



FIRST NATIONS OF QUEBEC
AND LABRADOR HEALTH
AND SOCIAL SERVICES
COMMISSION

Reference guide

APPOINTING A COMPETENT AUTHORITY **FOR CUSTOMARY ADOPTION AND TUTORSHIP IN FIRST NATIONS COMMUNITIES AND NATIONS**





All rights reserved for the FNQLHSSC.

This document is available in electronic format, in French and English, at www.cssspnql.com. Any reproduction, by any means whatsoever, translation or dissemination, even partial, is prohibited without the prior authorization of the FNQLHSSC. Its reproduction or use for personal, but non-commercial, purposes is however permitted provided the source is acknowledged, in the following way:

First Nations of Quebec and Labrador Health and Social Services Commission (FNQLHSSC). Reference Guide - Appointing a Competent Authority for Customary Adoption and Tutorship in First Nations Communities and Nations, Wendake, 14 pages.

All requests must be addressed to the FNQLHSSC by mail or by email using the following contact information:

**First Nations of Quebec and Labrador
Health and Social Services Commission
250, place Chef-Michel-Laveau, Suite 102 Wendake (Québec) G0A 4V0**

info@cssspnql.com

cssspnql.com/en

ISBN Web version: 978-1-77315-451-0

© CSSSPNQL 2023

Table of contents

➡➡	4	BACKGROUND
➡➡	5	COMPETENT AUTHORITY Roles and Responsibilities
➡➡	6	CUSTOMARY ADOPTION Recognition of Pre-Existing Bonds of Filiation Rights and Obligations Customary Adoption Procedure
➡➡	9	CUSTOMARY TUTORSHIP Customary Tutorship Procedure
➡➡	11	CUSTOMARY ADOPTION AND TUTORSHIP AND YOUTH PROTECTION
➡➡	12	RECOGNITION OF CUSTOMARY ADOPTION/ TUTORSHIP BETWEEN PROVINCES Available Funding
➡➡	13	ADDITIONAL INFORMATION

Background

Indigenous peoples have practised customary adoption and tutorship for millennia. However, those who followed these traditions encountered difficulties when it came to completing government paperwork, such as signing a child's passport application, consenting to medical treatment for a child, or enrolling a child for school. These difficulties stemmed from the fact that governments did not recognize the legal effects of customary adoption and tutorship and, therefore, did not recognize adoptive parents or guardians of children as their legal guardians.

In 2007, a report on adoption entitled *Pour une adoption Québécoise à la mesure de chaque enfant (An Adoption System Adapted to Every Child in Quebec)* was presented to the Government of Quebec. This led to the creation of a working group on customary adoption that was composed of various First Nations, Inuit and government representatives. The working group's mandate was to analyze customary adoption in Indigenous communities, as well as propose conditions, effects and frameworks that could be put into place so customary adoption could be recognized under Quebec provincial laws. Between 2009 and 2010, the working group consulted Indigenous communities and released its final report¹ in 2012

On June 16, 2017, the National Assembly of Quebec adopted An Act to amend the Civil Code and other legislative provisions as regards adoption and disclosure of information. The Act came into force on June 16, 2018. This Act officially recognizes the legal effects of customary adoption and customary tutorship in the provincial system.

This reference guide describes three main components of this Act: competent authority, customary adoption and customary tutorship. In addition to helping communities appoint their competent authorities, this guide:

- **Defines each component.**
- **Explains the process for having Quebec recognize a customary adoption or tutorship.**
- **Explains the responsibilities of a competent authority in matters of customary adoptions or tutorships relating to open youth protection files.**
- **Explains the process of recognizing customary adoptions and tutorships between provinces.**
- **Explains different funding options available to First Nations communities or nations to implement their competent authority.**
- **Cites documents that are available on the FNQLHSSC website.**

Competent authority

The competent authority acts as the bridge between Indigenous custom and the Quebec government. It can exercise its functions for a community, a group of communities, or a nation¹. The competent authority can be an individual, multiple individuals, or an official body. It is recommended that the competent authority be someone of good social standing who is familiar with the customs of the community or nation.

A community or nation appoints its competent authority through its own governance process. In practice, this will often be in the form of a band council or tribal council resolution. The competent authority appointment form must be sent to the registrar of civil status, officially called the Directeur de l'état civil (DEC), within 30 days of its appointment. When a competent authority ceases to be recognized by the community or nation, the DEC must also be notified accordingly within 30 days.

Roles and responsibilities

The competent authority must ensure that a customary adoption or tutorship complies with the following three fundamental principles:

1. It is in the child's best interests.
2. It is in accordance with the customs of the child's nation or community and the required consents have been validly given.
3. The child has been entrusted to the guardian or adoptive parent.

The competent authority cannot be a stakeholder in a customary adoption or tutorship/customary care (as an adoptive parent for example). This means that, in most cases, it would be best to name more than one person to fulfill the role of the competent authority (multiple individuals or a body with multiple signatories) in order to mitigate the risk of a conflict of interest.

When the child and the adoptive parents or guardians are from different communities, the competent authority from the child's Nation is responsible for applying the process.

After having verified and confirmed these criteria are respected, the competent authority completes the forms required for the certificate and, if applicable, transmits these documents to the Registrar of Civil Status. In the case of customary adoption, the Registrar of Civil Status will then modify the birth record to reflect the new family situation.

Note: The competent authority must also verify if a child is currently under the Director of Youth Protection (DYP). Please consult page 11 for more information on customary adoption and open Youth Protection files.

¹ The term "competent authority of the community or nation" will be used in this guide for brevity purposes.

Customary adoption

Customary adoption is an act that transfers the bond of filiation from the parents of origin to the adoptive parents in the traditional way. It confers parental authority on the adoptive parents and modifies the child's birth certificate. The adoptive parents become fully responsible for the child and can then pick the child's school, make decisions about the child's health, pass on their spiritual or religious beliefs (if applicable) to the child, give the child permission to travel outside of Canada as well as manage the child's money and assets. In order for the legal effects of customary adoption to be recognized by the Quebec government, the competent authority **must** send completed forms to the DEC.

Although both customary adoption and conventional adoption sever the bond of filiation between the child and their parents of origin, customary adoption differs from conventional adoption in a few respects. First, customary adoption is certified by the competent authority of the community or nation, unlike with conventional adoption, which must be certified by a judge of the Court of Quebec, Youth Division. Then, a pre-existing bond of filiation may be recognized in the case of customary adoption, and certain rights and responsibilities may be upheld between the parents of origin and the child, as outlined by custom.

Recognition of pre-existing bonds of filiation

The recognition of pre-existing bonds of filiation allows the child to maintain a connection to their parents of origin, even after the transfer of the bond of filiation to the adoptive parents. For example, the child may keep the last name of their family of origin and maintain a connection with them (e.g., parents, cousins, aunts, uncles, grandparents), but this does not constitute a bond of filiation. The names of the parents of origin may also be included in a section specific to customary adoption of the child's birth certificate in order to have them recognized as the parents of origin.



Rights and obligations

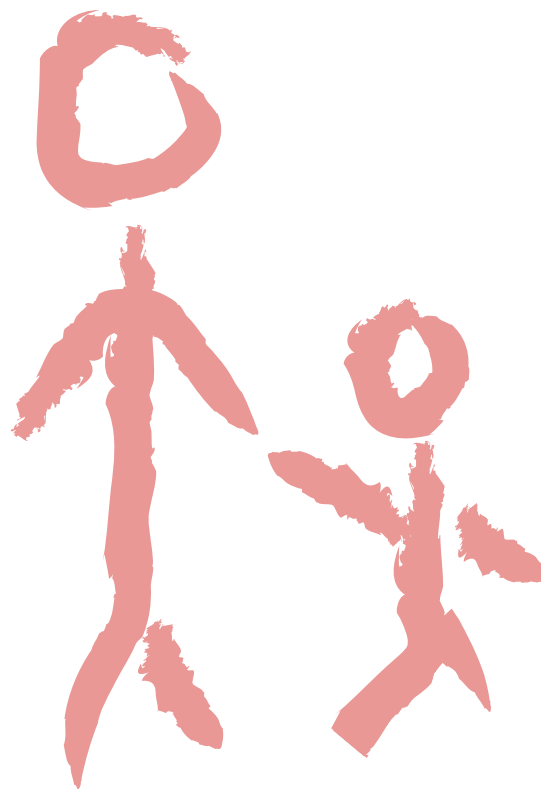
There are two types of rights and obligations when it comes to customary adoption.

The first type consists of rights and obligations that persist between the parents of origin and the child, such as visitation rights, the obligation to provide for the needs of the child, and the child's right to inherit from the parents of origin in the case of death without a will. The second type consists of community-defined rights and obligations, which may include maintaining territorial rights (e.g., hunting, fishing, trapping) in the community of the parents of origin and band membership.

When a customary adoption includes the recognition of pre-existing bonds of filiation or rights and obligations, the competent authority adds this information in the space provided for this purpose in the customary adoption certificate. The DEC will then add this information to a specific section of the child's birth certificate. It is not necessary for pre-existing bonds of filiation or rights and obligations to be recognized for customary adoption to be recognized.

Birth certificate outside Quebec

If a child lives in Quebec and has a birth certificate from another province/jurisdiction, the child's birth certificate must be transferred to the official Quebec registry by completing an "Application for Insertion of an Act of Civil Status Made outside Québec in the Québec Register of Civil Status" from the Registrar of Civil Status. Once the birth certificate is in Quebec's registry, the family can proceed with the customary adoption recognition process.



Customary adoption procedure



A family wishing to have the effects of the customary adoption of a child recognized contacts the competent authority.



The competent authority informs the family of the effects of customary adoption and the differences between customary adoption, customary tutorship and conventional adoption.



The competent authority verifies that the established criteria have been met:

- a. It is in the child's best interests.
- b. It is in accordance with the customs of the child's nation or community and the required consents have been validly given.
- c. The child has been entrusted to adoptive parents.



The competent authority verifies whether the child has an open file with the DYP. If the child is under the DYP, see the applicable procedure on **page 11** of this guide under the "Customary adoption and tutorship and youth protection" section.



Once the competent authority has confirmed that all criteria have been met, they fill out the form for the customary adoption certificate with all required information.



The competent authority sends the duly completed certificate form to the **Directeur de l'état civil, 2535, Laurier Blvd., Québec City, Quebec, G1V 5C6**, or through the online services for notification of legal proceedings and documents.



The DEC processes the application for a customary adoption certificate and modifies the child's birth certificate accordingly. The certificate is kept in the archives of the DEC.



A certified copy of the amended birth certificate is provided upon request to all parties to the adoption.



Customary tutorship

Customary tutorship (also known as “customary care”) differs from customary adoption in that it does not change the bond of filiation between a child and their parents of origin. In customary tutorship, the parental responsibilities of the parents of origin are suspended² and are entrusted to the guardians.

Customary guardians have custody of the child and ensure their safety and development, but without ever becoming the child’s legal parents. Guardians pick the child’s school, make decisions about the child’s health, pass on their spiritual or religious beliefs (if applicable) to the child, give the child permission to travel outside of Canada as well as manage the child’s money and assets.

The legal effects of customary tutorship are recognized and confirmed by the competent authority, which is responsible for issuing the certificate of customary tutorship. Since customary tutorship does not modify the child’s birth certificate, there is no legal obligation to send the certificate of customary tutorship or additional information form to the DEC. However, the DEC offers to archive certificates of customary tutorship and provide certified copies bearing its official seal free of charge. It is important to note that the archiving and official seal do not give the document force of law, as this responsibility rests with the competent authority. However, having the official seal of the DEC can facilitate recognition of the certificate of customary tutorship by certain government services.

How are they different?

Customary adoption



Customary tutorship

A new bond of filiation is created between the child and the adoptive parents. The birth parents no longer have a legal connection to the child.

Bond of filiation

No changes :
Birth parents remain the parents.

Parental authority is transferred to the adoptive parents permanently.

Parental authority

The parental authority of the birth parents is suspended. Guardians have parental authority.

The names of the adoptive parents replace the names of the birth parents and a new act of birth is issued.

Birth certificate

No changes.

² Except those related to filiation (e.g., assignment of inheritance).

Customary tutorship procedure



A family wishing to have the appointment of a guardian recognized according to custom contacts the competent authority.



The competent authority informs the family of the effects of customary tutorship and the differences between customary tutorship, customary adoption and conventional adoption.



The competent authority verifies whether the established criteria have been met:

- a. It is in the child's best interests.
- b. It is in accordance with the customs of the child's nation or community and the required consents have been validly given.
- c. The child was entrusted to the guardian.



The competent authority verifies whether the child has an open file with the DYP. If the child is under the DYP, refer to the applicable procedure on **page 11** of this guide.



Once the competent authority confirms that all criteria have been met, they complete the customary tutorship certificate with all required information.



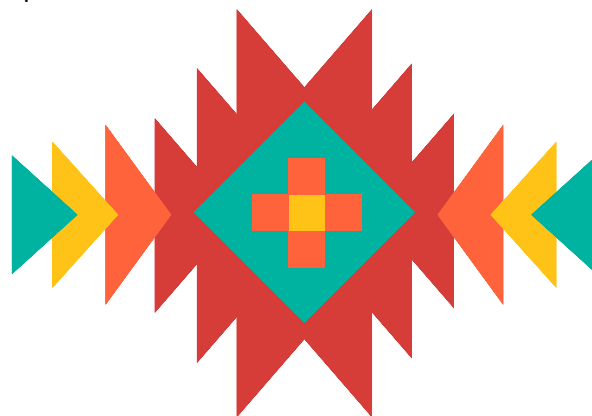
The parents of origin remain the child's legal parents, but their parental responsibilities are suspended. The guardian then assumes parental responsibility for the child.



The certificate and additional information form for the certificate of customary tutorship may be sent to the **Directeur de l'état civil, 2535, Laurier Blvd., Québec City, Quebec, G1V 5C6**, or through the online notification services for legal proceedings and documents for archival purposes.



A certified copy of the customary tutorship certificate bearing the official seal of the DEC is provided to the parties to the tutorship who request it.



Customary adoption and tutorship and youth protection

Customary adoption and tutorship are now recognized as possible life plans for First Nations and Inuit children monitored by the DYP. Funds are provided to help adoptive parents or guardians assume their role and responsibilities as part of a life plan recognized by the DYP. These funds are linked to the eligibility criteria set out in Quebec's draft regulations.

When a child has an open file with the DYP, the competent authority of a community or nation cannot issue a certificate of customary adoption or tutorship without having received **a written notice** from the

DYP regarding the best interests of the child and respect for their rights with regard to the proposed life plan.³ After receiving the notice, the competent authority can certify the customary adoption or tutorship, regardless of whether the DYP notice is positive or negative. However, the funding possibilities for life plans are linked to the eligibility criteria of the regulations,⁴ such as whether the customary adoption or tutorship made it possible to put an end to the DYP's intervention. The following are explanations of possible scenarios.

If the DYP provides a **positive notice** on the life plan (customary adoption or customary tutorship) and closes the child's file, the adoptive parents or guardians will be entitled to funding under the life plan program so long as they meet the eligibility criteria. The customary adoption or customary tutorship is then implemented according to the established procedure.

If the DYP gives a **negative notice** on the life plan (customary adoption or customary tutorship), the child's file will remain open. The competent authority can then choose to make **one of the following decisions**:

1. The competent authority receives the DYP's notice, which is negative. The competent authority makes a decision based on the established criteria and finds that they are not met. The competent authority does not certify the customary adoption or tutorship. No funding is granted since there is no valid life plan. If the situation changes, a new notice can be requested from the DYP.

2. The competent authority receives the DYP's notice, which is negative. The competent authority makes a decision based on the established criteria and finds that they are met. The competent authority certifies the customary adoption or tutorship. The child's file remains open with the DYP, and the adoptive parents or guardians are not entitled to the life plan funding. The adoptive parents or guardians have custody of the child and are monitored by the DYP.

3 A community may give the competent authority the notice provided for in section 131.18 of the Youth Protection Act if it has entered into an agreement to this effect with their respective facility.

4 These regulations are not yet in force. Funding for life plans will be available starting from the date set by Quebec's regulations.

Recognition of customary adoption and tutorship between provinces

A competent authority of a community or nation in Quebec has the power to recognize customary adoption, tutorship or care granted by competent authorities or applicable law regimes in other Canadian provinces or territories.

If the child's community or nation is in another province or territory and has a competent authority, it will proceed with the customary adoption or tutorship according to established procedures. The competent authority of the community or nation in Quebec can then have the legal effects recognized in Quebec by selecting "Certificate recognizing customary adoption or tutorship outside Quebec» in the appropriate form and completing it according to established procedures.

If the adoption or tutorship takes place under the applicable law of another province or territory in Canada (i.e., before a court), the competent authority in Quebec can recognize it in a customary manner by adding the rights and obligations and pre-existing bonds of filiation to it. The competent authority in Quebec must select "Certificate recognizing customary adoption outside Quebec" in the appropriate form and complete it according to established procedures.

Available Funding

The First Nations Child and Family Services (FNCFS) Program of Indigenous Services Canada funds prevention and protection services intended for First Nations children and families who normally reside in the communities. The costs associated with the establishment and operation of competent authorities are covered by the FNCFS Program.⁵ It is important that this expense be included in the community action plan. To do this, contact the child and family services sector in your community.

It is important to note that financial assistance granted to the adoptive parent or guardian for customary adoption or tutorship life plans for youth protection is still not available. It will be available as soon as the regulations have been adopted.

Additional information

We provide you with the following documents:

Form : [Designation of a Competent Authority](#)

Form : [Revocation of a Competent Authority](#)

Form : [Certificate of Customary Adoption](#)

Form : [Certificate of Tutorship or Customary Care](#)

Form : [Additional information on Tutorship or Customary Care](#)

For more information, please contact us at info@cssspnql.com or 418-842-1540.

Writers

Leila Ben Messaoud Ouellet, Legal Advisor, Special projects –
First Nations of Quebec and Labrador Health and Social Services
Commission (FNQLHSSC)
Cedric Gray-Lehoux, Justice Initiatives Advisor – FNQLHSSC

Contributors

Anaisa Cornejo, Social Marketing and Communications Advisor –
FNQLHSSC
Wyatt Dumont, Child and Family Services Analyst Advisor –
FNQLHSSC
Richard Gray, Social Services Manager – FNQLHSSC
Marjolaine Sioui, Executive Director – FNQLHSSC

Translation

France Chouinard

Graphic design

Siamois Graphisme
Absolu

Photos

FNQLHSSC
istock.com



Vision

First Nations individuals, families and communities are healthy,
have equitable access to quality care and services,
and are self-determining and culturally empowered.

Mission

To accompany Quebec First Nations in achieving their health,
wellness, culture and self-determination goals.



FIRST NATIONS OF QUEBEC
AND LABRADOR HEALTH
AND SOCIAL SERVICES
COMMISSION