

## Voluntary Surrender of Guardianship

This section contains provincial policies and standards regarding voluntary surrender of guardianship. It applies to child and family services agencies.

[Legislation](#)  
[Policy](#)  
[Standards](#)

### Legislation

[Voluntary Surrender of Guardianship Agreements](#)  
[Declarations of Parentage](#)  
[Adoption Placements and Applications for Adoption Orders](#)  
[Prescribed Forms](#)

### Voluntary Surrender of Guardianship Agreements

Section 16 of *The Child and Family Services Act* pertains to the voluntary surrender of guardianship (VSG) agreements. The table below lists and describes the substantive provisions in this section:

Section	Provision
<a href="#">16(1)</a>	The parents of a child, or if one parent is deceased, a surviving parent, if both parents are deceased, the individual who is the child's guardian appointed by court order may surrender guardianship of a child.
<a href="#">16(2)</a>	The mother of a child who is unmarried and without a common-law partner or who ceased to cohabit with her spouse or common-law partner 300 days or more before the child was born may surrender guardianship of the child.
<a href="#">16(4)</a>	A VSG agreement signed by a minor surrendering guardianship is valid.
<a href="#">16(5)</a>	A VSG agreement cannot be signed until at least 48 hours after birth of the child.
<a href="#">16(9)</a>	A VSG agreement terminates the rights and obligations of the person surrendering guardianship with respect to the child.
<a href="#">16(10)</a>	A person may by written notice withdraw a VSG within 21 days after the date of the agreement.
<a href="#">16(10.1)</a>	When a person withdraws a VSG under subsection (10), the agency to whom guardianship was surrendered must return the child to that person.
<a href="#">16(11)</a>	Where more than 1 year has expired since the signing of a VSG and the child has not been placed for adoption, the person who surrendered guardianship

Volume 1: Agency Standards 1.2.7  
 Chapter 2: Services to Families  
 Section 7: Voluntary Surrender of Guardianship Approved: 2008/07/02  
 Last Revised: 2008/10/10

Section	Provision
	may apply to an agency's mandating authority to terminate the agreement. <sup>1</sup>
<a href="#">16(12)</a>	Where an agency's mandating authority refuses an application under subsection (11), the person who surrendered guardianship may apply to the Court of Queen's Bench for an order terminating the agreement.

1. Section 35 of the [Child and Family Services Authorities Regulation](#) transfers the power of the director under [subsections 16\(11\) and \(12\)](#) of *The Child and Family Services Act* to an agency's mandating authority to approve an application to withdraw a VSG after one year from the date it was signed and the child has not been placed for adoption. A copy of the [VSG form](#) is sent to the director (Director of Child and Family Services) to maintain the provincial children-in-care registry and for statistical purposes.

## Declarations of Parentage

[Section 20](#) of *The Family Maintenance Act* pertains to applications to court for an order declaring that a man is or is not the father of a child. Notice of an application must be served on the Director of Child and Family Services.

## Adoption Placements and Applications for Adoption Orders

[Sections 24](#) of *The Adoption Act* prohibits the placement of a child for adoption after the director (Director of Child and Family Services) has been served with a notice under [section 20](#) of *The Family Maintenance Act* that a man is the father of a child, born or unborn, unless the application is withdrawn or dismissed. Also see Chapter 6, [Adoption](#).

[Section 25](#) of *The Adoption Act* states a judge shall not make an order under this Act where the director certifies that an application under section 20 of *The Family Maintenance Act* was served on the director within 21 days after a VSG agreement was signed unless the application is withdrawn or dismissed and all the appeals from the dismissal have been exhausted.

[Section 26](#) of *The Adoption Act* pertains to requirements for serving notice of a proposed adoption of a child upon a birth father. Subsection 26(3) lists when notice is not required and subsection (4) when a judge or master may dispense with notice.

[Section 44](#) sets out the procedures for placing a child for adoption where a VSG agreement has been or will be signed and for returning the child to the person who surrendered guardianship when the agreement is withdrawn.

Volume 1: Agency Standards 1.2.7  
Chapter 2: Services to Families  
Section 7: Voluntary Surrender of Guardianship Approved: 2008/07/02  
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## Prescribed Forms

Schedule A of the [Child and Family Services Regulation](#) contains the following VSG prescribed forms:

- Form CFS-13 – Voluntary Surrender of Guardianship Agreement by Parent(s)
- Form CFS-14 – Voluntary Surrender of Guardianship Agreement by Guardian(s)
- Form CFS-15 – Voluntary Surrender of Guardianship Agreement by Mother
- Form CFS-16 – Certificate of Interpreter for Voluntary Surrender of Guardianship

Pursuant to [subsection 16\(13\)](#) of *The Child and Family Services Act*, the VSG agreement forms explain the implications of the agreement and the right to independent legal advice prior to signing it. They also contain an affidavit of execution requiring the agency person who witnessed the signing of an agreement to swear or affirm before a Commissioner for Oaths that he or she fully explained the effect of the agreement and advised the person of the right to independent legal advice prior to signing the agreement.

Schedule B of the [Adoption Regulation](#) contains the following prescribed forms pertaining to notice to birth fathers:

- Form AA-1 – Notice to Birth Father
- Form AA-2 – Affidavit of Service

These forms cannot be changed other than by an amendment to the regulation. Printable versions are available through the Child and Family Services Information System.

Section 34 of the [Child and Family Services Authorities Regulation](#) transfers the power of the director under [subsection 16\(8\)](#) of *The Child and Family Services Act* to an agency's mandating authority to require an agency to submit all or any agreements under section 16 of the Act for approval.

## Policy

[Voluntary Surrender of Guardianship Process](#)  
[Agency Signing Authority](#)

## Voluntary Surrender of Guardianship Process

The signing of a voluntary surrender of guardianship (VSG) agreement has the same legal effect as a permanent order of guardianship under [subsection 45\(1\)](#) of *The Child and Family Services Act*. It permanently terminates all parental rights and obligations for the child after 21 days from the date of signing (see [subsection 16\(10\)](#) of the Act).

Volume 1: Agency Standards 1.2.7  
Chapter 2: Services to Families  
Section 7: Voluntary Surrender of Guardianship Approved: 2008/07/02  
Last Revised: 2008/10/10

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Entering into a VSG is not recommended when one or more of the following apply:

- An agency believes that a child may be in [need of protection](#) and has intervened under Part III of *The Child and Family Services Act*.
- The parent, guardian appointed by the court, or mother of the child has not freely and willingly agreed to surrender guardianship of the child.
- The legal effect of a VSG and right to independent counsel has not been fully explained to a parent, guardian or mother of the child.
- The mother of the child is unwilling or unable to disclose the name of the birth father or the birth father cannot be located and the mother agrees to the agency applying for a permanent order of guardianship under Part III of the Act.

## Agency Signing Authority

Consistent with provincial policy and standards in Section 1.7.5, [Delegation of Authority](#), an agency executive or regional director may delegate signing authority for VSG forms to one or more persons in a managerial or supervisory role in the agency. Delegation must be in writing and a copy of the delegating instrument kept on file.

Persons who are given VSG signing authority are expected to have a sound working knowledge of relevant provisions in *The Child and Family Services Act* and *The Adoption Act* and regulations.

## Standards

1. **Counselling Services** – Before entering into a voluntary surrender of guardianship agreement (VSG) under [section 16](#) of *The Child and Family Services Act* with a parent, guardian or mother of a child, the case manager:
  - fully explains the legal implications of signing a VSG and advises the person of the right to independent legal counsel,
  - advises the person of the right to withdraw a VSG within 21 days after the date of the agreement pursuant to [subsection 16\(10\)](#) of the Act,
  - explains that the agency can place the child for adoption pursuant to [section 44](#) of *The Adoption Act*, and

Volume 1: Agency Standards 1.2.7  
Chapter 2: Services to Families  
Section 7: Voluntary Surrender of Guardianship Approved: 2008/07/02  
Last Revised: 2008/10/10

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- advises the person of the right to apply for withdrawal of a VSG under [subsection 16\(11\) and \(12\)](#) of the Act if the child is not placed for adoption within one year of signing the agreement.
2. **Decision to Enter into VSG** – No decision is made to enter into a VSG until:
- the case manager has completed an [assessment](#) of the parent, guardian or mother and child, and
  - the case manager’s supervisor has reviewed and approved the [care plan](#).
3. **Signing of VSG** – The appropriate Voluntary Surrender of Guardianship Agreement (CFS-13, CFS-14, or CFS-15) and, when applicable, the Certificate of Interpreter for Voluntary Surrender of Guardianship Agreement (CFS-16) are completed and signed prior to or on the date the child comes into care of the agency through the VSG. The agreement is signed by:
- the agency executive or regional director or person delegated in writing to act on behalf and in the absence of the agency or regional director, and
  - when applicable, the agency’s mandating authority pursuant to section 34 of the [Child and Family Services Authorities Regulation](#).
4. **Filing of VSG Forms** – Agency copies of the Voluntary Surrender of Guardianship Agreement (CFS-13, CFS-14 or CFS-15) and, when applicable, the Certificate of Interpreter for Voluntary Surrender of Guardianship Agreement (CFS-16) are stored on the child-in-care file (see [Case Categories](#) in Section 1.7.1, Service Records).
5. **Withdrawal Notices and Applications** – All documentation relating to withdrawal of a VSG under [subsections 16\(10\), \(10.1\) and \(11\)](#) of *The Child and Family Services Act* is stored on the child-in-care file.
6. **Distribution of VSG Forms** – Signed copies of the Voluntary Surrender of Guardianship Agreement (CFS-13, CFS-14 or CFS-15) are:
- provided or mailed to the parent, guardian or mother within one working day from the date the agency representative signs the form, and
  - sent to the agency’s mandating child and family services authority and to the Director of Child and Family Services within 30 days from the date of signing.