



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

**Complementary Research on Traditional and  
Customary Child Care Practices/Adoption within  
Aboriginal Communities in Quebec**

Presented to:  
Working Group on Customary Adoption in Aboriginal Communities  
Justice Québec

**Kahnawake, August, 2010**

## *About Our Organization*

### **Quebec Native Women Inc/Femmes Autochtones du Québec**

Quebec Native Women (QNW) is a bilingual, non-profit organization that began as a grass-root community initiative in 1974 and has consultative status with the Economic and Social Council of the United Nations (ECOSOC) since July 2009. Our membership includes women from the 10 of the 11 nations of Quebec including the Abenaki, Algonquin, Atikamekw, Eeyou (Cree), Huron-Wendat, Innu, Maliseet, Mi'gmaq, Mohawk and Naskapi, as well as a diversity of Indigenous groups from across Canada living in urban areas within the region.

QNW's mission is to advocate for the human rights of Indigenous women and their families, both collectively and individually, and to lobby the needs and priorities of its members to all levels of government, civil society and decision-makers in all our areas of activity, in regards to Indigenous peoples' rights.

At the political level, QNW works on behalf of Indigenous women throughout the country as well as internationally to obtain recognition of their right to equality, in both legislative and constitutional terms. QNW also supports Indigenous peoples' right to self-determination and encourages the full participation of Indigenous women in the process leading to the achievement of that goal.

At the socio-economic level, QNW promotes and creates new training initiatives that will help its members to improve their living conditions thereby creating opportunities for their members to become an integral part of the entrepreneurship and decision-making processes in their communities.

QNW encourages and provides support to community initiatives that seek to improve the living conditions of Indigenous women and their families. In this context, QNW is actively involved in cultural sensitization, education and awareness and research.

Quebec Native Women has enjoyed unprecedented institutional capacity and development in recent years, as reflected in the ever-increasing quantity and quality of its work producing results that are making a real difference. Backed by a solid organizational structure and strong experience acquired over its 35 year history, QNW is well known today for its proactive involvement in all areas affecting Indigenous peoples lives.

## Introduction

It is estimated that there are presently three times more Aboriginal children in the custody of child welfare authorities than were placed in Residential Schools at the height of their operations in the 1940's<sup>1</sup>. This overrepresentation of Aboriginal children in the child welfare system is a growing and complex problem rooted in a pervasive history of discrimination and colonization.

The multigenerational effects of both the Residential School and the child welfare system on the lives of Aboriginal children, families, communities and cultures have been well documented and continue to be evidenced by the social, health, and justice factors that surface within Aboriginal communities today<sup>2</sup>.

More recently the revisions to Quebec's *Youth Protection Act* (YPA) in 2006 have raised several concerns for Aboriginal peoples, particularly for Aboriginal women. In accordance with the YPA, courts have the power to issue a permanent placement order outside of the immediate family of the child, when the child has been subjected to a temporary placement during a period of time between 12 months (for children under 2 years old) to 24 months (for children 6 years and under) and if the judge deems that there is still a risk for the child's safety and development should he or she return to his family.

As a result of these revisions, by the end of March 2007, approximately 8,300 children living on reserves across Canada had been put under the Youth Protection regime, which represents 5% of Aboriginal children aged from 0 to 18<sup>3</sup>. QNW estimates that this percentage is 8 times higher than children living off-reserve.

In light of these alarming statistics, Justice Québec invited the *Commission de la santé et des services sociaux des Premières Nations du Québec et du Labrador* (CSSSPNQL), the Cree Board of Health and Social Services of James Bay, the Makivik Corporation, the Nunavik Regional Board of Health and Social Services (NHSS) and Quebec Native Women (QNW) to comprise a working group in order to find alternative solutions based upon case law precedents and traditional child care practices, to the phenomenon of massive placements of Aboriginal children outside of their communities. The CSSSPNQL therefore conducted research on various case law precedents in Canada to determine best practices by other provinces and territories.

---

<sup>1</sup> Blackstock, C. (2003), First Nations Child and Family Caring Society of Canada: Restoring peace and harmony in First Nations communities. In Kathleen Kufeldt and Brad McKenzie (Eds.) *Child Welfare: Connecting Research Policy and Practice* (pp. 331-343)., Waterloo: Wilfrid Laurier University Press.

<sup>2</sup> On this issue see United Nations Permanent Forum on Indigenous Issues, *Item 3: Indigenous Peoples and Boarding Schools: A Comparative Study*, E/C.19/2010/11, 26 January 2010.

<sup>3</sup> Report of the Auditor General of Canada to the House of Commons, *Chapter 4: First Nations Child and Family Services Program— Indian and Northern Affairs Canada*, Ottawa, 2008, p. 5.

However, QNW considers that a more holistic approach must be taken to address the issue of child placement. The focus on case law, while important, is limited in scope since it fails to consider more appropriate measures which are based upon culturally relevant forms of child care. It is also important that a gender perspective be used when examining customary child care practices of Indigenous communities. For this reason, QNW has undertaken a complementary research to examine the various types of customary child care practices and their related adoption mechanisms amongst different Aboriginal peoples. This research also aimed to include **prevention, support and solutions** based upon Indigenous culture, customs and traditions that will allow families in crisis to keep the children within their communities, while accessing adequate support mechanisms.

The objective of the research is thus to define concepts linked to various customary child care practices within Aboriginal communities in Quebec, with a particular attention to the experiences of Aboriginal women and their families.

## **Backgrounder**

There are systemic and structural factors that must be taken into account in respect to Aboriginal peoples' situation. Conflicting jurisdictions play key roles in the quality of services for families in crisis. For example, all funds for Aboriginal communities originate from the federal government. However in matters of health, social services and education the provinces and territories have the authority to implement their own laws although they do not directly contribute to the financial needs of Aboriginal families creating inter governmental jurisdictional disputes. This situation becomes one of the key factors that create a void in the quality of care and services of Aboriginal children and their families who consequently receive much less financial aid during these times of crisis, hence contributing to the placement of Aboriginal children into foster care<sup>4</sup>.

The impacts of **colonization and assimilation** policies created within the *Indian Act*, inclusive of the Residential School System, have also had a devastating effect on Aboriginal peoples' social, cultural, spiritual and political structures; leading to a loss of identity, deterioration in the quality of life, loss of language, loss of connection to the land and undermining of Indigenous peoples' self-determination. These elements have in

---

<sup>4</sup> A recent research report indicates that jurisdictional disputes involving the costs of caring for First Nations children are very prevalent with 393 of these disputes occurring in 12 sample First Nations child and family service agencies this past year alone. The vast majority of these disputes were between two federal government departments or between the federal government and the provincial/territorial government. See on this subject First Nations Child and Family Caring Society, <<http://www.fncfcs.com/docs/FirstNationsFS1.pdf>>.

many cases led to high rates of poverty, suicide and violence that put children at risk, yet article 6 and 27 of the *Convention on the Rights of the Child* oblige States to provide an adequate standard of living for the survival and development of children<sup>5</sup>.

According to University of Denver professor Maria Braveheart-Yellowhorse “*Native American history meets the 1948 Geneva Convention's definition of genocide, defining genocide as the intent to destroy a national, ethnic, racial or religious group*”<sup>6</sup>.

Within professor Braveheart-Yellowhorse’s research, she mentions the long-term historical trauma that Indigenous peoples in North America have faced due to assimilative policies such as the creation of reserves, diseases, wars, and the residential schools experiences of Aboriginal children.

In a recent CBC radio show<sup>7</sup>, a residential school survivor stated that when she was in residential school, she was not taught how to parent. Upon return to her community, not only could she not communicate with her parents, but the local village priest instructed her to get married and have children. She stated that because she did not know what was expected of her, she did a poor job of parenting her children and now she sees that it is her grandchildren’s generation that are having their children taken away.

It is therefore important for authorities to underline these **root causes** and offer culturally based services and programs to address the root causes of socio-economic and spiritual problems plaguing Aboriginal communities. But the fact remains that this issue is not being taken into account by the authorities when decisions are made concerning the placement of Aboriginal children outside of their communities.

Some of the main underlying causes considered in the placement of Aboriginal children include **poverty, neglect and violence**<sup>8</sup>. As indicated in QNW’s recent study on domestic

---

<sup>5</sup> *Convention on the Rights of the Child*, General Assembly resolution 44/25 of 20 November 1989, s.6,27; UN Committee on the Rights of the Child. *General Comment No.11 (2009) Indigenous children and their rights under the Convention*. Fiftieth session, Geneva, 2009 (“this is particularly pertinent for indigenous children as the Committee is concerned by the disproportionate numbers of indigenous children living in poverty”).

<sup>6</sup> Brave Heart, M.Y.H. *et al.* (Eds), *Historical Trauma Within the American Experience: Roots, Effects, and Healing*, New York: Haworth Press.

<sup>7</sup> CBC radio Montreal, June 15, 2010

<sup>8</sup> See on this subject FNCFCSS, *Research Summary on First Nations Child Welfare*, 2009 (“Several reports based on CIS-2003 data have shown that *neglect* is the most commonly substantiated form of maltreatment for investigations involving First Nations children”).

violence<sup>9</sup>, there is an over-representation of Aboriginal women in women's shelters across the province, although Aboriginal people comprise 1.4% of the total population of Quebec, nearly 4% of the clientele in women's shelters are Aboriginal women. As well, most of the shelters that offer services to Aboriginal women are located off-reserve. This clearly demonstrates the need for better access to culturally adapted resources and services to be made available for Aboriginal women and children in order to address the problem of domestic violence in the communities. If Aboriginal women had access to an adequate support system in their communities (ex: trained Aboriginal police officers on domestic violence; adequate access to support services i.e. psychologists, secondary housing, training of judges, lawyers and social workers<sup>10</sup>), they would not feel compelled to return to the same situations that places themselves and their children at risk.

During the Government of Canada's apology to Aboriginal peoples for the Residential School System, Prime Minister Stephen Harper called on a process of reconciliation between the Canadian population and Aboriginal peoples. In order for a true reconciliation to take place, all levels of government must recognize the political and socio-economic problems that the impacts of colonization have caused. To accomplish this task, it is necessary to first recognize the fact that all facets of Indigenous identity have been negatively impacted by colonization; these include Indigenous languages, social and political structures, cultural norms and their customs, way of life - access to land and its resources, Indigenous spirituality and sexuality, and finally parenting skills. These must be addressed in order to determine the social services needs of Aboriginal communities to find solutions to the issues of poverty and violence so that Aboriginal women and children may remain in their communities.

There are also internationally established norms that Canada must abide by as a member of the international community. In accordance with articles 3, 5, 18, 25, and 27 (3), of the *Convention of the Rights of the Child*, Canada is expected to respect and safeguard the integrity of Indigenous parents, extended families, and communities in their child-rearing responsibilities and duties<sup>11</sup>. Policies relating to the alternative care of Indigenous children should therefore be developed in culturally sensitive ways and should always ensure that the best interests of the child are of primary consideration, as required by article 3 of the Convention<sup>12</sup> taking into account their collective, cultural and kinship component. Moreover, alternative care placements should strive for continuity in the Indigenous child's ethnic, religious, cultural, and linguistic upbringing, as outlined in

---

<sup>9</sup> Femmes Autochtones du Québec, Fédération des ressources d'hébergement pour femmes violentées du Québec, UQAM, DIALOG, *Projet Ishketeu, des services d'aide en violence conjugale en réponse aux besoins des femmes autochtones*, 2008.

<sup>10</sup> See Justice Quebec, *Women and Justice Tripartite Committee Report*, 2003.

<sup>11</sup> United Nations Committee on the Rights of the Child, *supra* note 5.

<sup>12</sup> *Ibid.*

article 20 (3) of the Convention<sup>13</sup>. Finally, the cultural identity of Indigenous children should be ensured when out-of-home placements are required<sup>14</sup>. Indigenous children are entitled to, and should enjoy, the same level of rights afforded non Indigenous children as outlined in the Convention<sup>15</sup>. Canada should thus work to strengthen connections and cooperation with Indigenous communities to empower Indigenous children to express their rights.

Article 25 of the *Universal Declaration of Human Rights* states that every individual “has the right to a standard of living adequate for the health and well-being of himself and of his of his family, including food, clothing, housing and medical care and necessary social services”<sup>16</sup>. Due to policies within the *Indian Act* that still discriminate based upon gender (ex: the *Indian Act* registration regime favoring patrilineal lineage; INAC’s unstated paternity policy; Matrimonial real property on reserve, etc), it is clear that the present conditions (i.e. funding caps on education, inadequate housing, poor water quality, poverty) of Aboriginal women in the communities do not promote an “adequate standard of living” and that Aboriginal women do not have access to “necessary social services “ to assure their well-being and their families’ well-being<sup>17</sup>.

Furthermore, the *UN Declaration on the Rights of Indigenous Peoples* (UNDRIP) indicates that “Indigenous Peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group”<sup>18</sup>. The fact that so many children have been placed under Child Welfare protection may be interpreted as taking children away from the communities by force, especially if Aboriginal peoples do not agree to these measures and are proposing alternative solutions such as customary child care/adoption. The situation is also exacerbated by the lack of respect towards Aboriginal social workers whose recommendations are often ignored by Québécois social workers whose reactions automatically place children outside of any Aboriginal community. This phenomenon which is a direct result of societal attitudes towards Aboriginal women<sup>19</sup> and the "genocidal" ideology of the Residential School

---

<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*

<sup>16</sup> *Universal Declaration of Human Rights*, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948).

<sup>17</sup> See on these issues QNW, *Position Paper: BILL C-3*, April 2010; see also the United Nations, *Report of the Special Rapporteur on adequate housing*, Miloon Kothari, Canada, 2007 where, M. Miloon Kothari denounced "the slow progress in housing rights leaving Aboriginal communities **in poor living conditions for decades** due to overcrowded and inadequate housing conditions, as well as difficulties accessing basic services, including water and sanitation". According to M. Kothari, "Aboriginal women face some of the most severe housing conditions and challenges in the country".

<sup>18</sup> *United Nations Declaration on the Rights of Indigenous Peoples* A/RES/61/295 (2007), art. 7.

<sup>19</sup> See on this subject Amnesty International, *Stolen Sisters: A Human Rights Response to Discrimination and Violence Against Indigenous Women in Canada*, October 2006.

System requires a more holistic approach that allows for reconciliation on many levels. Until this is recognized, government policies will continue to hinder the health and well-being of Indigenous communities.

On October 6<sup>th</sup> 2009, Minister of Justice Kathleen Weil tabled at the National Assembly a draft bill, an *Act to amend the Civil Code and other legislative provisions as regards adoption and parental authority* that provides for open adoption and for adoption in which the bond of filiation with the original parents is not dissolved. This draft bill may well have serious effects for generations of Aboriginal peoples, especially as regards to the application of customary law in matters of adoption<sup>20</sup>. We therefore share the CSSSPNQL, AFNQL and the Grand Council of the Crees' concerns at the prospect of amendments to the adoption regime under the *Civil Code* before the present Working Group on Customary Adoption in Aboriginal Communities has completed its work and presented its final report for study and consideration. QNW therefore joins their call to postpone any amendments entailed by the draft bill until after the tabling of the final report of the Working Group and public consultations on a revised draft bill, which would duly consider the recommendations of the said Working Group<sup>21</sup>.

## **Data analysis**

### *Methodology*

To complement the study undertaken by the Working Group on the amendments to Quebec's Civil Code, QNW has accordingly conducted field-research using a **gender perspective** in the aim of finding **preventive solutions** that will allow families to keep children within their communities. Emphasis was also placed upon the experiences and realities of Aboriginal women who are often the primary child care givers. This research was not restricted solely to the concept of "adoption" in order to broadly analyze Indigenous customary child care practices within Aboriginal communities in Quebec.

To collect qualitative data on customary child care through a gender perspective, traditional knowledge holders of customary child care were searched out and interviewed in their respective traditional Indigenous languages. This resulted in the selection of fifteen (15) Aboriginal women and four men (including 14 Elders) for the individual interviews and two focus group interviews of frontline workers from Native Women Shelters across Quebec. This qualitative data allowed us to uniquely determine Aboriginal people's life experiences on customary child care/adoption. In order to discover the participants' primary concerns on these particular issues and how they

---

<sup>20</sup> See AFNQL, *Letter to Minister of Justice*, February 17, 2010.

<sup>21</sup> Grand Council of the Crees (Eeyou Istchee) and the Cree Regional Authority, *Brief on Draft Bill to Amend the Civil Code and Other Legislative Provisions as Regards Adoption and Parental Authority*, January 2010.



continually try to resolve them, a broad questionnaire (see Annex A) directed at the holders of traditional knowledge and experts within each selected community and the beneficiaries of these was used. The knowledge gathered from participants with traditional knowledge of customary child care practices, is invaluable in how it reveals that customs are still relevant in the daily lives of Indigenous peoples, and helps determine options to placement outside of immediate families and their communities.

This resulted in the collection of oral testimonies from 9 of the 11 Nations of Quebec (Algonquin, Innu, Naskapi, Abenaki, Eeyou, Atikamekw, Mi'gmaq, Mohawk, Inuit) focusing on the participants' practical experiences, with attention paid to both successes and challenges in each community. A more **holistic** approach to child care is indeed needed to address the root causes previously stated (poverty, violence on reserve) that far too often leads to placement of Aboriginal children outside of their communities.

## **Overall picture**

### *Experience regarding Indigenous customary child care practices/adoption in Quebec*

In this complementary research we tried to highlight common themes from the collected data in order to get an accurate overall picture of customary child care practices/ adoption within Aboriginal communities in Quebec. From this data we can conclude that even if these practices are still common in most Aboriginal communities within Quebec<sup>22</sup> these concepts are being interpreted differently from Nation to Nation, community to community and even family to family<sup>23</sup>. According to our respondents, different terms are indeed being used in their communities to describe customary child care practices/ adoption (for ex: in the Anishanabe Algonquin language the terms "kawin minaken awiek kija kennamodjin ki nidjanjish" / not give your children to strangers to be educated are being used as well as "ogi nitagowan"/ to raise a child; in the Eeyou language the terms "Eeyou binaushoon" / how Eeyou determined to raise another person's child; are being used for Custom Child Care Practices)<sup>24</sup>.

However, a common understanding of what is meant by customary child care/ adoption practices seems to emerge from the testimonials collected. Thus, globally for Aboriginal peoples within Quebec these concepts are best described as being practices by which

---

<sup>22</sup> It must be underlined that it cannot be assumed that customary adoption practices are non-existent in the communities from which feedback has not been obtained despite our sustained efforts.

<sup>23</sup> This seems to be also the case across Canada. On this subject see Cindy L. Baldassi, *The Legal Status of Aboriginal Customary Adoption Across Canada: Comparisons, Contrasts, and Convergences*, 39:1 U.B.C. Law Review 2006, at p.70 ( "One cannot emphasize enough that the term 'custom adoption' will mean different things to different indigenous peoples in Canada and worldwide, with practices sometimes varying within the First Nations communities themselves").

<sup>24</sup> Algonquin Interviews in Lac Simon ; Eeyou interviews of Elders from Chisasibi .

Aboriginal biological parents ask other family or community members to take care of their children outside of the Quebec legal system. Indeed, the current practices today do not involve the signing of any legal papers by the adoptive and biological parents, but rather involve looking after the children and their education, i.e., assuming parental responsibilities for a temporary or undetermined amount of time. The reasons why a child is entrusted to someone other than the biological parents seem to vary from one community to the next<sup>25</sup>.

The majority of respondents also described these practices as taking place naturally within the context of the extended family circle (grandparents, uncles, aunts, cousins, etc.) which allows the parents to share their family responsibilities when they feel they are incapable of doing so fully. From the testimonies we have gathered, customary child care practices/ adoption thus allows the biological parents to maintain contact with their children in contrast with legal adoption which imposes a confidentiality restriction on the identity of the biological parents. The biological parents are therefore not *abandoning* their children but asking other people to *take care of* their children during times that they are unable to care for them for whatever reason; be it economical, granting childless couples the opportunity to parent, or due to neglect. This places full responsibility of a child, including their development, in the hands of capable persons while at the same time maintaining the child's links with their **Aboriginal identity, culture, traditions and language**.

However, the practice and process of traditional adoption/customary care are far from uniform and varies among the communities within Quebec. For example, in Kitcisakik (Algonquin Nation) the process of traditional adoption has evolved outside the family structure where children (ex: in a case of incest) are placed away from their own extended family and sometimes community, and placed in a nearby community that speaks the same native language in order to maintain the link to their Aboriginal identity, culture and language<sup>26</sup>. In another community, Chisasibi (Cree Nation), according to their traditional custom one would raise another family's child simply for their wellbeing. According to our respondents, it was part of the custom to teach the children what their parents missed in life skills, traditional teachings and knowledge to help raise children. It was a way of the clan helping each other and was a mutually arranged<sup>27</sup>. Another

---

<sup>25</sup> Our research found the following reasons, in no specific order: *childless couples, death of biological parent, depression, domestic violence, drugs and/or alcohol addictions, large family, suicide, traditional education and trauma*.

<sup>26</sup> Algonquin Interviews in Kitcisakik.

<sup>27</sup> Cree Interviews of Elders from Chisasibi. A grandmother said, "In the past, a child was not taken to be raised by someone else because he/she was not well taken care of, it was not like that. It was considered a tradition for another person to raise a child. Some families without children took care of another child, mainly because people had families with many children, it was a way to help and support one another in the raising of a child. People with large families had a lot of work to do and they could rely on others in the

respondent described a broader adoption custom, the Adoption belt of the Kanienkehá:ka (people of the Flint – Mohawk), which could include the adoption of a child, a family, a clan or even a whole nation<sup>28</sup>.

### *Specific challenges facing Aboriginal families within Quebec*

Whereas traditional adoption is a practice based on oral tradition and custom, in most cases it does not involve the signing of any legal papers by the adoptive and biological parents. One common challenge that arises, according to the testimonies gathered, is in the case of biological parents wishing to regain custody of the child, sometimes several years later. This may occur despite alcohol and drug problems of the biological parents and the subsequent need for Youth Protection Services to intervene.

The absence of a document attesting to the consent of the biological parents in transferring their parental authority also 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 or to get financial support to provide for the child's basic needs (child assistance payment)<sup>29</sup>.

Another common challenge that emerges from the testimonies is the fact that these problematic situations seem exacerbated by the Youth Protection Services who are generally poorly perceived by Aboriginal peoples, as being at times considered as "kidnappers" of their children<sup>30</sup>. Thus, when a case enters the Quebec legal system for purposes of legal adoption, many of our respondents feared that the children involved will end up in non-Aboriginal families, signifying a break with their original line of descent and the loss of their Aboriginal identity, language and traditions. This situation is even more problematic in urban areas where, according to the focus groups of front line Shelter workers respondents there is a very high percentage of women (80% of the cases)

---

family to help them raise their children. This is how the family clan worked together to support each other in the raising of a child".

<sup>28</sup> Mohawk Interview in Kanehsatake. For example, in the situation where there was an adoption of a clan or family, this would arise if there was a war and there were great losses of life for certain clans or families. In order to increase their numbers once again, whole families would be adopted by a clan, sometimes even whole nations. The principle behind adoption was that beginning with the day of the adoption ceremony, the past would be forgotten and that from that day forward, those individuals, nations, clans would be considered as part of that clan.

<sup>29</sup> Abénaqui Interviews in Odanak : "Le principal défi c'est par rapport à l'aide financière pour les enfants adoptés de façon coutumière. Les Conseils de bande devraient faire quelque chose".

<sup>30</sup> Algonquin interview in Kitecisakik: "Pour les aînés, quand le système est là, quand ils viennent arracher nos enfants, on sait qu'ils sont en train de nous tuer déjà, de tuer la culture"; Naskapi interview in Kawawachikamach : "It is not the family that gives me trouble, it's the social services. I would be happy to see if the Social services were not involved in the adoptions here in the community".

who are victims of conjugal violence, that have had their child placed in non-Aboriginal families<sup>31</sup>.

Another common complaint that emerges from the testimonies is the fact that the actual Youth Protection System in Quebec has been imposed upon Aboriginal communities by the provincial government without any real consultation<sup>32</sup>. According our respondents, this system and the *Youth Protection Act* are thus ill suited to the realities faced by Aboriginal communities by not taking into account their traditional customs concerning adoption and child care which are based on a more **holistic** approach. But as well, do not take into consideration, the negative impacts of the Residential School System upon parenting skills. Indeed many respondents that have had children placed felt judged or were victims of prejudices by non-aboriginal Social workers that lacked knowledge of Aboriginal customs and realities. This situation furthers the general mistrust towards Youth Protection and Social Services in the communities, which much be addressed according to our respondents<sup>33</sup>.

It was also stated by our Elders respondents, that their traditional customary child care practices/ adoption are now becoming less frequent due to the implementation of the *Youth Protection Act* that unnecessarily complicates the placement of a child<sup>34</sup>. According to respondents, in the past, there were many grandparents who raised grandchildren to teach them, one just took a child without any formalities, without asking permission or requesting financial assistance. Today, one receives financial assistance to raise a child; the child is no longer the focus. According to the Elders, this is linked, to the present education system ill-suited to Aboriginal tradition and customs which has taken the responsibility away from parents on how to raise a child and prevents the application of traditional practices.

---

<sup>31</sup> Focus group of front line workers in Native Women Shelters Focus group: "il y a des gros problèmes en milieu urbain, parce que la DPJ dit : On relève pas de la communauté d'origine de cette enfant-là, on relève du territoire urbain".

<sup>32</sup> Regarding the imposition of provincial laws in the cases of child welfare see FNCFCSS, *First Nations Fact Sheet: A General Profile on First Nations Child Welfare in Canada, 2009* ("Provincial laws of general applicability were first imposed on First Nations in 1951 when a number of revisions were made to the federal *Indian Act*. The extension of provincial child welfare jurisdiction on reserve was viewed as yet another attempt at cultural genocide, which continues to contribute to the destruction of Aboriginal cultures. First Nations governments and their child welfare agencies have reluctantly accepted to implement provincial child welfare legislation. Provincial jurisdiction, for the time being, is accepted as an interim arrangement until such time as specific First Nations legislation is developed and enacted by First Nations through the self-government process").

<sup>33</sup> Mohawk Interview in Kanehsatake.

<sup>34</sup> Cree interviews, one Elder from Chisasibi said, "The difference I see today when a child is taken away, it seems so complicated. In the past, there was no great discussion, the person who made the choice to raise a child, just simply took the child into her home. Today, it does not seem so easy for relatives to transfer the care of a child. There are so many requirements to fulfill if you want to raise your own relative's child."

Thus for the majority of our respondents Social Services and the Youth Protection System have had important implications in communities by altering the traditional role of parents, the extended family and of Elders in their parenting responsibilities which were once shared by all. According to our Elders respondents, provincial authorities (Youth and Social Services) have undermined the traditional child care practices of communities and not until the provincial and federal authorities stop imposing their colonized policy of assimilation, will Indigenous peoples be able to create healthy communities and families<sup>35</sup>.

*Proposed suggestions to resolve issues of Aboriginal communities within Quebec*

Many of our respondents believe that the community as a whole, in particular, community leaders should become involved in creating policy that draw upon traditional culture, customs and teachings to improve child care that will prevent the massive placement of Aboriginal children outside of communities. It was stated by our Elders respondents that it is up to the nation and the community to find and provide solutions to this problem and not the provincial and federal authorities alone as it should not be considered as a continuation of colonization against which Indigenous peoples have been fighting for centuries<sup>36</sup>. According to two of our male respondents the community leaders should stand up more to the government in a move towards self-determination and demand the recognition of their customary child care practice/ adoption<sup>37</sup>. For instance, by recognizing traditional Aboriginal adoption, the *Civil Code of Quebec* will facilitate the traditional child care practices/adoption of Indigenous/First Nations communities, and support families in cases where they are granted guardianship or parental rights of children. Thus providing proof of guardianship that the biological parents have granted custody of their children to those they trust. However, while the majority of respondents seem favorable to a legal recognition of customary adoption in order to bestow the adoptive parents with the ability to exercise parental authority, other non-legal preventive solutions were suggested.

---

<sup>35</sup> Mohawk Interview in Kanehsatake. The Elder feels that beginning with the Residential School experience and how the Government continues its attack on "us" through their laws and policies, it has caused Indigenous peoples to lose their connection to their land and consequently, has broken the family circle.

<sup>36</sup> Mohawk Interview in Kanehsatake

<sup>37</sup> Innu interview in Mashteuiash: " Il faudrait que les dirigeants des communautés (politiciens, directeurs des secteurs santé et services sociaux) se lèvent et disent au gouvernement fédéral et provincial que C'EST ASSEZ, qu'il ne faut plus qu'ils répètent les mêmes erreurs"; Abénaqui interviews in Odanak : "Il faudrait que les gouvernements traditionnels se réalisent et il faudrait qu'on enlève le terme Indien pour le remplacer par Première Nations. Il faut que les communautés s'assument et les Conseils des Nations qu'ils se prennent en main. L'impact positif si nos leaders politiques se tiennent debout et transmette leur fierté d'être autochtone pis que ça se transmet dans la communauté à nos jeunes ben on aura pu de problème d'alcoolisme de drogues".

It is thus interesting to note that, in a gender perspective, our male respondents seemed to favor a more political approach whereas female respondents were more interested in grass roots solutions. For example, many of our female respondents argued that the extended family should be considered first by Social Services in the foster care placement of children in crisis situations. According to testimonials, the concept of the extended family is very important in Aboriginal communities and traditional adoption allows the line of descent from biological parents to their children to remain unbroken<sup>38</sup>. Keeping lines of descent intact seems to be a common preoccupation from the testimonies gathered as it reinforces identity and ensures that adopted children will know their origins such as what clan they are from, provides access to their language and culture while protecting their status.

Other respondents also suggested that Aboriginal Elders, being traditionally responsible for the wellbeing of children within their community, be allowed to play a more proactive role regarding child care to avoid reports to the DYP (Director of Youth Protection) in the first place, by teaching parenting skills to younger generations and giving them advice on how their own actions can negatively affect their family<sup>39</sup>. For example, there could be a Council of Elders or grandparents that can provide help and support to couples experiencing a hard time in raising their children<sup>40</sup>. Aboriginal traditions and customs concerning child care including ceremonial rites of passage showing each child what is expected of them when they enter adulthood would thus be better passed on to the younger generations helping the biological parents to understand their own individual duty and responsibilities towards their children. According to the testimonies gathered, a traditional approach of adoption is based upon the consent of all parties involved where the children need not feel rejected by their biological parents, who for various reasons have not been able to maintain custody of them.

As for the involvement of social services, many respondents believe that a better understanding and respect for the Aboriginal realities is mandatory in the actual Youth Protection System, and that it must take into consideration a community-based

---

<sup>38</sup> Mohawk Interview in Kanehsatake. Mention was made of how raising a child involves the extended family such as the grandparents, aunts and uncles: extended family members providing guidance and support to parents and children.

<sup>39</sup> Algonquin interviews in Dozois and Lac Simon: "Comme je suis une aînée mon rôle s'étend à veiller aux enfants. C'est ma pensée que je puisse être responsable de ces enfants"; "J'ai aidé beaucoup de femmes comme ma fille, ma petite-fille, mes nièces à leur faire prendre conscience de comment ça peut affecter une famille toute une famille leurs problèmes de consommation et les conséquences d'un signalement à la DPJ. C'est vraiment une collaboration familiale"; Naskapi interview in Kawawachikamach: "The kids I raised, my grandkids they are never bothered by the social services, because I give them advice on how to parent their kids, on what the child needs in order to fulfill those needs".

<sup>40</sup> Mohawk Interview in Kanehsatake.

approach<sup>41</sup>. Non-native social workers, especially evaluators and those in management positions should be culturally educated and sensitized regarding the history, customs, traditions and realities faced by Aboriginal peoples<sup>42</sup>.

Some respondents also suggested that more Aboriginal social workers be involved in the DYP because they are familiar with the settings, the culture and the language of First Nations. Other respondents argued that the government could assemble together an ad hoc working group comprised of community Aboriginal Elders Councils that advise, negotiate and provide support mechanisms in order to include Aboriginal traditions and customs within the Youth Protection System<sup>43</sup>.

Indeed, the Elder respondents want traditional ways to be practiced and their teachings to be shared for the care and wellbeing of children. According to them, nowadays, many parents do not have these teachings on how to raise their own children in a traditional way. Citing one of the Elders' message to the youth: "*you cannot have children until you have learned the traditional teachings of raising a child. This is the teaching that must be brought back. This is a traditional teaching*"<sup>44</sup>.

One Elder also raised the importance of the traditional role of women to balance leadership in communities:

Today, there are too many men and not enough women in leadership, so there that can't be an equal balance in the decision-making to make changes for the better. Too many do not prominently consider the importance of the role of a woman. Yet, she is the life-giver. In the past, a man always considered a woman as an equal partner to care for the home, the children and all that is brought into the home. If we look at things this way, we can be sure that the home fires will keep burning in a good way for the wellbeing of all in a home.<sup>45</sup>

---

<sup>41</sup> Algonquin interviews in Kitchisakik : " Les services sociaux pensent que chaque famille c'est comme une famille nucléaire basée sur l'homme et non pas basée sur le cercle de la famille, ce qu'on est comme anishnabe, tsé la société matriarcale et d'un côté t'as la société patriarcale du système blanc. Ok mais ça juste parce que cette pensée là, elle est là, c'est ça qui fait qu'ils ne peuvent pas comprendre ça. Tous les intervenants, les travailleurs sociaux, tant et aussi longtemps qu'y ont cette perspective là, ils pourront jamais comprendre le système traditionnel des adoptions qui se fait dans la communauté".

<sup>42</sup> Focus group of front line workers in Native Women Shelters.

<sup>43</sup> Algonquin interviews in Lac Simon: " Nos aînés encore, y'on été capables eux autres, de prendre soin de leurs petits-enfants. Si le gouvernement à un moment donné s'assoit avec les aînés, ça serait bon qu'ils aient des Conseils avec les aînés aussi, parce que c'est ça qui mène la force, une force dans une communauté, quand c'est le Conseil des Aînés".

<sup>44</sup> Cree interview of Elders from Chisasibi. A grandfather says, "Since we have been put in the communities with the education and health & social systems, etc, a child is born and raised in the community, becomes an adult, marries and has a family. Yet one goes on in life without remembering or knowing the traditional teachings of raising a child. As they become young men & women, they stay in their homes in the community without these teachings. Yet they have to learn what they are expected to learn in their education, yet they know so little of their upbringing. I would like to see that this situation be looked at where there could be in the school system the traditional teachings and practices of raising and caring for a child. A child's education was not just in the home, but out on the land regarding these teachings. This is what I see is missing at this time".

<sup>45</sup> Cree interview of Elders from Chisasibi.

## Conclusion

Acting in the best interests of children is paramount to QNW's examination of this important issue. Based upon testimonies of this complementary research, a child's best interests are best served by allowing them to remain amongst their people and in their communities. Reinforcement of their identity and the protection of their status, language and culture are of great significance to the health and wellbeing of Aboriginal children. To this day, traditional adoption forms part of the customary law of certain communities and their desire to preserve it for the wellbeing of the children, the families and the community overall is essential in overcoming the negative impacts of colonization imposed through the policies of the *Indian Act*.

QNW thus deems it necessary that in order to prevent an increase in the massive placement of Aboriginal children outside of communities, any legal recognition of customary adoption in the *Civil Code of Quebec* must be paired with other non-legal preventive solutions as suggested by our respondents. Indeed, a more **holistic** approach to child care is needed to address the **root causes** of colonization as stated previously (poverty, loss of parenting skills, inadequate housing, poor quality of water, violence on reserve) that too often leads to placement of Aboriginal children outside of their communities. Therefore, while QNW recognizes the value of traditional child care practices to be included within the parameters of adoption in the *Civil Code of Quebec*, in order to bestow adoptive parents with the ability to exercise parental authority, it should not represent a stand-alone solution.

Stronger communities equipped with good governance structures and the resources to address problems such as child poverty, inadequate housing and substance abuse are required to stem the tide of Aboriginal children entering into the child welfare system. Solutions to protect Aboriginal children rest with resilient Aboriginal communities who can provide the best remedy for safe and healthy communities.



## Recommendations of QNW

Taking into account the proposed suggestions by Aboriginal communities' respondents regarding the issue of child placement within the province of Quebec, QNW recommends the following **be conducted in consultation with Aboriginal peoples**:

1. That customary child care practices and traditional adoption of Aboriginal peoples be formally recognized in the *Civil Code of Quebec* and that such recognition not alter Aboriginal customary law regarding adoption by using an **legally inclusive definition** of customary child care practices and traditional adoption.

- a) We thus propose the following as a basis for definition: *customary care and/or traditional adoption is a informal consensual process handed down by tradition and specific to Indigenous peoples (usually a verbal process with no written documentation), by which an Aboriginal parent, with the support of the community and its entities, entrusts their child to a person in whom they trust will assume parental responsibilities on a temporary or indefinite basis when the parent is unable to take upon themselves their parental duties. The best interest of the child remains the primary consideration in the process of customary care and/or traditional adoption taking into account its collective, cultural and kinship component.*

*Customary adoption is by nature an open adoption i.e an adoption in which the biological parents may still have access and contact to the child being raised and cared for by the adoptive parents. The child's social identity does not change and the child maintains the memory of his or her roots*

- b) that in all cases involving the adoption of Aboriginal children, priority be given to the **extended family**
- c) that adoption of Aboriginal children be allowed to take place within their own Nation, even if such adoption takes them to a community within their own nation and to another "jurisdiction" either in Canada or the USA.

2. That the Competent Aboriginal entities or authorities in charge of enforcing and administering this new adoption system be designated and supervised within each Aboriginal communities in a accountable and transparent manner taking into account the specific issues faced by **each** communities as not to adopt a "one size fits all" solution that would be ill suited to Indigenous realities.

3. That the legal recognition of Aboriginal traditional customary adoption in the *Civil Code of Quebec* be paired **with other non-legal preventative** solutions to address the **root causes** (colonization, the *Indian Act*, Residential School; linked to poverty, violence on reserve) that leads to placement of Aboriginal children outside of their communities.

Ex: Resources be granted to communities in order to form Aboriginal Elders Councils to provide help and support to couples experiencing problems in raising their children by teaching parenting skills to younger generations and Aboriginal traditions and customs concerning child care.

4. That the Child Welfare system in Quebec integrate a more **holistic** approach to child care and youth protection which takes into account Aboriginal realities, customs, traditional teachings and community-based approach.

Ex.: Resources be granted to assemble an ad hoc working group comprised of community Aboriginal Elders Councils and Aboriginal social workers to advise, negotiate and provide support mechanisms in order to include Aboriginal traditions and customs within the Youth Protection System.

5. That Non-native social workers, especially evaluators and those in management positions receive cultural sensitivity training on Aboriginal cultures, history and realities especially on the communities that they serve.

6. That the 12, 18 and 24 month timeframes for long-term placements be re-evaluated to take into account the legislative gaps which cause Aboriginal parents to be unable to access support services that would allow them to remedy their situation.

7. That, respecting the customary laws of Aboriginal peoples, Aboriginal entities in Quebec be allowed to exercise efficiently their jurisdiction towards Aboriginal children and be granted the necessary resources for managing youth protection services in the community in order to move more closely towards **self-determination**. This should be done in conjunction with mutually agreed mechanisms, qualified authorities, solidly based in Aboriginal customs and laws.

Ex.: That Aboriginal communities in Quebec receive the same resources as other provincial agencies required to take responsibility for youth protection services.

8. That poverty be removed from the province's definition of neglect. Many communities have high unemployment rates and many still live a traditional life-style. According to the *Convention on the Rights of the Child*, *each child has the right to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference*<sup>46</sup>.

9. That the federal government and provincial governments coordinate their efforts more efficiently to prevent funding and legislative gaps that harm the well-being of Aboriginal families and their communities and adopt a child first principle like the Jordan Principle, to resolve jurisdictional disputes involving the care of First Nations children.

---

<sup>46</sup> *Convention on the Rights of the Child*, supra note 5.

## ANNEX A

### QNW's Interview Questionnaire Guide RE: Custom Child Care Practices

1. What is your experience regarding custom child care practices/adoption in your family and/or in your community/Nation?
2. Could you talk about/describe this practice? /these practices?
3. Is there a phrase in your language for this custom care/adoption? If possible, what is it that phrase? Is it possible to translate and if so, what is the equivalent in English/French?
4. Do you or do you know other families that still follow these traditional practices?
5. If so, are there any specific challenges that you or other families must face?
6. Do you know if families or if your community is attempting to resolve these issues?
7. What are your proposed suggestions that incorporate your nation's/community's custom adoption and child care?
8. Would you like to add anything further?...

Migwech, Thank you, Merci