



Filiation

- » Filiation is the relationship which exists between a child and the child's parents, whether the parents are of the same or the opposite sex. The relationship can be established by blood, by law in certain cases, or by a judgment of adoption. Once filiation has been established, it creates rights and obligations for both the child and the parents, regardless of the circumstances of the child's birth.



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» Types of filiation

Filiation by blood

Attestation of birth

When a child is born, the individual who delivers the baby completes an attestation of birth for the [Registrar of Civil Status](#) [\[DEC 7\]](#), stating the place, date and time of the birth, the sex of the child and the name and domicile of the mother, and gives a copy to the persons who are required to file a declaration of birth.

Declaration of birth

The parents, or the father or mother separately, must file a declaration of birth with the Registrar of Civil Status within 30 days of the birth of the child, along with a copy of the attestation of birth. If the parents are married or in a civil union, either of them can declare the filiation of the child on behalf of the other spouse. In all other cases, the declaration of birth must be signed by the father or the mother or both, and the declaration will be valid only as regards the person or persons who have signed it.

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The declaration of birth must be completed in the presence of a witness who then signs it. It states the child's name, sex, place, date and time of birth, and the name and domicile of the father, mother and witness. It also states the family relationship between the child and the person or persons making the declaration.

Important

If a declaration of birth is not filed with the Registrar of Civil Status within 30 days, it is possible to file a late declaration, in which case the Registrar of Civil Status will make a summary investigation and draw up the act of civil status on the basis on the information obtained.

If a late declaration is filed for a child for whom a declaration has already been made, and does not contradict the initial declaration, any change made to the act of civil status will be conditional on

- the consent of the parent who filed the initial declaration,
- the consent of the child, if 14 years of age or older,
- the absence of a relationship of filiation established with another person, and
- the absence of any objection by a third person.

Act of birth

The Registrar of Civil Status draws up the child's act of birth on the basis of the information contained in the attestation and declaration of birth.

Filiation by assisted procreation

A parental project involving assisted procreation exists when a single individual or spouses of the same or the opposite sex decide to have a child by using the genetic material of another individual.

Act of birth

As is the case with filiation by blood, the filiation of a child born through assisted procreation is established by the act of birth prepared by the Registrar of Civil Status. At the time of the child's birth, an attestation and a declaration of birth must be filed with the Registrar of Civil Status in the manner described in the previous section on [Filiation by blood](#). If the parents of a child born through assisted procreation are of the same sex, they are designated in the register of civil status as the mothers of the child in the case of two women, or as the fathers in the case of two men.

Important

Surrogate mother agreements

A surrogate mother contract is any agreement in which a woman agrees to conceive or carry a child for another individual or a couple, either free of charge or for a consideration. All such agreements are null.

Filiation by adoption

Judgment of adoption

A judgment of adoption is a judicial act whereby the same rights and obligations arising out of filiation by blood are established for the adoptive parent and the adopted child. The judgment substitutes filiation by adoption for the child's original filiation, and the child ceases to belong to his or her original family, except that the child will not be able to marry or enter into a civil union with a member of that original family.

A minor child who has only a father or a mother may be adopted by that parent's spouse, with the parent's consent. De facto spouses must have been living together for at least three years to be able to adopt in this manner. This type of adoption does not terminate the child's filiation with his or her biological father or mother.

The judgment of adoption enables the particulars of the parents to be changed on the child's act of birth. The new, corrected act of civil status serves as proof of the filiation between the adopted child and the adoptive parent. If the parents of the adopted child are of the same sex, they are designated in the register of civil status as the mothers of the child in the case of two women, or as the fathers in the case of two men.



» **Proof of filiation**

Act of birth

Paternal and maternal filiation is proved by a child's act of birth, regardless of the circumstances of the child's birth. If no act of birth has been drawn up for the child, filiation can be proved by uninterrupted possession of status, by a legal presumption, or by voluntary acknowledgement..

Uninterrupted possession of status

Uninterrupted possession of status consists of a series of facts showing the relationship between the child and the person who is said to be the father or mother. To take a fictive example, parents Michael and Kim failed to declare the birth of their daughter Caroline to the Registrar of Civil Status because they believed that entry of the birth in the hospital registers was official proof of filiation. Without the declaration of birth, no act of birth was drawn up for Caroline by the Registrar of Civil Status. If, however, Caroline is able to demonstrate that she is the daughter of Michael and Kim and has been raised by and is acknowledged by them as their child, she will establish filiation and be able to have it recorded in the register of civil status. Once the register of civil status has been corrected, Caroline will be able to obtain various documents such as a birth certificate and a passport.

In general, when a child has possession of status consistent with the act of birth, the child's filiation cannot be challenged or a different filiation claimed.

In the event that possession of status is not consistent with the act of birth, any interested person, including the father and mother, may contest the filiation. Even a child whose filiation has not been established by an act of birth and consistent possession of status may have the relationship confirmed by a court. The father and mother may also claim the paternity or maternity of a child in similar circumstances.

It should be noted that a court may order DNA testing to establish filiation at the request of an interested person.

Legal presumption

The spouse of the mother of a child born of a marriage or a civil union between two persons of opposite sex or within 300 days after the dissolution of their marriage or civil union is presumed to be the child's father. This is referred to as the presumption of paternity. It will be set aside if the child is born after the mother marries or enters into a civil union with another person, in which case the new spouse is presumed to be the

father. If the child is born more than 300 days after a judgment of legal separation, the presumption of paternity will apply if the spouses voluntarily resumed living together before the birth.

In another fictive case, if John is born in June, six months (180 days) after his parents Louise and Thomas are granted a divorce, Thomas will be presumed to be John's father because fewer than 300 days have elapsed since the divorce.

But that would not be the case for Frances, also born in June. Her mother Nicole had earlier divorced Alan in February of the same year and entered into a civil union with Charles the following month. This means that Charles will be presumed to be Frances' father, since he was Nicole's spouse at the time of the baby's birth in June.

It is possible, though, for the mother to contest her spouse or ex-spouse's paternity in the year following the child's birth.

A presumed father can contest the filiation and disavow the child by proving before a court that he is not the father. In general, this must be done within one year of the birth or if the father was unaware of the birth, within one year of the date on which he became aware of it.

A presumption also exists when a child is born through assisted procreation to same-sex or opposite-sex spouses who are married or in a civil union. This is referred to as a presumption of parenthood.

If the child is not born as part of a common parental project or proof is shown that no assisted procreation was involved, the parent who is married or in a civil union with the mother can contest the filiation and disavow the child. A child's filiation cannot, however, be contested solely on the ground that the child was born out of a parental project involving assisted procreation.

Important

The law provides that the donor of gametes (sperm or eggs) for a parental project cannot claim the paternity or maternity of a child born through assisted procreation. However, if the gametes were provided through sexual intercourse, the donor has one year in which to initiate legal proceedings to have the child's filiation with the donor established. During this period, the mother's spouse (of either sex) cannot oppose the application on the ground of possession of status consistent with the act of birth.

Information on the identity of the donor is kept confidential, although if there is a risk of serious harm to the health of the child or the child's descendants, the court may authorize the information to be transmitted confidentially to the appropriate medical authorities. A person born through assisted procreation and his or her descendants are entitled to exercise the right to be given the information.

Important

The presumptions of paternity and parenthood do not apply to de facto spouses in a same-sex or opposite-sex union, and the presumption of paternity does not apply to same-sex spouses in a civil union.

Voluntary acknowledgement

If paternity or maternity cannot be established by the act of birth, by uninterrupted possession of status or by the presumption of paternity, the father or mother can make a declaration voluntarily acknowledging the child and attesting to paternity or maternity. The declaration is binding only on the person who makes it and cannot, on its own, disprove a filiation that has already been established and that has not been set aside by the court.



» Consequences of filiation

Parental responsibilities

Parental authority

The parents exercise parental authority jointly. If one parent dies, is deprived of parental authority or is unable to express his or her will, the other parent exercises parental authority alone.

Parents also have rights and duties regarding the custody, supervision and education of their child whom they are obligated to provide for. The custody, supervision or education of a child may be delegated by the person having parental authority. Should custody of a child be given for whatever reason to one of the parents or to a third person, both the father and mother retain the right to supervise the child's maintenance and education and are required to contribute in proportion to their means.

The rights and duties of parents toward their child remain the same regardless of whether the parents are married, are in a civil union, are de facto spouses or are single, whether they live together or are separated or divorced, whether filiation has been established by blood, or whether the child was born through assisted procreation or was adopted.

If the mother and father are of full age or are emancipated minors, in addition to having the duties and obligations of parental authority they are by law the tutors of their minor child for the purposes of representing the child in the exercise of his or her civil rights and administering the child's property.

Important

Children owe their parents respect and remain under their authority until they reach full age (18 years) or are [emancipated](#)¹. An unemancipated minor may not leave home without the consent of the person with parental authority.

Loss of parental authority

A court may, for serious reasons and in the interest of the child, order that one or both parents be deprived of parental authority. This could occur, for instance, if a parent is convicted of incest. In a less serious situation, the court may withdraw an attribute of parental authority (such as custody, supervision or education), or the exercise of it..

Important

A parent deprived of parental authority or from whom an attribute of parental authority has been withdrawn may apply to the court to have it restored if the parent is able to prove that circumstances have changed.

Naming a child

Choosing a name

The parents jointly choose their child's name, which consists of a surname and a given name or names. The surname may contain at most two parts, taken from the surnames of the child's parents. If the parents fail to agree on a surname, the Registrar of Civil Status will give the child a name composed of two parts, one taken from the surname of the father and the other on the surname of the mother, as chosen by each.

Changing a name

A change of surname or given name must be authorized by the Registrar of Civil Status or by the court. In cases where a child's filiation is changed, a child is abandoned by his or her father or mother or the court has ordered deprivation of parental authority, only the court may authorize a change of name. For any other reason, an application must be made to the Registrar of Civil Status.

In cases not requiring authorization by the court, the Registrar of Civil Status will approve a change of name for serious reasons. The Registrar may do so, for example, if the name is not identical to the one appearing on the act of birth, is of foreign origin or is too difficult to pronounce or write, or if the name invites ridicule or has been dishonoured.

» **Right to inherit**

In the absence of a will, children whose filiation is established can inherit from their father or mother.

1. Emancipation confers on the minor the freedom to dispose of his or her person as desired and a degree of capacity as regards certain administrative decisions. Emancipation does not confer all the rights enjoyed by persons of full age but releases the minor from the requirement to be represented in the exercise of his or her civil rights.

» **For more information**

The types of conjugal relationships and consequences on the rules of filiation:

- [Marriage](#)
- [Civil Unions](#)
- [De Facto Unions](#)

Filiation by assisted procreation:

- [General information](#)  (In French)

Filiation by adoption:

- [Special adoption by a family member or spouse](#)  (In French)

Parents' responsibilities towards their children after a divorce or death:

- [Separation, Divorce and Dissolving a Civil Union](#)
- [Wills](#)
- [Successions](#)

Partition of the family patrimony and the impact on the settlement of a succession:

- [Family Patrimony](#)

Declarations of birth and how to obtain a birth certificate or a copy of an act of birth:

- [Registrar of Civil Status](#) 

The content of this document is strictly informative and has no legal value.

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Please note: The personnel at the Service de renseignements of the Ministère de la Justice can help you understand the general rules for applying Québec legislation. They cannot, however, interpret these rules to respond to a specific case or situation.

When contacting us by mail or e-mail, please indicate your address and telephone number so that we can contact you when necessary.

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