

# Awactenamakanic e opikihakaniwitic, a custom-based system leading to greater child autonomy



PRESENTED BY

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## Recognition of customary adoption in Québec law

Eva Ottawa presents the preliminary results of her research project on the circulation of children among the Atikamekw Nehirowisiwok of Manawan. Based on the work of John Borrows on recognition for a multi-juridical order in Canada, Ottawa has carried out empirical work to define and document *Opikihakaniwitic*, meaning the circulation of children among the Atikamekw Nehirowisiwok of Manawan, as a legal order in Québec. The objective of the research project is to assist the competent authority in the field of customary adoption, which is now recognized in the *Civil Code of Québec*.

## *Opikihakaniwitic*, customary adoption among the Atikamekw Nehirowisiwok of Manawan

In 2018, following the passage of Bill 113, *An Act to amend the Civil Code and other legislative provisions as regards adoption and the disclosure of information*, the *Civil Code of Québec* was amended to recognize Indigenous customary adoption in Québec law. This statutory recognition for customary adoption, *Opikihakaniwitic*, makes it possible to move away from the dogmatic concepts of the law and opens the door to the recognition of a multi-juridical order for the circulation of children.

While the state-enacted system for adoption in Québec law provides for the severing of bonds of filiation, the Atikamekw Nehirowisiwok of Manawan state that it is important for them to maintain the bond of filiation in the circulation of children process. The amendments made to the *Civil Code* now make it possible to symbolically recognize pre-existing bonds of filiation in compliance with Indigenous legal tradition. The effects of customary adoption can be provided for in the certificate of customary adoption issued by the competent authority after verifying that the custom complies with certain principles (interests of the child, rights of the child, consent of interested persons (including the biological and adoptive parents)).

## The basis of customary adoption

The approach proposed by Ottawa examines the foundation for *Opikihakaniwitic*, which means to “take care of, guide, support to maturity, and ensure the wellbeing of a child, and provide with all the instruction needed to allow the child to achieve autonomy” in the Atikamekw Nehirowisiwok language. For this purpose, Ottawa has interviewed Atikamekw Nehirowisiwok of Manawan individuals (children, biological and adoptive parents) who have experienced *Opikihakaniwitic*. This work has identified the five fundamental elements of the customary legal system, which are the traditional values promoted in teaching, principles (gift, mutual assistance, individual freedom, etc.), rules (territorial affiliation, total or partial transfer of parental authority, etc.), actors (children, grandparents, biological and adoptive parents), and processes (family and community).

## The cohabitation of legal systems, a step towards reconciliation

In light of these observations, Ottawa notes the existence of a multi-juridical system for the circulation of children in Québec. She concludes that the system for the circulation of children, designed to allow children to become autonomous, is based on the cohabitation of three systems. First, the state-enacted adoption system that provides for the severing of bonds of filiation. Second, the state-enacted customary adoption system that provides for the recognition of adoptions. And third, the *awactenamakanic e opikihakaniwitic* system, which recognizes the customary system designed to ensure the autonomy of the child.



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