

Native Legal Info

PATERNITY SUIT

Éducaloi, in collaboration with the Quebec Native Women's Association, presents Native Legal Info. This legal bulletin deals with recognition of paternity. It is intended to inform Aboriginal women of their rights and the legal actions that can allow them to defend those rights.

Marie sees Anne from afar on the site of an Aboriginal music festival. She appears to be preoccupied. Marie approaches her and holds out her hand. Anne responds sadly.

Marie : Hello Anne. Things don't seem to be fine.

Anne : No, that's right. I'm a little worried. Stephanie and Nancy just told me that children of a status Indian mother whose father's name isn't on the birth certificate are considered to be white. That's the case for me because my ex, Simon's father, refused to sign his birth certificate. I am a status Indian and so is his father. But since his father absolutely refuses to sign the birth certificate, I don't know what to do in order for my son to have his status Indian.

Marie : Don't worry Anne! First, your son is not white but Indian since you yourself are Indian according to the Indian Act, are a 6 (1) and your son, for the time being, is a 6 (2). The difference between you and your child is that he cannot transmit status to his children if his spouse is not a status Indian.

Anne : Can I do something to change that ?

Marie : Yes, you can undertake a paternity suit in order to have Simon's father legally recognise his paternity. You know, I also had to take legal action so the name of my daughter's father appeared on the birth certificate. You have the right as the mother to force the father of your son to recognise his paternity.

Anne : Yes, but what if he is married ?

Marie : It makes no difference if he is married or not. Procedures are the same and you have the right to sue him even if he is married.

Anne : What do I need to do for this ?

Marie : First, you must see a lawyer and explain the situation. He will prepare a paternity declaration for Simon's father. Your lawyer will explain what information he will require to prove paternity and if medical tests are needed.

Anne : I don't have money for that !

Marie : It's true that if you are not eligible for legal aid, you must pay your lawyer's fees. But it is important for your child. It is also important for you because if the father is not registered on the birth certificate, you have no recourse against him for child support for your son.

Anne : You're right ! It is important for my son. I must do something.

If you are in a similar situation and you wish to undertake a paternity suit against the father of your child, do not hesitate to contact the legal aid services in your area if you are eligible, or an attorney.

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