



**FEMMES AUTOCHTONES DU QUÉBEC INC.**  
**QUEBEC NATIVE WOMEN INC.**

**MÉMOIRE**

**BILL N°99**

**AN ACT TO AMEND THE YOUTH  
PROTECTION ACT AND OTHER PROVISIONS**

**THE RIGHT TO INDIGENOUS CULTURAL IDENTITY  
AND COLLABORATION FOR THE FUTURE OF OUR  
CHILDREN AND OUR FUTURE GENERATIONS**

**Presented to the Committee on Health and Social  
Services of the National Assembly of Québec**

**By  
Québec Native Women**

**Kahnawake, September 26, 2016**

## About our organization

**Québec Native Women (QNW)** is a bilingual, non-profit, organization, the result of a community initiative in 1974. We represent the Indigenous women of Québec, whether they live in a community or in an urban area.

QNW's mission consists of defending the human rights of Indigenous women and their families, both collectively and individually, and of promoting the needs and priorities of members at the various levels of government, society and the decision makers in all areas of activity that have an impact on the rights of Indigenous people.

At the political level, QNW seeks to have the rights of Indigenous women to equality recognized, both at the legislative and constitutional levels, nationally and internationally. QNW defends the right of Indigenous peoples to self-determination; it encourages the full participation of Indigenous women in the process to achieve this goal.

At the socio-economic level, QNW sets up, or promotes the setting up of new training initiatives designed to help its members improve their living conditions by offering opportunities to actively participate in entrepreneurship and in the decision-making process within their communities.

QNW encourages and supports community initiatives aimed at enhancing the living conditions of Indigenous women and their families. To this effect, it is actively involved in cultural awareness, education and research.

The institutional capacity of QNW has increased over the last decade, as is reflected by the ever-increasing quantity and quality of its work and the tangible results obtained. Supported by a solid organizational structure and extensive experience of over 40 years, QNW is well known today for its active participation in all areas affecting the lives of Indigenous peoples.

## Introduction

Québec Native Women (QNW) would like to thank the Committee on Health and Social Services for inviting us to participate in the consultations regarding Bill n°99: *An Act to amend the Youth Protection Act and other provisions*, to present the recommendations of our organization and to allow the voices of Québec Indigenous women to be heard.

From the outset, QNW welcomes the intention of the legislator to involve Indigenous communities in the youth protection process and to ensure the preservation of the cultural identity of Indigenous children. In fact, our communities are undoubtedly in a better position to protect the interests of our children, as they are culturally better equipped to intervene. Furthermore, the effects of colonization have left indelible traces which may explain the lack of trust our communities have in the government system perceived as a “thief of children”. The impact of the Youth Protection Act (YPA) on our nations and communities is striking. An alarming number of children are being torn from our communities to be placed in non-native families. The marks of colonialism and residential schools are still entrenched among our peoples. The mere presence of the Director of Youth Protection in our communities reminds us of this dark period in our history, that of residential schools, of the history of all of us, when our children were torn from us to be raised in non-native institutions.

To this effect, let us highlight the blockade put in place by the Lac Simon community in November of 2013. The community of about 1400 residents refused entry to Youth Protection workers, which consisted of some forty counsellors. By its gesture of courage and resistance, the community set its heels in protest and forbade the government to take away even one more child.

It is unacceptable that the number of children taken into care by Youth Protection is higher than the number of children in residential schools at its busiest time. In 2016, we are still living with the intergenerational ailments and breaks inflicted upon us by the accumulation of attempts at acculturation and assimilation. Over the centuries, the law has been an imposing colonization tool. Is it possible that today, it can be used to defend and protect the rights of Indigenous children?

In order to understand the social situations afflicting our communities, we must focus on history, tell it in its entirety, understand it and finally avoid repeating it. Each one of us has a responsibility and a role to play in the history we are presently writing. Our Indigenous citizens seek recognition of their expertise and the freedom to take responsibility. It is with a great deal of courage that today, they are on the path to healing in order to put a stop to this intergenerational suffering. We are witnessing educational and cultural revitalization initiatives in our nations and communities which are inspiring and filled with hope. However, it is necessary to work in collaboration with the various levels of government in order for them to recognize our expertise so that the positive actions can continue and can be established in a sustainable way in our

communities.

## The Right to Indigenous Cultural Identity

QNW welcomes the inclusion of the notion of preservation of cultural identity in the explanatory notes to Bill 99. QNW reminds us that these notes must be read in conjunction with the sections of the act in order to interpret them in a manner consistent with the legislator's intent thus expressed. Thus, QNW emphasizes the importance of such recognition. To this end, the third paragraph of the explanatory notes establishes the principles of the involvement of Indigenous communities and the preservation of the cultural identity of Indigenous children. QNW supports the clear intentions of the legislator by suggesting, in the present memoir, ways to achieve these goals so that the rights of our children, our families and future generations are respected.

### The Legal Aspect of Cultural Identity

First, QNW maintains that the preservation of cultural identity is much more than just a factor to be considered, as Bill 99 currently suggests: it is a right. QNW believes that it is wrong to claim that the elements enumerated in Article 3(2) of the YPA which must be taken into consideration, such as the age of the child or his moral and physical needs, have a similar impact on the security and development of the child as his/her cultural identity. Rather, the preservation of the cultural identity will have a major impact on the development, health and life of the Indigenous child. The Lovelace decision, rendered by the United Nations Human Rights Committee, which led to an amendment to the *Indian Act* in 1985, recognized the gender discrimination of Indigenous women under the Act. The judgment argued that, among other things, we were denying the rights of women and their children to practise their customs, speak their language and live among their own. This judgment had, moreover, drawn its reasons from Article 27 of the International Covenant on Civil and Political Rights. This right is also recognized and protected by various international laws such as the *American Declaration of the Rights and Duties of Man*, the *Convention on the Rights of the Child* and the *United Nations Declaration on the Rights of Indigenous People*.<sup>1</sup>

The Québec courts themselves recognized that identity is a right when they stated that "Identity, in addition to being a right, is a major component of legal personality, which is a factor of social continuity and stability."<sup>2</sup> The Federal Court of Appeal also ruled on the right to not only the physical, but also the cultural integrity of Indigenous children.<sup>3</sup>

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<sup>1</sup> QUÉBEC NATIVE WOMEN. Changements proposés à la Loi sur les Indiens et l'administration de la Loi sur les Indiens. Memoir presented to Indigenous and Northern Affairs Canada (September 29, 2000) pp. 7 and 8

<sup>2</sup> A.-A. C. c. A. C., 2005 CanLII 14526 (QC CS) (Non-official translation).

<sup>3</sup> *Tobique c. Sappier Band Council* (1988), 87 N.R. 1.

The Indigenous child, deprived of his family or community environment, is deprived of his culture and, consequently, deprived of the privileged means of protecting and allowing to flourish his/her identity within his/her community. This contravenes the express right under Article 8(1) of the Convention on the Rights of the Child:

“8(1) States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.”<sup>4</sup>

QNW asks that this right, which, as we have already demonstrated, has already recognized us as Indigenous women and children, be respected today for our children and future generations, to be able to flourish within our families and communities.

### **Impact of Residential Schools**

It is estimated that in Québec, some 13,000 Indigenous children lived in residential schools. Of the 135 residential schools that existed in Canada, eleven were established in Québec.<sup>5</sup> Even after the last residential schools closed their doors, the devastating effects of these institutions continued to be felt in the communities throughout the country and the trauma was passed down from generation to generation.

The recent publication of the final report of the Truth and Reconciliation Commission (TRC) served to raise awareness of the history of Residential Schools in Canada (TRC 2015). During this dark era of our history, girls and boys aged 5 to 17 were torn from their families to go to live in residential schools, those institutions which were at the heart of the assimilation strategy of the Canadian government. In these schools administered by various religious communities or directly by the state, Indigenous youth suffered countless physical, sexual, emotional and psychological abuses. In the worst cases, the young residents never returned home and their families were left without answers regarding the fate of their child, who was often buried anonymously and without ceremony.

Undoubtedly, the residential school experience corresponds, in many respects to a situation where an Indigenous child is taken from his family and placed in a non-Indigenous environment. In fact, by being sent to residential schools, Indigenous youth did not have the opportunity to live within their family or community, nor could they develop a sense of belonging. On the contrary, they were expressly isolated.

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<sup>4</sup> *Convention on the Rights of the Child*, November 20, 1989, C.N. 147. 1993 (effective on September 2, 1990).

<sup>5</sup> McDonough B. (2013). Le drame des pensionnats autochtones, *Revue Relations* (768). Online (in French only): <http://www.cjf.qc.ca/fr/rerelations/article.php?ida=3259&title=le-drame-des-pensionnats-autochtones>

## Placement of Indigenous Youth and its Impacts on Cultural Identity

Even after the era of residential schools our children continue to be displaced and relocated by the state, since now, as mentioned above, we must deal with institutions such as Youth Protection.

The Truth and Reconciliation Commission of Canada (TRC) clearly identified what Indigenous children raised outside their family, their community and their nation suffered, when, during the course of the 60's Scoop, they were taken out of their communities by social workers and placed in non-native foster homes. In fact, the TRC reminds us of the similarities of the scars of the children of this era with those of residential school children.

Aboriginal children adopted or placed with white foster parents were sometimes abused. They suffered from identity confusion, low self-esteem, addictions, lower levels of educational achievement, and unemployment.<sup>25</sup> They sometimes experienced disparagement and almost always suffered from dislocation and denial of their Aboriginal identity.<sup>6</sup>

Following the long and difficult period of residential schools, the survivors saw their parental skills severely compromised due to neglect during their childhood and the abuse they suffered (TRC, 2015). At the same time, our citizens are subjected to the evaluation criteria of social services, which are often not adapted to their lifestyle. In a brief written jointly with the Regroupement des centres d'amitié autochtones du Québec concerning the revision of the Youth Protection Act, QNW gave the example of Indigenous children living in remote areas and placed many kilometres away from their community of origin (QNW and RCAAQ, 2005). The distance separating parents from their children could be an important obstacle when it came to visiting them. We also spoke out against the fact that these parents, often of limited means, were accused of showing too little interest in their child and long-term placement was consequently recommended.

The damage to parenting skills as a result of residential schools and the discriminatory evaluation criteria of Youth Protection combined have resulted in an extremely high rate of Indigenous youth placement. Citing documents from Statistics Canada and the Assembly of First Nations, it was recently noted in *Le Devoir* that in Québec, 10% of youth placed by social services are Indigenous, while they represent only 2% of the Québec population (Bélair-Cirino, 2015). In fact, the over-representation of Indigenous children within our child protection system is an issue that has been faced by our families for over forty years<sup>7</sup>. Our children are over-represented at every stage of the protection process. For example, they are 4.4 times more represented than non-Indigenous children at the assessment stage. This rate

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<sup>6</sup> Canada's Residential Schools: The Legacy – The Final Report of the Truth and Reconciliation Commission of Canada (2015) Truth and Reconciliation Commission of Canada, McGill-Queen's University Press, vol.5, p.15.

<sup>7</sup> First Nations and non-Aboriginal Children in Child Protection Services (2013), National Collaborating Center for Aboriginal Health (online) [http://www.nccah-cnca.ca/Publications/Lists/Publications/Attachments/7/protective\\_services\\_EN\\_web.pdf](http://www.nccah-cnca.ca/Publications/Lists/Publications/Attachments/7/protective_services_EN_web.pdf).

climbs to 7.9 for placement outside of families and 9.4 for recurrence in the protection system.<sup>8</sup> This last number is proof of the difficulties faced by the Québec government to protect our children and to help our families get back on their feet.

The high placement rate of Indigenous youth and the resulting risks translate into a real fear for Indigenous women of having their children taken away. This fear then acts as an important barrier when it comes time to rely on support services. In fact, Indigenous women living in a situation in which they would need help, such as a relationship with a violent partner, can choose not to ask for help for fear of being reported to Youth Protection. This threat increases their vulnerability and that of their children.

Pursuant to paragraph 2 a) of Article 8 of the UNDRIP, QNW asks the government of Québec to “put in place effective prevention and compensation mechanisms for any act whose purpose or effect is to deprive Indigenous peoples of their integrity as distinct peoples, or of their cultural values or ethnic identity.” To this end, QNW recommends collaboration with Indigenous communities and legislation which recognizes the right to cultural preservation.

### **Cultural Identity and Child Development**

QNW advocates for a clearer piece of legislation on the right to cultural identity of Indigenous children, since we are the first to observe the negative effects resulting from the violation and, conversely, all the benefits for a child when this right is respected.

Studies show a correlation between the identity factor of an Indigenous youth and his/her overall health<sup>9</sup>. Thus, preservation of cultural identity would be ensured by keeping our children in their Indigenous communities.

The Public Health Agency of Canada talks about “the healing power of cultural identity.”<sup>10</sup> According to the studies it reports that children who have more self-confidence are more likely to develop in good health. Cultural identity would be among the factors leading to better self-esteem and a sense of belonging, both indicators of healthy child development. This is particularly true for Indigenous children, given the important place of family and community in our own beliefs and lifestyle.

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<sup>8</sup> This rate is calculated on a sample of 1000 children.

<sup>9</sup> Chandler, M. J. & Lalonde, C.E. (2008). Cultural Continuity as a Protective Factor against Suicide In First Nations Youth. *Horizons – A Special Issue on Aboriginal Youth, Hope or Heartbreak: Aboriginal Youth and Canada’s Future*. 10(1), 68-72.

<sup>10</sup> *Aboriginal children: the healing power of cultural identity*, Public Health Agency of Canada, Government of Canada (online) <http://www.phac-aspc.gc.ca/hp-ps/dca-dea/prog-ini/ahsunc-papacun/aboriginal-autochtones-eng.php>

We are constantly developing our identity, from birth to the end of our lives. We build it based on our relationships to relatives, friends, community, geography, language and other social factors. Identity plays a key role in healthy child development. When a child feels a sense of belonging to family, community and peers he or she is better able to deal with adversity.<sup>11</sup>

In short, just like the child deprived of his/her culture by the Indian Act, the residential schools or the 60's Scoop, the removal of our children by the institutions leads to adverse effects for children uprooted when placed outside Indigenous families. While the 2008 Canadian study on the incidence reveals that Indigenous children make up 5% of the Canadian population, they account for 17% of referrals to protective services, 22% of substantiated reports of mistreatment and 25% of children taken into care (Blackstock, Trocomé and Bennett, 2004). QNW implores the Québec government to make the amendments to Articles 3 and 4 of the YPA, so that the legislation gives clear guidelines regarding Indigenous youth. The current rates are alarming. Our children are the future of our peoples. We are asking for recognition of their right to cultural identity and collaboration among our Indigenous communities, nations and services for their well-being, security and development.

Recommendation: QNW urges the provincial government not to repeat the mistakes of the past. In order to do so, QNW believes that a clearer legislative approach with regard to the intent of the legislator to collaborate with the Indigenous community and the recognition of the right to the preservation of the cultural identity of an Indigenous child is warranted.

QNW asks that the text of Bill 99 be amended in Articles 3 and 4 of the YPA and replaced with the following:

- By adding the following sentence to the first paragraph of Article 3: "In the case of an Indigenous child, the preservation of his/her cultural identity is a right." QNW rejects the amendment brought to Bill 99 which suggests adding the following sentence to the end of the second paragraph of Article 3: « In the case of a child who is a member of a Native community, the preservation of the child's cultural identity must also be taken into account.

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<sup>11</sup> *Aboriginal children: the healing power of cultural identity*, Public Health Agency of Canada, Government of Canada (online) <http://www.phac-aspc.gc.ca/hp-ps/dca-dea/prog-ini/ahsunc-papacun/aboriginal-autochtones-eng.php>



- By adding a second part to the legislation of Article 4 (underlined): “A decision made under the second or third paragraph regarding an Indigenous child must aim at entrusting the child to an alternative living environment capable of preserving his cultural identity, primarily within:
  - a) His/her extended family;
  - b) His/her community;
  - c) His/her nation;
  - d) An Indigenous family of another nation;
  - e) And finally, where Youth Protection demonstrated that with the cooperation of youth protection services of the child’s community, no individual listed in a) to d) inclusive can take the child in charge, a non-Indigenous family which has been able to demonstrate that it will see to preserve the child’s cultural identity and who will have to account to this during the meetings with Youth Protection.”

## Public and professional education

QNW points out that the right to the preservation of the cultural identity of any Indigenous child, if implemented, will have a positive impact on the development and security of our children. While QNW welcomes the inclusion of the principle of preservation of the cultural identity of an Indigenous child in Youth Protection, we want to ensure that this notion is not only theoretical.

Gladue Principles in criminal law, as well as a major part of the legal decisions rendered in Youth Court, justify our reluctance. On the one hand, the Criminal Code requires that the characteristics of the Indigenous population be recognized in order to reduce the over-representation of the Indigenous population in the prison system. However, the current data show the inefficiency of this approach. In fact, despite the Gladue Principles, 25.4% of prisoners in the prison system of **Québec or Canada** are Indigenous; in female correctional facilities, 36% of the prisoners are Indigenous.

As for Québec courts, according to the current trend, judges say that they consider the Indigenous cultural identity of the children in their decision-making in the same way as the elements included in article 3(2) of the YPA. The reasons for the judgment of the Court of Appeal in M.-K.K invalidate the first instance decision which declared that rendering the child “admissible for adoption, comes back to, given the adoptive family chosen by the Director, jeopardizing his/her identity, culture, a part of his essence”<sup>12</sup>. The reasons of the Court of Appeal are as follows:

<sup>12</sup> M.-K.K. (*In the situation of*), [2003] R.D.F. 762 (C.Q.)

After analysis, it appears that the first instance decision is entirely devoted to examining the interest of the Indigenous community, and, incidentally, that of the child. The criteria of the child's moral, intellectual, emotional and physical needs, his/her age, character and family environment [article 33 C.c.Q.] are overshadowed when one of the aspects of his/her situation, his/her Algonquin identity, becomes dominant alone.<sup>13</sup>

QNW asks for clearer legislation regarding the right to cultural identity of Indigenous children-to guide the decisions makers. We are convinced that the modifications demanded by our association will have a positive impact on our young people and on our present and future populations.

### **Negligence**

Cases of negligence account for 64% of reports evaluated in the Indigenous population, making it the leading cause of reporting. For the purpose of interpreting this concept, negligence is "defined as a type of maltreatment that refers to a caregiver's failure to provide, or inability to provide, a minimal standard of age-appropriate care" (Blackstock and Trocmé, 2005)<sup>14</sup>. Thus, at the present time, negligence corresponds to the perception of parental maltreatment of Indigenous parents towards their Indigenous children, according to non-native counsellors and according to the standards of non-native society. However, provincial social workers assigned to reserves (...) have little, if any, training in Indigenous culture. They have not learned to detect problems originating from multigenerational trauma linked to residential schools. Instead, they pass judgment on the way that Indigenous parents raise their children, which is, according to them, wrong or negligent.<sup>15</sup>

The results are heartbreaking, as the number of First Nations children taken into care by the State protection system is three times higher than at the highest period of the residential schools (Blackstock, 2007). This situation seems to be too closely modelled on the 60's Scoop during which thousands of children were taken away by provincial social workers.

QNW believes that in order to address these issues and to ensure the viability of the intentions of collaboration, involvement and preservation of cultural identity, the Québec government should provide better education for professionals working in our communities, for judges and legal experts called upon to interpret the law, and for the general population. In fact, ignorance is often

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<sup>13</sup> *Rejean Bergeron, es qualité DPJ Abitibi a J.K et W.B.*, [2004] R.D.F. 264 (C.A.) Non-official translation.

<sup>14</sup> First Nations and non-Aboriginal Children in Child Protection Services (2013), National Collaborating Center for Aboriginal Health (online) [http://www.nccah-cnsa.ca/Publications/Lists/Publications/Attachments/7/protective\\_services\\_EN\\_web.pdf](http://www.nccah-cnsa.ca/Publications/Lists/Publications/Attachments/7/protective_services_EN_web.pdf).

<sup>15</sup> Canada's Residential Schools: The Legacy – The Final Report of the Truth and Reconciliation Commission of Canada (2015) Truth and Reconciliation Commission of Canada, McGill-Queen's University Press, vol.5, p.15.

at the root of our disagreements and the prejudices which wrongly exist. The consequences of the lack of knowledge regarding history and the repercussions of settlement policies, such as residential schools, are blatant. Sometimes, maybe in spite of them, the way they look at our community is filled with ethnocentrism. When we know that the main element taken into account by the legislator in child law is in the child's own interest, and considering that this concept is based on an important subjectivity, while Youth Protection attempts to guide the decision makers by offering solutions while considering, among others, his moral, intellectual, emotional and physical needs, his age, his health, his character, his family environment (article 3(2) LPJ), we can only understand the alarming rates of Indigenous children placed outside their communities.

For these reasons, QNW believes that the present bill should be accompanied by a reform of the Québec school history programs. As we had petitioned the National Assembly in 2013, we firmly believe that we must make room for an Indigenous self-history starting at the elementary level, which would include the history and evolution of the Indian Act, the residential schools, the 60's Scoop, missing and murdered Indigenous women and the complete history of discrimination, particularly towards Indigenous women and children. That being said, more in-depth and adapted training should also be mandatory for any professional called to work, closely or at a distance, with Indigenous people, while recognizing the diversity of customs, practices, needs and priorities of each of the eleven Indigenous nations of Québec. Finally, education specific to the community receiving the services of professionals should be offered.

Recommendation: QNW requires that all parties involved in all stages of the youth protection process receive training with regard to the colonial history in Québec, and more precisely with regard to the specific environment to which the worker will be assigned.

## Indigenous Citizens

### **“Indigenous child” vs “Child member of a native community”**

Colonial and assimilatory policies have fostered the development of a control regime of Indigenous people through the establishment of the Indian Registry. The purpose of this regime was to list all Indigenous people and to identify them in order to better control them. According to the Indian Act, Indigenous people thus become “members” of a community, just like one is a member of an association or a group. This terminology and the resulting legislative realities are not similar to the citizen regime enjoyed by the rest of Québec and Canadian society.

In the bill on which we are commenting, the expression “member of an Indigenous community” is not defined. Thus it is not clear whether Indigenous children who are not registered in the Indian Registry, Métis children and Indigenous children living in urban areas are included, even though they are in fact Indigenous citizens. In this sense, the expression “member of an Indigenous community” is potentially discriminatory; there is the risk of excluding a large number of Indigenous children.

The right to self-determination is recognized by the UN Declaration on the Rights of Indigenous Peoples and protects the Indigenous peoples' right to define themselves. Presently, the Indian Act

designates a federal membership system which constitutes an impediment to that right. The inclusion of such terminology in Québec's legislation contributes to the continuation of this hierarchy of our peoples by depriving our communities and nations of self-definition. Incidentally, the Descheneaux Decision of the Supreme Court of Canada in 2015 adds to the decisions to recognize all the discrimination against Indigenous women and children. QNW encourages the Québec government to adopt a more inclusive and non-discriminatory terminology to ensure that every child entitled to adequate protection has access to it.

Recommendation: QNW asks that the legislation referring to Indigenous children adopt the vocabulary "Indigenous child" instead of "member of a native community".

### Sources of the issue

The first recommendations of the Truth and Reconciliation Commission report<sup>16</sup> concerns the protection of Indigenous children and ask the federal, provincial and Indigenous governments to commit to reducing the number of Indigenous children in youth protection. As you know, our children are over-represented in youth protection. Research shows that this over-representation can be explained by the living conditions in which we find ourselves. We Indigenous women have always had a primary role when it comes to taking care of our children. Today, we have to deal with the after effects caused by the residential schools and the youth protection practices of the past, and with a systemic discrimination when it comes to financing our social programs, as set out in the decision of the Canadian Human Rights Tribunal in 2015<sup>17</sup>. The amendments to the Youth Protection Act are important steps, but if we really wish to address the safety, development and well-being of our children, we must be able to give them the opportunity to be born and grow up in living conditions equal to those of other Québec children.

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<sup>16</sup> Truth and Reconciliation Commission of Canada, 2015. Honoring the Truth, Reconciling for the Future. Final Report Summary. Editions McGill-Queen's University Press. Online: [http://www.trc.ca/websites/trcinstitution/File/2015/Honouring the Truth Reconciling for the Future July 23 2015.pdf](http://www.trc.ca/websites/trcinstitution/File/2015/Honouring%20the%20Truth%20Reconciling%20for%20the%20Future%20July%2023%202015.pdf)

<sup>17</sup> First Nations Child and Family Caring Society et al. c. Attorney General of Canada (for the ministry of Indigenous and Northern Affairs Canada)

For this reason, we ask you to address the real problem which is at the root of the over-representation of our youth in youth protection services.

The Final Report of the Truth and Reconciliation Commission of Canada works in this direction by suggesting the reduction of the number of Indigenous children taken into care by the State “Providing adequate resources to enable Aboriginal communities and child-welfare organizations to keep Aboriginal families together where it is safe to do so, and to keep children in culturally appropriate environments, regardless of where they reside”<sup>18</sup>.

### Maximum duration before the adoption

As mentioned above, Indigenous children and their families do not have the same opportunities to access support services when faced with a situation that involves the intervention of youth protection. While the maximum durations for alternate placement were conceptualised and conceived by non-Indigenous workers for children and non-Indigenous families, QNW finds it deplorable that they have not been adapted to Indigenous realities and are contrary to the rights to the preservation of the cultural identity of the Indigenous child.

In fact, Indigenous parents do not always have access to the same quality of services as non-Indigenous parents, as recognized by the decision of the Human Rights Tribunal in 2015<sup>19</sup>. Thus it is the responsibility of the Québec government to adjust the application of the concept of maximum duration by respecting the special situation of the Indigenous people. In fact, it is discriminatory to apply the same evaluation criteria to parents who are struggling with different accessibility, both in terms of adaptation to Indigenous history and culture and at the level of the presence or absence of assistance for parents. On the other hand, at the end of the maximum duration of placement, applications for adoption of the child become admissible. The child is thus completely cut off from his family, even though the family did not have a fair chance to solve the issues they face. In order to preserve cultural identity, and in the spirit of co-operation, QNW asks that the maximum duration in an alternate environment before the child becomes eligible for adoption be flexible for Indigenous children. To this effect, QNW reminds us that the objective of the YPA is to protect the children while supporting parents in their process of accountability. QNW is of the opinion that opting for the adoption of an Indigenous child at the end of the maximum duration without flexibility does not meet either of the two fundamental objectives of the YPA.

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<sup>18</sup> Final Report of the Truth and Reconciliation Commission of Canada, Call to Action 1 ii).

<sup>19</sup> First Nations Child and Family Caring Society et al. c. Attorney General of Canada (for ministry of Indigenous and Northern Affairs Canada)

Recommendation: QNW's asks the Québec government to recognize the cultural particularities of our Indigenous communities, as well as the accessibility to services for the families, which is not equal to those of non-native families, during the evaluation of dispositions pertaining to the maximum duration of a child in an alternate environment before he/she becomes eligible for adoption.

### Allowing us to develop our own solutions

In its report, the Truth and Reconciliation Commission also addresses the importance of youth protection practices being culturally adapted to Indigenous realities. In order to develop such practices, greater autonomy must be granted to Indigenous communities.

QNW would like to highlight the effectiveness of the *Système d'intervention d'autorité atikamekw (SIAA)*, an authority intervention system which was formed as a result of the Québec government's recognition of the different contexts, culture and living environments of Indigenous children compared to those of non-native children, and the difficulties of the State's system to meet the needs of Indigenous youth and their families in a culturally appropriate manner. This initiative, which is based on mechanisms of collaboration, has achieved an almost 80% reduction in the number of cases filed in the first year of its implementation in 2011, and the situation has improved steadily since then. Also, the family council, created by the SIAA, has solved at least 90% of cases in the 30 days following the report.<sup>20</sup> The efficiency of the interventions carried out by the communities is undeniable. The benefits are felt not only among youth, their families and their communities, but also in the Québec justice system, in which the courts are already overcrowded.

QNW would like to emphasize that despite the encouraging results of the Atikamekw system, no agreement has been signed to concretize Article 37.5 of the YPA with the Atikamekw communities. QNW asks that the Québec government act in good faith by respecting the UN Declaration of the Rights of Indigenous Peoples (UNDRIP) which commits the responsibility of the governments for "the right of families and communities to retain their shared responsibility in terms of education, training, instruction and well-being of their children, in accordance with the rights of the child" (we emphasize). QNW also reminds us that Canada adopted the UNDRIP in 2016 and asks that the Québec government conform. As young Jordan and the principle now bearing his name remind us, Indigenous youth do not have to pay the cost of their lives for a bureaucracy and government procedures. QNW asks that our communities be provided with a recognized freedom and power to act, considering the benefits of interventions in the environment.

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<sup>20</sup> *Système SIAA, Atikamekw Sipi* (online): [http://www.atikamekwsipi.com/systeme\\_siaa](http://www.atikamekwsipi.com/systeme_siaa).

The signing of an agreement under Article 37.5 is the cornerstone to ensure that the protection of Indigenous children be achieved with respect for the culture and integrity of our nations. While some communities have begun the Article 37.5 process, a real agreement still has not been finalized between your governments and those communities, despite highly conclusive results arising from Indigenous systems. It is through such agreements that culturally appropriate practices will be developed in order to ensure a true response to the issues of protection of our children. Research also shows that the level of autonomy of Indigenous communities in their internal governance is associated with better socio-economic indicators<sup>21</sup>. Thus, granting greater autonomy to Indigenous communities in terms of youth protection will not only create services which respond to our concepts of child care, but also address the root causes of the over-representation of Indigenous children in protection services. We are asking the government to recognize the expertise of our nations and to complete Article 37.5 by reaching an agreement with the communities that request it. It is about the future of our children, our families and our Indigenous and non-native societies.

The realization of agreements under Article 37.5 is a necessary step in order for Indigenous communities themselves to develop their own possible solutions. Despite this fact, for example, it has been fifteen years that the Atikamekw Nation has been waiting for the signing of such an agreement. QNW urges the current government to move forward with the signing of agreements with Indigenous communities under Article 37.5 and to promote such agreements, as the future of our children and the well-being of our Nations depend on it.

Recommendation: QNW asks that the Québec government finalize the agreements under Article 37.5 of the YPA with communities that have requested it, as soon as possible, in order to facilitate the performance of their duties and thus to improve the lot of our Indigenous youth.

### **Supporting us in our Self-determination**

For the reasons outlined above, we believe that the current government must support Indigenous communities in their steps towards self-determination with regard to the protection of Indigenous children. It is imperative that Indigenous communities have the opportunity to develop the skills which will prepare them for the possibility of signing an agreement under Article 37.5. However, in the field, Indigenous workers tell us that, in the current context of the law, there are certain blockages, particularly with respect to Article 32 of the YPA.

<sup>21</sup> Commission du droit du Canada. (2006). La justice en soi : les traditions juridiques autochtones. Ottawa: Commission du droit du Canada ; Chandler, M. et Lalonde, C. (1998). Cultural Continuity as a Hedge Against Suicide in Canada's First Nations. *Transcultural Psychiatry*, 35(2), 191-219.

In fact, the current legal context does not allow Youth Protection to authorize people who are not part of their staff to give advice or establish whether the safety or development of a child is compromised. We believe that granting such an authorization would give Indigenous communities access to a transition zone towards self-determination and the acquisition of these skills. This would be the result of good co-operation between the Centres Jeunesse and Indigenous communities, while maintaining the responsibility and the right of examination for the Youth Protection directors, as is the case with Article 33. The platform would be more accessible to communities considering finalizing an agreement under Article 37.5 with the government. The transition would then be smoother on both sides, which would be beneficial for children who find themselves in a situation of assistance and vulnerability.

### Summary of recommendations

1. That the Government of Québec recognize the right of any Indigenous child to the preservation of his/her cultural identity and that it establish mechanisms to guide parties and decision makers in order for their rights to not only be taken into consideration, but also fully recognized and respected.
2. That the Government of Québec amend the legislation in Articles 3 and 4 as presented by QNW in this memoir in order to ensure that the intention of the legislator is respected and applied by the various parties involved in the YPA process.
3. That the Government of Québec provide mandatory training in collaboration with Indigenous people or organizations, for all their employees who work with Indigenous communities and children on the history and current realities experienced by Indigenous people.
4. That the Government of Québec abolish the assimilatory, colonial and discriminatory vocabulary of Bill 99, by replacing the terminology “child who is a member of a native community” by “Indigenous child” wherever it appears in the Act.
5. That the provincial government grant Indigenous families delays of maximum duration which are flexible and adapted to Indigenous realities. The current situation discriminates against Indigenous families who do not have the same opportunities to get back on their feet within the delays prescribed by the law, as well as violating the rights to the preservation of the cultural identity of Indigenous children.
6. That the Government of Québec make the necessary arrangements to address the social inequalities faced by Indigenous families, considering that Indigenous children do not have the same opportunities as other children to be born and to grow up in favourable living conditions and that this is directly related to the place our children occupy in Youth Protection services.
7. That the Government of Québec consider requests for agreements made by Indigenous communities under Article 37.5 of the YPA to be priorities and take the necessary steps to support the process leading to such agreements, considering that Indigenous people themselves are aware of the solutions that address the issues they are confronted with.
8. That the Government of Québec amend Article 32 of the YPA by replacing the second to last paragraph with “Authorization granted to a person who is not a member of the director’s staff is valid only for the purposes of the assessment and not for the purpose of deciding whether the child’s security or development is in danger.”, considering that it is



currently difficult for an Indigenous community to prepare for the signing an agreement under Article 37.5 with respect to decisions related to the safety and development of a child.

9. That the Government of Québec collaborate with the federal government following the decision rendered by the Canadian Human Rights Tribunal <sup>22</sup> which states that the services offered to Indigenous children on reserves are inferior to those offered by provincial governments, thus creating discrimination towards the Indigenous children living on reserves and increasing the number of Indigenous children taken into care by government social assistance services.

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<sup>17</sup> <sup>22</sup> First Nations Child and Family Caring Society et al. c. Attorney General of Canada (for ministry of Indigenous and Northern Affairs Canada)