



FEMMES AUTOCHTONES DU QUÉBEC INC.
QUEBEC NATIVE WOMEN INC.



Regroupement des centres
d'amitié autochtones du Québec

Traditional and Custom Adoption in the First Nations

Presented to:
Working Group on the Quebec Adoption System

Department of Justice
Department of Health and Social Services

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About our organizations

Quebec Native Women

Quebec Native Women is a non-profit organization that began as a community initiative in 1974. It is the only organization working on behalf of all Native women in Quebec. It represents women from the Abenaki, Algonquin, Atikamekw, Cree, Huron-Wendat, Innu, Maliseet, Mi'kmaq, Mohawk and Naskapi nations, as well as women living in urban centres.

The mission of our organization is to support and encourage local initiatives that seek to improve the living conditions of Native women and families. In this context, we play a role in education, awareness and research, and provide a structure giving women the opportunity to be active in their communities. Serving as a forum where the First Nations can share ideas, *Quebec Native Women* is the spokesperson for Native women. We make the needs and priorities of our members known to the authorities and decision-makers in all our areas of activity: health, youth, justice and public security, women's shelters and promotion of non-violence, human rights and equality, and employment and training.

At the political level, we work on behalf of Native women throughout the country to obtain recognition of their right to equality, in both legislative and constitutional terms.

We also support the First Nations' claims for self-government and we encourage the full participation of Native women in the process leading to the achievement of that goal.

At the socio-economic level, we promote and create new training initiatives that will help our members to improve their and their families' living conditions. These initiatives also give women the opportunity to become more active in their communities.

Quebec Native Women has enjoyed unprecedented growth in recent years, as reflected in the ever-increasing quantity and quality of its work and in results that are making a real difference. Backed by a solid organizational structure and strong experience acquired over the years, QNW is well known today for its proactive involvement in many different areas.

Regroupement des Centres d'amitié autochtones du Québec

Close to 35 years ago, the Native friendship centres in Quebec created a new association, the Regroupement des centres d'amitié autochtones du Québec (RCAAQ), to provide a democratic space for their concerted action and communication. The RCAAQ is today a focal point for discussion and reflection serving to support all persons involved in the centres' work.

The mission of the RCAAQ is to promote the rights and interests of urban Aboriginal people. It accomplishes this mission on two levels. First, the RCAAQ supports the Native friendship centres through the development and implementation of province-wide projects and programs and through other means at the provincial level. It also supports its member centres in carrying out their individual missions by providing them with technical advice, support and resources.

The RCAAQ carries out representation activities for its member centres and establishes partnerships at the provincial level. In so doing, it encourages joint actions and exchanges between First Nations members in Quebec and different government authorities. The RCAAQ and the Assembly of First Nations of Quebec and Labrador have signed a relationship agreement to formalize their relations as part of their shared objective to improve the well-being of the First Nations in Quebec.

The Native friendship centres in Quebec are urban service institutions working on behalf of Aboriginal people. The challenges they take up on a daily basis include improving the quality of life in the urban Aboriginal community, promoting culture and building harmonious relations with the non-Aboriginal community.

Canada's first Native friendship centre was created in the mid-1950s. Today, there are 117 throughout the country, eight of which are in Quebec.

The Native friendship centres in Quebec have also become important education and training organizations. These centres are located in Chibougamau, Val-d'Or, La Tuque, Montreal, Senneterre, Quebec City, Lanaudière and Sept-Îles. They strive daily to bring about better understanding of the issues, challenges and problems facing the urban Aboriginal communities, not just by non-Aboriginal people but also by the Aboriginal people living in the First Nations. The Native friendship centres are social economy enterprises that meet unique and culturally-specific needs. Through their network, they provide quality jobs to more than 108 Aboriginal people in Quebec's urban centres and they are demonstrating that their network is the best positioned for effectively meeting the needs of urban Aboriginal people.

The First Nations members living in urban centres are not sitting back and waiting for others to come up with solutions to their problems. Instead, they are working together to address the issues affecting them. Today, there is an Aboriginal identity with urban overtones, one that is as strong and diversified in the cities as it is in the First Nations communities.

The special place held by children in Aboriginal cultures

It is necessary to begin by explaining the importance of children within Aboriginal cultures. In this regard, the *Report of the Royal Commission on Aboriginal Peoples*¹ reads as follows:

Children hold a special place in Aboriginal cultures. According to tradition, they are gifts from the spirit world and have to be treated very gently lest they become disillusioned with this world and return to a more congenial place. They must be protected from harm because there are spirits that would wish to entice them back to that other realm. They bring a purity of vision to the world that can teach their elders. They carry within them the gifts that manifest themselves as they become teachers, mothers, hunters, councillors, artisans and visionaries. They renew the strength of the family, clan and village and make the elders young again with their joyful presence.

Failure to care for these gifts bestowed on the family, and to protect children from the betrayal of others, is perhaps the greatest shame that can befall an Aboriginal family.

What does traditional adoption among the First Nations consist in?

The concept of traditional adoption in the First Nations is difficult to describe exactly, because it stems from oral tradition. There is almost nothing written about its practice among the First Nations in Quebec. However, some decisions by the Court of Quebec's Youth Chamber² involving primarily the districts of Abitibi and Mingan refer to the traditional adoption practiced by a number of Aboriginal communities.

We can say, however, that traditional adoption is a form of adoption specific to the Aboriginal peoples. It is a time-honoured practice by which Aboriginal parents ask other people, whom they trust, to take custody of their children to people they trust. This involves looking after the children and their education, i.e., assuming parental responsibilities for a temporary or undetermined time during which the parents are unable to do so themselves.

This method is commonly accepted in the Aboriginal communities. It takes place naturally within the context of the extended family (grandparents, uncles, aunts, cousins, etc.) which allows the parents to share their family responsibilities when they feel they are incapable of doing so fully. This practice also allows them to maintain contact with their children.

Traditional adoption in the First Nations does not mean that biological parents *abandon* their children. It means instead that they ask other people to *take charge* of their children and to be fully responsible for their development, at the same time maintaining their links with their Aboriginal identity, culture, traditions and language.

The practice of traditional adoption varies among the First Nations.

¹ *Report of the Royal Commission on Aboriginal Peoples*, Volume 3, *Gathering Strength*, Chapter 2 – The Family, p. 25 (813 pages).

² Case of M.Q. heard by Justice Viviane Primeau- C.Q. Saint-Hyacinthe (13-01-2005); case of W. P. heard by Justice Denyse Leduc- C.Q. Abitibi (Val-d'Or), 615-41-000767-045 (14-07-2004); case of J.-A. A. M. heard by Justice Robert Lévesque- C.Q. Mingan, 650-41-000641-015 (03-12-2001); case of J. J. M. heard by Justice Gilles Gendron- C.Q. of Abitibi (Val-d'Or), 615-41-000831-049 (11-01-2005).

It should also be noted that in 1985³, 1995⁴ and 1996,⁵ recommendations were made calling for recognition of Aboriginal customary law and in particular, the First Nations' practice of custom adoption.

In 2001, *Quebec Native Women* held a seminar on adoption. Following are some of the recommendations made by our members at that seminar:

- Adoption files of social services should remain open to allow adopted children to find their biological parents when they wish to do so.
- The federal government should be lobbied to allow children to recover their status if they lost it following adoption and to modify the legislation to eliminate discrimination against Aboriginal children.
- Aboriginal children should be supported in their search for their cultural identity and efforts to restore links with their communities and families.
- Adoption procedures specific to the First Nations should be recognized by Indian and Northern Affairs Canada (INAC) and Aboriginal women affirm their children's right to recognition by their communities.
- The role of the extended family should be recognized, in particular by INAC and social services.
- Research should be conducted on issues related to adoption, particularly the adoption of Aboriginal children by non-Aboriginal people.
- QNW should encourage traditional practices and recognition of customary law.
- The communities should be made aware of the situation in order to be more open towards supportive of adopted children in their search for their cultural identity, to encourage youths to return to their communities and to help bring about an increase in the number of foster families, which today are insufficient for purposes of traditional practices, thereby also supporting the concept of the extended family within a spirit of inclusion.

³ Association des centres de services sociaux du Québec. Les Nations autochtones et les services sociaux: Vers une véritable autonomie (brief), October 1985, 149 pages.

⁴ Association des centres jeunesse du Québec. Les services sociaux aux jeunes autochtones en difficulté et à leurs familles: une nécessaire appropriation, October 1995.

⁵ *Report of the Royal Commission on Aboriginal Peoples*, Volume 3, *Gathering Strength*, Chapter 2 – The Family, p. 106 (813 pages).

Is traditional adoption different from what some call customary care, which is a method for delegating parental authority?

It is impossible to answer this question on a blanket basis for all Aboriginal communities in Quebec because traditional adoption varies from one First Nation to the next. In some communities that practise it, the biological parents continue to hold certain responsibilities for their children. In others, the biological parents sign an unofficial document confirming their agreement to transfer parental responsibilities to the adoptive parents. The adoptive parents may also sign such a document to indicate their responsibility for the children's health care, as required, and to receive family allowances for the children. Another method used in some communities involves the sharing of responsibility for an adopted child among the adoptive family, the biological family and the community. If the practice of traditional adoption was uniform, we could consider it to be customary care, but such is clearly not the case at present.

How does traditional adoption work today in practice?

Is it used similarly and to the same extent by different First Nations? What are the problems involved and why?

As mentioned previously, the practice of traditional adoption varies among the First Nations and in some cases, even among the communities. In some First Nations, it is seen regularly, while in others it is seen sporadically, and in others yet it is inexistent.

The testimonies from women who live in the Aboriginal communities and have used traditional adoption show that the practice is far from uniform and that it varies in as many ways as there are instances of it.

Traditional adoption is a practice based on oral tradition and in most cases does not involve the signing of any legal papers by the adoptive and biological parents. Therefore, the main problem which can arise is that the biological parent wishes, sometimes after several years, to regain custody of the child. This may occur despite alcohol and drug problems of the biological parent and the subsequent need for youth protection services to intervene. We need not hide the fact that youth protection services are very badly perceived in the Aboriginal communities in Quebec, indeed, that they are perceived at times by the First Nations as kidnappers of their children. Thus, when a case gets into the Quebec legal system for purposes of legal adoption, the communities fear that the children involved will end up in non-Aboriginal families, which means a break with their original line of descent and from there, the loss of their Indian status and of Aboriginal identity, language and traditions.

The other problem encountered by adoptive parents stems from the absence of a document attesting to the consent of the biological parents to transfer their parental authority. This places the adoptive parents in a difficult situation when a biological parent's signature is required to authorize actions regarding the child, particularly those involving health care.

In the Aboriginal communities, the concept of the extended family is very important and traditional adoption allows the line of descent from biological parents to their children to remain unbroken. According to the testimonies received, keeping lines of descent intact is of the utmost importance because it ensures that adopted children will keep their Indian status. It also helps them to hold onto their language and culture.

The adoptive parents also believe it is important that children adopted according to this custom maintain ties with their biological parents and that the latter continue to play a role in the children's lives. The biological parents thus have an emotional duty towards the adopted children. This way of approaching adoption is based on the consent of all parties involved and the children do not feel rejected by their biological parents, who for various reasons have not been able to maintain custody of them.

In relation to existing legislation:

What is the nature of the changes being requested?

Some recent court judgements suggest that adoptive families should be evaluated.

What do you think about this? What organization or mechanism in the communities would be the most appropriate one for carrying out such evaluations?

At present, we believe it is much too soon to pronounce on the requested changes because there is practically nothing in writing about traditional adoption and the First Nations acknowledge that they should be consulted for purposes of documenting this practice.

We can, of course, base our line of thinking on policies put into place by British Columbia⁶ and the Northwest Territories,⁷ both of which have modified their legislation to recognize Aboriginal customary law and to formally recognize traditional adoption.

Section 46 of British Columbia's *Adoption Act* stipulates the following:

Custom adoptions

46 (1) On application, the court may recognize that an adoption of a person effected by the custom of an Indian band or aboriginal community has the effect of an adoption under this Act.

(2) Subsection (1) does not affect any aboriginal rights a person has.

The *Aboriginal Custom Adoption Recognition Act* passed by the Northwest Territories begins as follows:

Whereas aboriginal customary law in the Territories includes law respecting adoptions;

And desiring, without changing aboriginal customary law respecting adoptions, to set out a simple procedure by which a custom adoption may be respected and recognized and a certificate recognizing the adoption will be issued having the effect of an order of a court of competent

⁶ *Adoption Act* [RSBC 1996], Chapter 5.

⁷ *Aboriginal Custom Adoption Recognition Act*, N.W.T., 1994, Chapter 26.

jurisdiction in the Territories so that birth registrations can be appropriately altered in the Territories and other jurisdictions in Canada.

.Section 2 of the Act stipulates the following:

2. (1) A person who has adopted a child in accordance with aboriginal customary law may apply to a custom adoption commissioner for a certificate recognizing the adoption.

(2) A person applying for a certificate must provide the following information to the custom adoption commissioner:

(a) with respect to the child, the name given at birth and the current name, date of birth and of adoption, place of birth, sex and the names of the mother and father, so far as is known;

(b) a statement by the adoptive parents and any other person who is, under aboriginal customary law, interested in the adoption that the child was adopted in accordance with aboriginal customary law.

In recognizing traditional Aboriginal adoption, these two laws have made it easier for people in the First Nations involved to adopt the children for whom they have been given custody, because they do not have to prove that the children have been abandoned but instead that the biological parents have given them custody for their children because of their trust in them.

We believe it is too soon to recognize or develop the concept of traditional adoption. Before we can do that, Aboriginal and non-Aboriginal experts must fully examine the issues involved. Traditional adoption is now recognized in British Columbia and the Northwest Territories, and the approach used by these jurisdictions to arrive at recognition of traditional adoption in the First Nations communities may serve as a starting point for our own approach.

We therefore believe it is necessary to get to the heart of the issues surrounding traditional adoption and conduct a thorough analysis that can lead to recommendations for solutions in this matter.

Despite the proposals made in 1985, 1995, 1996 and 2001, we are forced to acknowledge that the issue of traditional adoption has not been sufficiently documented and that steps are necessary to remedy this lack of documentation.

Acting in the best interests of the children is central to our considerations. According to the testimonies received, the children's best interests are served by allowing them to stay with their people in their communities, at the same time protecting their status, language and culture.

To this day, traditional adoption forms part of the customary law of certain communities and they wish to preserve it for the well-being of the children, the families and the community overall.

We are aware that we must comply with the legal regulations applicable in Quebec, as stipulated by Section 88 of the *Indian Act*,⁸ which begins as follows:

Subject to the terms of any treaty and any other Act of Parliament, all laws of general application from time to time in force in any province are applicable to and in respect of Indians in the province...

This means that we are required to apply Quebec's youth protection regulations and in some cases, to apply the *Civil Code of Quebec*.

Although Section 37.5 of the *Youth Protection Act*⁹ allows the government to sign agreements with the First Nations for establishing a specific youth protection system, we must be realistic and admit that due to federal/provincial jurisdiction problems, it is difficult to obtain all the infrastructures necessary for developing and maintaining a youth protection system based on Aboriginal culture. It has long been recognized that the Aboriginal peoples want to take responsibility for the youth protection services in their communities but that because of the lack of professional and financial support, they must make use of the Quebec system, which they nevertheless believe does not take account of Aboriginal realities and customs.

Furthermore, if we were to officially recognize traditional adoption in the Aboriginal communities, what organization or structure would administer the adoption system? Would we have to assign these responsibilities to a third party?

As for the evaluation of foster families, *Quebec Native Women* wishes to point out that the Quebec system already makes it difficult for Aboriginal families to qualify as foster families, according to youth protection regulations. Would this also be true for legal adoption? Seeing that the Aboriginal vision concerning adoption is based on a holistic approach, we are not opposed to the evaluation of foster families by a council of elders, which could even support these families in their new parental responsibilities, if necessary. In addition, we are not opposed to the idea that there could be adoptions within a single nation, even if not always in the same community. However, we believe that the extended family should have priority in child adoption cases.

Traditional adoption is based on oral tradition and there is no documentation that traces the changing views accompanying its evolution. We therefore believe that we must hold off on granting it official recognition until the First Nations have been adequately consulted. Furthermore, we cannot officially recognize this form of adoption without properly assessing its legal consequences and its compatibility with other laws applicable to Aboriginal people, i.e., laws that will be applicable until we have achieved self-government.

⁸ R.S.C. 1985, chapter I-5

⁹ R.S.Q., chapter P-34.1

Have the First Nations achieved consensus regarding these demands and if so, does such consensus include the point of view of Native women?

There has been no genuine consultation on this matter. Therefore, we cannot speak of any consensus among the First Nations regarding these demands. We believe that the issue should first be discussed with each of the First Nations in Quebec and that their elected leaders should be consulted in order to represent us and jointly make a decision concerning the practice of traditional adoption.

Recommendations

1. Considering the absence of written documentation on this issue and on the practice of adoption in the Quebec Aboriginal communities, and considering the possibility that the *Civil Code of Quebec* may be modified in the future to include this form of adoption, we recommend to the working group on the Quebec adoption system that a sub-working group, made up of representatives from the AFNQL, QNW, the RCAAQ, the Quebec Department of Justice and the Quebec Department of Health and Social Services be created in order to analyze the issues involved and to provide its recommendations within ten months after being created.
2. We recommend that in all cases involving the adoption of Aboriginal children, priority be given to the extended family, which is an integral part of the Aboriginal cultural context.
3. We recommend that adoption of Aboriginal children be allowed to take place within their own First Nation, even if such adoption takes them to a community other than their community of origin.
4. We recommend that the criteria for accrediting foster families be revised to take account of the Aboriginal realities and culture.
5. We recommend that the 12, 18 and 24 month timeframes for long-term placements be re-evaluated to take account of the specific situation and realities of the Aboriginal communities in Quebec.
6. We recommend that the Aboriginal communities in Quebec be given, to the extent possible, direct responsibility for youth protection services.