



# ADOPTION AND INDIAN REGISTRATION



LEGAL AFFAIRS  
AND JUSTICE





# ADOPTION AND INDIAN REGISTRATION

## Adoption and Indian Registration

The practice of adopting individuals into one's family has been practiced by all First Nations since time immemorial. Generally, adoption is defined as the practice in which a child is raised by a person who is not the child's biological parent, according to the customary law of the family's community. It usually takes place between members of the immediate or extended family, although it may also involve people close to these families, such as friends or community members. By its nature, adoption varies from nation to nation, but it is common for the birth parents to give their consent and to maintain a role in the child's life.

In the 1972 case of *Re Deborah, Kitchooalik and Enooyak v Tucktoo*, custom adoption was recognized as an essential practice among the Inuit and was found to be a valid form of adoption in Canada. To this day, First Nation adoption remains part of the practical and cultural reality experienced by many families.

### What is the definition of "adoption"?

According to the Government of Canada, the Indian Act registration rules recognize three types of adoption. The different adoption types have different document requirements when a person applies for Indian registration. Individuals who are applying to Indian status will have to provide different documents depending on the type of adoption.

Legal Adoption	Custom Adoption	<i>De Facto Adoption</i>
An adoption under provincial/territorial adoption legislation. This includes private adoptions done through an accredited third party (this may include international adoptions if the agency is recognized by a Canadian authority).	A clear parent-child relationship is established with all the related legal, financial and other benefits and burdens of an adoption. However, this adoption is done through First Nation customary laws..	An adoption where a child has been in the care of the adoptive parent(s) but the legal adoption happens after the adopted person is an adult.

### How is an adopted individual registered?

A child can be registered under the *Indian Act* through their birth parent(s), or through their adoptive parent(s). An adopted person must have been a minor at the time when he or she is adopted. For an adopted person to qualify to be registered, at least one parent, either adoptive or birth, must be

registered or entitled to be registered under section 6(1) of the *Indian Act*. Please see Fact Sheet on *What does it mean to be registered as a 6(1) or 6(2)?*

The adopted individuals have a choice to be registered to the band of their adoptive parent(s) or their birth parent(s), if that information is known.

### How do you apply under a Custom Adoption?

To be registered after a custom adoption, the applicant must submit documentation that was signed by a Band Council and Elders of the band. They must state that the adopted individual was adopted in accordance with the customs of the band of the adoptive parent(s). In cases where the adoption is not considered a formal "legal adoption", it is important to ensure that the adopted child has a connection to the community and culture. The application form may require another documentation, including: a statement signed by applicant, pre-adoptive proof of birth documentation, and statutory declarations by birth and adoptive parents.

### Why is this issue important?

Adoption is not defined in federal law. At this moment, adoption is under the jurisdiction of provinces and territories. It means that the terms of adoption can vary across the country. This could create difficulties for the adoptees when they apply for Indian status, because they must follow the adoption laws of their province or territory.

For instance, the *Aboriginal Custom Adoption Recognition Act* in the Northwest Territories and Nunavut is one example of legislation that addresses custom adoptions through a formal legal process. This Act allows families to have their custom adoptions recognized under territorial law through a relatively simple application process.

By contrast, the Province of Ontario does not recognize custom adoptions. The *Child and Family Services Act* recognizes "customary care" – defined as *the care and supervision of an Indian or native child by a person who is not the child's parent, according to the custom of the child's band or native community*. However, customary care does not have the same legal effects as an adoption carried out under provincial laws.