,



Janice Krumpacker
Director, Provincial Post Care Services

cc: Honourable Buckley Belanger, Minister, Community Resources
Sharon Procyshen, Area Service Manager, Saskatoon