

## Chapter 5

*Do not use this guide for legal advice. It provides information only, and that information only applies to British Columbia law, services, and benefits. Consult with a lawyer for advice related to your specific situation. Laws, benefits, policies, and procedures are always changing. Always double-check the information you intend to rely on with the appropriate agency or with your lawyer. Indigenous people's traditions and customary laws are outside the scope of this guide; however, we want to acknowledge those customs and traditions and emphasize that nothing in this guide should be misinterpreted as superseding or taking away from them.*

## Adoption

Creating a stable home for their grandchildren is a priority for many grandparents. The most permanent way to do so is through adoption.

Adoption is a process by which a court creates a new parent-child relationship between a child and an adult who is not the child's birth parent. Through the process of adoption, all legal rights and responsibilities of a child's birth parents are terminated, and new rights and responsibilities are created between the child and the adoptive parent.

Once the adoption is final, there is no legal difference between the rights you have as an adoptive parent and the rights you would have if you were the birth parent of that child. For that reason, this is the most legally secure relationship you can have with a child you are raising.

The two main laws that govern adoption in BC are the [Adoption Act](#), which sets out rules to follow regarding most adoptions in BC, and the [Child, Family, and Community Service Act \(CFCSA\)](#), which sets out rules for the adoption of children who are in the care of the Ministry of Children and Family Development.

An adoption is made official through a court order under the Adoption Act. A judge is required by law to decide whether the adoption is in the child's best interests. A few things that a judge might consider when making that decision are:

- the child's safety
- the child's physical and emotional needs and level of development
- the importance of continuity in the child's care
- the child's cultural, racial, linguistic, and religious heritage
- the child's views

## Aboriginal children and adoption

The *Adoption Act* says that if a child is Aboriginal, the judge must also consider the importance of preserving the child's cultural identity when determining what is in the child's best interests. This issue arises when the people who apply to adopt an Aboriginal child are not Aboriginal themselves. In such cases, the judge tries to find a balance between the importance of keeping the child connected to his or her cultural heritage and the degree to which the child has bonded with the adoptive parents.

If a child with status under the *Indian Act* is adopted by non-Aboriginal parents, the child keeps that status. Whether or not an Aboriginal child keeps band membership and treaty rights depends upon the particular band's by-laws, treaties, and other laws. The best source of information about what will happen to band membership and treaty rights upon adoption is the band itself.

## Custom adoption

Many indigenous communities have traditions of adopting children by custom that were in place before the Canadian legal system was established. BC courts recognize these **custom adoptions** as legal under the *Adoption Act*. The Ministry of Children and Family Development supports custom adoptions as a way to make sure Aboriginal children in care are raised with Aboriginal families whenever possible. Custom adoption is a way for Aboriginal families, organizations, and communities to share in the planning for Aboriginal children.

If the Aboriginal child is in the care of the ministry, a customary adoption proceeds when custody of the child is transferred to the prospective adoptive parents under [section 54.1 of the Child, Family, and Community Service Act \(CFCSA\)](#). To find out more about custom adoption, visit: [http://www.mcf.gov.bc.ca/adoption/custom\\_adoption.htm](http://www.mcf.gov.bc.ca/adoption/custom_adoption.htm). You can also call LawLINE: 1-866-577-2525 (toll-free).

## Open adoption

Although birth parents' rights and responsibilities to their children end once the children are adopted, everyone agrees that it is best for children if they remain connected to their parents in some way. This is called open adoption. It means that some sort of contact – anything from yearly letters to regular visits – is kept between the birth parents (sometimes including their extended families) and the adoptive family.

For example, the adoptive parent can make an **openness agreement** with your grandchild's father that he will visit once a month. Openness agreements are not legally binding, but they are a good way to ensure that other family members remain involved in the child's life.

## If your grandchild is up for adoption to another family

If your grandchild is in the continuing custody of the Ministry of Children and Family Development, such as long-term foster care, he or she can be placed for adoption with another family, and you can lose your ability to visit. The ministry's Director of Adoption must consent to the placement, and the director must also inform any person who has been given access rights to the child (such as a grandparent) of the likely adoption.

Discovering that your grandchild in foster care will be placed for adoption may come as quite a shock for grandparents. An adoption legally changes who the child's parents are, so when it goes through, the grandparents' legal ties with the grandchild also end. Remember, however, that the judge should not grant an adoption order unless it is in your grandchild's best interests.

If you have received notice that your grandchildren in foster care will be placed for adoption, the first thing to do is contact the social worker to discuss your options. It is best to work cooperatively with the ministry. If you do not agree with the social worker, or have a question that he or she cannot answer, you can ask to speak with the team leader. If possible, speak with a lawyer.

If your grandchildren are in the continuing custody of the ministry and you do not want them to be adopted by another family, you can ask the ministry to permanently transfer custody and guardianship rights to you under section 54.1 of *the Child, Family, and Community Service Act*. This way, you become legally responsible for your grandchildren's care, without going so far as to adopt them, and the ministry no longer has a say in where your grandchildren live or who adopts them. More information about this sort of transfer of custody is in *Chapter 6 Child Protection and the Courts*.

If you are unhappy with how the ministry has handled your family's case, you can file a complaint. See *Chapter 1 Child Protection and the Ministry* for more information.

## Deciding whether to adopt

You may be wondering how to know whether adoption is right for you and your grandchild. It is wise to speak with other grandparents or parents who have adopted to get a better idea about what adoption would mean for your family. It is also best to speak with a lawyer before making such a big decision. Adoption may be the best option for you and your grandchild if:

- it is clear that the child will not be able to return to the parents' care;
- you want permanent responsibility for your grandchild, without legal interference by the child's birth parents;
- you are prepared to support your grandchild, both emotionally and financially, until the child becomes an adult;
- you are willing to do without financial help. Many benefits end when you adopt.

## Concerns about age

Many grandparents are concerned about their age when it comes to adopting their grandchildren. Grandparents will be happy to know there is no legal age restriction for adoptive parents. The only legal requirements in BC are that you be a resident of BC who is more than 19 years of age.

Many loving families have been created for grandchildren by adoptive grandparents of all ages. It is important to remember, however, that the judge will consider your age when deciding what is in the child's best interests – but only if your age would affect your ability to care for the child.

## How to adopt

A great deal of the information in this section was taken from the section on adoption on the ministry's website. Go to <https://www.mcf.gov.bc.ca/adoption/> to read the original and to get other useful information about adoption.

The route you take to adopt your grandchild will be very different depending on whether the child is in the care of the ministry.

### Adoption through the ministry

If you want to adopt a child who is in the continuing custody of the ministry, the following people must consent to the adoption:

- the ministry's Director of Adoption
- and the child, if 12 or older.

Because the ministry holds custody and guardianship rights in relation to the child, the parents' consent is not necessary. To adopt a child in the care of the ministry, you will need to go through the following steps:

- Meet with your grandchild's social worker to discuss the adoption process.
- The social worker will look at your home (a process called home study) in order to see whether you can care for your grandchild. This study may be followed by pre-placement visits with your grandchild, supervised by the social worker. After that, the social worker will make a decision about whether it would be in the child's best interests to live with you.
- If the pre-placement visits go well, your grandchild will be placed in your home. You will fill out a Notice of Placement. For 6 months, the social worker will continue to visit to ensure that you are taking good care of your grandchild. After that, your social worker will apply for an adoption order for you.

- For children between the ages of 7 and 12, the social worker has to conduct an interview to ensure that they understand the meaning of adoption and to find out what their views are on being adopted. The records or notes of this interview will be included in the adoption order application and will be filed with the court.
- Children who are 12 or older must consent to the adoption and any name change that you request. Children can change their minds about the adoption at any time before the adoption order is granted.
- Remember, the best interests of the child guide the judge's decision, including such factors as cultural heritage and bonding.

### **Adoption without the ministry**

If the child is not in the ministry's care, the following people must agree to the adoption before it can take place:

- the child, if 12 or older;
- the birth mother;
- the father (as outlined in the *Adoption Act*); and
- any person appointed as the child's guardian.

Even parents who are under 19 years of age can still give legally valid consent to the adoption (which means that their parents do not need to consent too). If the adopted child is 7–12 years old, his or her views must be included in a written report. If one or both of the parents will not consent, you must prove to the court that it is in the child's best interest not to require their consent. The court may also decide that the consent of one or more parents is not required if:

- the parent is not mentally or physically capable of giving informed consent;
- you have made reasonable efforts to locate the parents to get consent, but you cannot find them;
- the parents have abandoned the child, not made reasonable efforts to meet their responsibility to the child, or are not capable of caring for the child; or
- other reasons that the court thinks are appropriate.

If your grandchild is not in the care of the ministry, the adoption process is very different:

- You must apply to the BC Supreme Court for an adoption order. You can contact your local BC Supreme Court Registry to find out more about filing an application and the supporting documents that are required, such as consent forms. Once your application is filed, a hearing date will be set. (To find your local Supreme Court Registry call: Service BC - In Victoria call: 250 387-6121- In Vancouver call: 604 660-2421 Elsewhere in B.C. call toll-free: 1 800 663-7867 or <mailto:EnquiryBC@gov.bc.ca>)

- Children who are 7–12 years old must be interviewed in private to find out if they understand the meaning of what is about to happen and whether they have any views on the proposed adoption. The interview can be conducted by either a registered psychologist/psychiatrist or by a registered social worker. At the end of the interview, he or she will submit a report on it to the court. The BC College of Social Workers can help you locate someone to write the report. Call 604-737-4916 or visit <http://www.bccollegeofsocialworkers.ca/>
- The ministry does not have a role in private relative adoptions; however, the court can order the ministry to review any aspect of the application and file a report.
- Children who are 12 or older must consent to the adoption and any name change that you request. They can change their mind about the adoption at any time before the adoption order is granted.
- Lastly, you must attend an adoption hearing, which is a session in court when the judge reviews your case. The judge will review all of the evidence (the documents that support your application) and then make an adoption order if it is in the child’s best interests to do so.
- Remember, the best interests of the child guide the judge’s decision, including such factors as cultural heritage and bonding.

For more information, see the ministry’s website: <https://www.mcf.gov.bc.ca/adoption/>

## Do you need a lawyer to adopt?

It is possible to go through the adoption process without a lawyer. Some Supreme Court registries in BC provide information packages for families to complete the adoption application on their own. You may wish to use one of these packages if the adoption is straightforward and everyone agrees. However, in most cases, it is highly recommended to get the help of a lawyer. If you decide to get a lawyer, look for one with experience handling adoptions. More information about finding and working with a lawyer is provided in *Chapter 8 – Getting Legal Help*.

## Costs of adopting

It is difficult to say for sure how much an adoption will cost, since every case is different. If the adoption is straightforward and everyone consents, you may not need a lawyer, so the cost will be low. However, you may wish to get at least some legal advice on your application even if you decide to file it yourself at the BC Supreme Court. You could take advantage of some of the free or low-cost options in your community. (see *Chapter 8 – Getting Legal Help*)

If you decide to have a lawyer help you through the entire process, be sure to discuss the costs at the very beginning. Legal fees vary depending on the facts of each case. Some things that will influence the costs are:

- the number of adoptive parents, birth parents, and/or guardians involved (because this affects the number of consents or affidavits the lawyer will need to prepare),
- whether the child is over 12 years of age,
- whether either of the birth parents need to be found, and
- whether you will have to ask the court to go forward without the consent of one or more people, since this will mean extra work for the lawyer.

If the ministry or another government agency is giving you financial help to care for your grandchildren, this assistance will stop once you adopt. However, you are not totally on your own, financially speaking, once the adoption goes through. There are several other sources of financial help that you can ask for from the provincial and federal governments, such as post adoption assistance. For more information about the benefits available to you and how you can apply for them, see *Chapter 10 Financial Assistance and Benefits*

## Support services for adoptive families

Adopting a child – even one you are related to – can be quite a challenge for you and your family. Below are organizations who offer support, as well as a list of books about adoption that may be helpful to you.

### Adoptive Families Association of BC (AFABC)

According to their website, “The Adoptive Families Association of BC has supported adoption and adoptive families since 1977. Our province-wide family services ensure that people considering adoption (and those who have already adopted) are educated, connected, and supported.” AFABC has a contract with the Ministry of Children and Family Development. They also run workshops and support groups and have a library of helpful books and resources. Phone: 604-320-7330, or toll free 1-877-236-7807. Website: <https://www.bcadoption.com/>

### Aboriginal community services for children and families

Many aboriginal communities across BC provide support services for Aboriginal families who are creating permanent homes for children. In *Appendix 8*, there is a list of these community groups and agencies, along with their contact information.

*This Legal Guide will be updated regularly. We are counting on readers to alert us to any errors, omissions or unclear content. Please send your feedback to “Communications” via: [office@parentsupportbc.ca](mailto:office@parentsupportbc.ca).*