



1290 Central Parkway West,
Suite 402,
Mississauga, Ontario
L5C 4R3
(905) 273-4588

Request for Paternity (DNA) Testing

We live in a world of daytime talk shows and reality television where serious issues are often presented to us as entertainment: look no further than your own living room and turn on your TV and you'll see what determining the unknown paternity of a child. Viewers watch as the mother waits with baited breath; the anxious potential father sits motionless, beads of sweat running down his face; all eyes locked on the host in his turtleneck and his fate-determining que card. Many of us have watched (and maybe even enjoyed) these shows as we are blissfully unaware of or unconcerned by the fact that this very situation is a real life changing and stressful reality for some. These "Who's Your Daddy?" talk shows tend to oversimplify the process of obtaining a DNA test. It is important to keep in mind that unless both parties consent it's not a given. In the case of *Griggs v Cummins*, 2013 CarswellOnt 93080 (Ont. S.C.J.), it was the alleged father who brought a motion requesting leave to obtain a blood test to determine whether he was, in fact the child's father. The mother then brought a cross-motion aggressively opposing the paternity test, leaving the proverbial cue-card of fate in the hands of the court. Case law has established the general principle that in exercising the discretion under section 10 of the *Children's Law Reform Act* is that request for leave to obtain DNA tests should be granted unless it can be shown that either the actual process of conducting the tests could be harmful to the child's health or the request for leave to obtain the blood test is made in bad faith. In *Griggs*, the Honorable Justice Howdan acted on the discretion permitted under sections 40 of the *Children's Law Reform Act*. Section 44 of the *Children's Law Reform Act* is where the best interests of the child are defined. Justice Howden ultimately decided that it would be in the best interests of the child in question to have some certainty as to the identity of her mother. He also determined that, from a public policy standpoint, it is also in society's interest to ascertain paternity of children, to ensure parental accountability. What's interesting about this decision is that it draws focus into the impact of family law decisions on public policy. As far as paternity testing, the interest goes beyond the individuals directly involved; it is also in the interest of society, as a whole, children are financially taken care of by the parents. If an alleged father is contesting maternity and the applicant seeking child support wishes to remove any doubt about percentage, the best course of action may be to apply to the court for leave to obtain a paternity test. We all know that parents are responsible for their children financially and otherwise. What you may not know is that there is a "presumption of paternity". Factors that are set out in Section 18 of the *Children's Law Reform Act* create a "presumption for paternity".

8. (1) Unless the contrary is proven on a balance of probabilities, there is a presumption that a male person is, and he shall be recognized in law to be, the father of a child in any one of the following circumstances:
9. The person is married to the father of the child at the time of the birth of the child.
- 10.

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11. The person was married to the mother of the child by a marriage that was terminated by death of judgement of nullity within 200 days before the birth of the child or by divorce where the decree nisi was granted within 200 days before the birth of the child.
12. The person marries the mother of the child after the birth of the child and acknowledges that he is the natural father.
13. The person was cohabiting with the mother of the child in a relationship of some permanence at the time of the birth of the child or the child is born within 300 days after they ceased to cohabit.
14. The person has certified the child's birth, as the child's father, under the *Vital Statistics Act* or a similar Act in another jurisdiction in Canada.
15. The person has been found or recognized in his lifetime by a court of competent jurisdiction in Canada to be the father of the child.

Children's Law Reform Act R.S.A. 1990, c. C. 22, s. 81. Based on the above factors, the best way to rebut the presumption of paternity in any of the above circumstances is to obtain a paternity test. In situations where support is being sought and a father is unsure if the child in question is his, he would be wise to seek a paternity test before he makes payments for the child and displays any conduct establishing a *locos parentis* role which can trigger support obligations regardless of biological paternity. For example, where a male may not be the biological father of the child, and this is later proven by paternity testing, he may still be responsible for providing child support if, by his conduct, he has demonstrated a settled intention and acted in the role of a parent. For those who find themselves in situations like this it is best to test and establish paternity sooner rather than later.