

How Do I Change My Name after Marriage or Divorce?

Issues about names mostly come up when a child is born, when people enter into new relationships and when they separate, and, after separation, sometimes when someone wants to change the name of a child. In a family law context, people usually change their names when they marry and when they divorce. The provincial *Name Act* ^[1] also allows people to change their names just because they feel like it, without the necessity of a marriage or a divorce.

This section provides a brief introduction to this subject and discusses the naming of children, changes of name on marriage and divorce, and changes of name under the *Name Act*.

Naming children

The provincial Ministry of Health's Vital Statistics Agency ^[2] is the government organization that keeps track of people's births, their deaths, their wills, and their names. Under s. 3(1) of the *Vital Statistics Act* ^[3], one or both of the parents must file a Registration of Live Birth ^[4] with the agency within 30 days of the birth of a child. This form must be completed before the child's birth certificate can be issued.

The form must state, among other things: the name of the mother; the name of the father (if known and acknowledged); the gender of the child; the date of birth; and, the name given to the child. Under s. 4 of the act, the child's surname can be:

- the name of either of the natural parents,
- the name of one of the parents,
- a combination of the parents' names, or
- another name entirely.

If one parent alone registers the birth with the agency, usually the mother, that parent has the final say on the child's name unless the father obtains a court order for a new surname.

A 2003 decision of the Supreme Court of Canada, *Trociuk v. British Columbia* ^[5], 2003 1 S.C.R. 835, held that fathers should have a say in their children's names, contrary to the provisions of the *Vital Statistics Act* in force at the time. This decision also affects the right of unacknowledged fathers to be listed on their children's birth certificates. On June 4, 2004, the act was amended to comply with the court's decision, and s. 4.1 of the *Vital Statistics Act* now allows the courts of British Columbia to make an order changing a child's surname when it makes a declaration of paternity.

Now, while you're free to name your child as you wish, there are some limits. You've probably heard of Dweezel and Moon Unit Zappa, and you probably know people named Sunshine and Starlight. Under s. 9 of the *Act*, the agency's chief executive officer has the authority to refuse to register the birth — and consequently to refuse to issue a birth certificate — for children whose names the chief executive officer believes:

- (a) might reasonably be expected to cause
 - (i) mistake or confusion, or
 - (ii) embarrassment to the child or another person,
- (b) is sought for an improper purpose, or
- (c) is, on any other ground, objectionable.

While it seems that the chief executive officer rarely rejects a name, you should still be aware that this power exists.

Changing names

It is not illegal to use an *alias* in British Columbia, although you will not be allowed to obtain government identification or to make certain legal transactions, like the transfer of property, using an alias. An alias is a name other than your legal, registered name.

People often use aliases just because that's how people have come to know them, like a nickname, or because their real name is too hard for English-speakers to pronounce or spell easily. Most people who want to legally change their names do so because they were adopted, married, or divorced. Others do so for purely personal reasons. I remember reading a change of name notice for a fellow with the unfortunate name of Donald Duck.

You can apply to have a legal, registered name that differs from your birth or married name under the provincial *Name Act*. This is a purely paper process and a hearing before a judge won't be necessary in most cases. Section 4 of the act sets out who may apply for a change of name:

(1) Subject to this section, a person who has attained the age of majority or, if the age of majority has not been attained, is a parent having custody of his or her child and who is domiciled in British Columbia for at least 3 months, or has resided in British Columbia for at least 3 months immediately before the date of the application, may, unless prohibited by this or another Act, change his or her name on complying with this Act.

(2) If the minister is satisfied that it is in the public interest to do so, the minister may waive the residency requirements of subsection (1).

(3) Subject to subsection (4), a person who is the parent of and who has custody of an unmarried minor child may, with the consent of the other parent of the child, apply to change the child's name, but, if the application is to change the child's surname to that of the applicant's spouse, the consent of the spouse is required.

(4) If a person applies to change the name of an unmarried minor child who has attained the age of 12 years, he or she must first obtain the consent in writing of the child.

(5) If a person whose consent is required under this Act

(a) is deceased or mentally disordered or cannot after reasonable, diligent and adequate search be located, or

(b) is, in the opinion of the director, unreasonably withholding his or her consent,

the applicant may, with the approval of the director, proceed with the application without the consent of that person.

(6) If, in the opinion of the director, exceptional circumstances make it unreasonable to seek the consent of a person as required under this Act, the applicant may, with the approval of the director, proceed with the application without the consent of that person.

When your name has been legally changed, the chief executive officer of the Ministry of Health Services' Vital Statistics Agency is required to make a notation on your birth certificate and on the registration of any current marriage. After the notation has been made, any future birth, marriage, or death certificates will show the new name. A Certificate of Change of Name will be issued that will allow you to obtain new identification, such as drivers' licences or BC Identification cards, in the new name.

Change of name on marriage

Many people change their names when they marry. Out of custom, wives often take their husbands' surnames, but there's no requirement that they do so, and there's nothing stopping a husband from taking his wife's surname. The options are wide open for same sex couples.

Choice of name

On marriage, s. 3 of the *Name Act* allows a spouse to:

- (a) use the surname he or she had immediately before the marriage,
- (b) use the surname he or she had at birth or by adoption, or
- (c) use the surname of his or her spouse by marriage.

This applies to both men and women, and to same sex and opposite sex couples, and no court application is required; the newly-married spouse simply starts using that name. To get identification in the new name, you will have to produce proof of your marriage (the government-issued marriage certificate) and proof of your old name (a driver's licence or BC ID).

The sort of marriage the act is referring to is a legal marriage solemnized by a marriage commissioner or licensed religious official; the rules about change of name on marriage do not apply to common-law relationships.

Hyphenated names

The *Name Act* does not deal with situations where spouses wish to take each other's surnames and use a hyphenated name, like Smith-Jones. Spouses who want to adopt a hyphenated name as their legal name will have to follow the *Name Act* process for obtaining a change of name, described below, to make their new name their registered, legal name.

On the other hand, the new hyphenated name can be used as an alias, the day-to-day name by which most people know you, without a formal change of name. It is not illegal to go by an alias in British Columbia. Note, however, that if you do not apply to have the new name registered as your legal name, you cannot use the alias for legal transactions, such as the transfer of property or obtaining a loan.

Change of name on divorce

Once an order for divorce or an order declaring the marriage to be a nullity has been made, a former spouse may begin using any legal name they had before marriage. No court application is necessary. Where identification was obtained in the married name or assets were purchased in the married name, a legal change of name will be required.

Orders for change of name

Where a spouse needs a legal change of name, the spouse may seek an order to this effect in the divorce proceeding and simply claim the change of name as part of what they are asking for in the Notice of Family Claim or Counterclaim.

An application for a change of name can also be dealt with in a separate proceeding altogether, usually by Petition and likely without an oral hearing. An application for a change of both given and last names may be dealt with by a hearing before a judge.

Children's names

An application for a change of name of the children of the marriage must be made with the consent of the other parent, even when the person making the application has custody of the children. The consent of the affected children must also be obtained where they are 12 or more years old.

Change of name under the *Name Act*

If you don't qualify for an automatic change of name, you will have to follow the process outlined in the *Name Act* to change your name. The Ministry of Health's Vital Statistics Agency ^[6] has a change of name package ^[7] that includes all the forms you will require and instructions on how to complete them. Although you don't have to run an ad in the newspaper to change your name, you will have to get your fingerprints taken and submit to a criminal records check. As well, a fee will be charged by the police department that takes your fingerprints.

The process is fairly straightforward and a hearing before a judge is usually not necessary. The steps for most people are as follows:

1. get the change of name package from the Vital Statistics Agency,
2. if you're seeking to also change the name of a child, you must obtain the consents of the other parent, the child (if the child is 12 or more years old), and your present spouse (if you are seeking to change the child's name to that of your spouse),
3. gather proof of identity, like birth certificates, for everyone affected by the change of name (usually, yourself and any children),
4. go to your local police detachment and submit to fingerprinting (you have to pay a fee for this service),
5. the police will send in all the required information — the identification, the consents, your fingerprints, and so forth — to the agency, along with payment of the agency's fee, and
6. once your name change has been registered, the fingerprints will be returned to the police for a criminal records check.

Once the agency receives all of this information with their fee, they will begin processing the request. (Bear in mind that the agency's chief executive officer has the authority to refuse to register objectionable names. This is discussed earlier in this section.) If all is well, the chief executive officer will make the required changes to the birth certificates of the people affected by the application and, if applicable, to any current marriage certificate, and will issue a Certificate of Change of Name.

Resources and links

Legislation

- *Vital Statistics Act* ^[3]
- *Name Act* ^[1]


Resources

- Online Birth Registration ^[8]
- Application for Change of Name ^[9]

Links

- Vital Statistics Agency ^[10]
 - Vital Statistics Agency: Legal Change of Name Application ^[11]
 - Most Popular Baby Names in British Columbia ^[12]
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This information applies to British Columbia, Canada. Last reviewed for legal accuracy by Bob Mostar and Mark Norton, June 24, 2019.

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References

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