



FEMMES AUTOCHTONES DU QUÉBEC INC.
QUEBEC NATIVE WOMEN INC.

Comments from Quebec Native Women

As part of:

The consultation conducted by Senator Boisvenu on Bill S-205, An Act to amend the Criminal Code and to make consequential amendments to another Act (interim release and domestic violence recognizance orders)

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About Quebec Native Women

Quebec Native Women (hereafter QNW) is a bilingual, non-profit organization founded in 1974 that began as a community-based initiative. Since July 2009, QNW has had consultative status with the United Nations Economic and Social Council (ECOSOC). Quebec Native Women (QNW) is an organization representing women from ten (10) First Nations of Quebec: Abenaki, Anishnabe, Attikamek, Innu, Eeyou, Wendat, Maliseet, Mig'maq, Mohawk and Naskapi. We represent First Nations women as well as urban Indigenous women. In 2015, QNW was recognized by Indigenous and Northern Affairs Canada as an Indigenous Representative Organization (IRO).

QNW's mission is to advocate for the human rights of Indigenous women and their families, both collectively and individually, and to represent the needs and priorities of its members to various levels of government, civil society and decision makers in all areas of activity that affect the rights of Indigenous people.

QNW has contributed to restoring the balance between Indigenous men and women by giving a strong voice to the needs and priorities of women for more than 47 years. QNW brings the needs and priorities of its members to the attention of authorities and decision makers in all areas of our work: health, youth, justice and public safety, women's shelters and the promotion of non-violence, human rights, international law, as well as employment and training. In this context, we play a role in education, awareness raising and research, and provide a structure for women to be active in their communities.

Preliminary remarks

In general, QNW welcomes *Bill S-205, An Act to amend the Criminal Code and to make consequential amendments to another Act (interim release and recognizance orders)* (hereinafter the *Bill*). QNW has made spousal and family violence its focus since its inception in 1974. Our goal is to protect Indigenous women who are victims of violence. Domestic violence is a serious societal problem that needs to be addressed in order to find solutions. The statistics don't lie. The Survey of Safety in Public and Private Spaces (2018) shows that Indigenous women experience a disproportionate level of violence compared to their non-Indigenous counterparts. In fact, 63% of First Nations and Inuit women have been physically or sexually assaulted by the age of 15 compared to 45% of non-Indigenous women¹. Violence in all its forms, but especially psychological violence, physical violence, sexual violence and post-separation violence, have serious consequences for Indigenous women and their children, who are already affected by the intergenerational traumas resulting from colonialism.

Despite the fact that the *Bill* presents interesting solutions to cases of domestic violence, our organization believes that it should be more culturally adapted for Indigenous people. The *Bill* that is currently being presented offers interesting modalities for cases of domestic violence in urban areas to protect Indigenous women and their children, but it is not adapted to the reality of Indigenous communities.

¹ Statistics Canada, 2018, "Intimate partner violence among diverse populations in Canada", in *Gouvernement of Canada*. Retrieved online: <https://www150.statcan.gc.ca/n1/daily-quotidien/210519/dq210519c-eng.htm> (June 14, 2021).

QNW Comments on Bill S-205

Regarding the new code 810 ordinance

It is well known that the peace bond is called into question as there is no formal criminal charge laid and it is not coercive for the abuser in cases of domestic violence². QNW welcomes the proposal to develop an 810 ordinance specific to domestic violence in the *Criminal Code*, as it promotes the protection and well-being of Indigenous women and their children.

Like the electronic bracelet, the 810 does not work in communities, as the size of the community may very well be too small to allow an appreciable distance for the safety of Indigenous women. All services are located in the centre of the community, i.e. the Band Council office, the health centre, schools and daycares, convenience stores and grocery stores, gas stations, etc. In this sense, the chances of the aggressor and the victim unintentionally crossing paths are very high. However, QNW welcomes the idea of applying an 810 specific to cases of conjugal and family violence in urban areas so that our women and their children can be safe.

QNW proposes that the distance of the 810 in a community be proportional to its size and its particular cultural context, as is suggested for the electronic bracelet. Considering that in cases of domestic violence recidivism is very frequent, this would ensure a higher level of safety for Indigenous women and their children who are victims of domestic violence. However, our organization is of the opinion that Ordinance 810 should be more restrictive in terms of formal criminal charges. In the case of a breach of condition, there should be sanctions significant enough to deter the accused from breaching it.

Concerning electronic bracelets

In many cases, electronic bracelets can save lives. Let's take the example of a man who reoffends and tries to approach his ex-wife in an urban centre. If he is wearing an electronic bracelet, the

² Myriam DUBÉ *et al.*, 2020, "L'engagement de ne pas troubler l'ordre public utilisé en matière de violence conjugale (article 810) : Que nous en disent les victimes ?". Retrieved online: https://sac.ugam.ca/upload/files/Rapport_810CC.pdf (June 15,2021).

worst is likely to be avoided because of the preventive aspect of the electronic bracelet. In an urban setting, the electronic bracelet is essential to ensure effective surveillance and the protection of our Indigenous women, their children and their families.

However, the situation in urban and community settings is completely different: the proximity between the victim and the aggressor does not allow for this type of measure. Indigenous communities are not large and the people involved are often in the same place or very close to each other, without actually wanting to be. The wearing of an electronic bracelet is therefore not sufficient in these circumstances. Being in the same area, the bracelet would not prevent the abuser/ex-spouse from trying to re-offend.

We must find an appropriate solution to the specific situation of Indigenous communities. We have unfortunately lost too many women and, by extension, families, through the murder of women and children by the abuser over the past few years. Sadly, this is often followed by the suicide of the abuser after he has committed the act, resulting in the loss of an entire family. In cases where the distance is too great for the context of the Indigenous community, we propose that it be reduced to make it culturally appropriate. In this sense, legislative changes could be made to the *Bill* to make it culturally appropriate for Indigenous people.

There should also be no delay in notifying the police when the abuser nears the victim's home. QNW believes that the intervention must be carried out by a multidisciplinary team of police officers and Indigenous interveners, interveners for Indigenous men with violent behaviours, Kukums, Mushums, Elders and traditional healers. Communication between the different services in cases of domestic violence is very important. Multidisciplinary teams have to be created and they must be able to intervene in a way that is adapted to the culture of the First Nations and Inuit in a more rapid and effective manner. Collaboration between the different milieus allows, among other things, for the building of real trust in the interventions. It is well known that Indigenous people have little³[\[OBI\]](#). Their various experiences with the police, the justice system and the courts do not help with Indigenous women's sense of trust. These teams also allow for priority attention

³ Statistics Canada, *Ibid.*

to be given to women and children to ensure their well-being. Finally, closer follow-up in terms of time can be done.

Regarding the therapy imposed by the judge

When it comes to therapy, we believe that it is essential to healing. It is true to say that prison does not offer proper rehabilitation and real follow-up with the abuser compared to therapy. However, this healing process (therapy) must be culturally appropriate for Indigenous communities. Indigenous people are also generally reluctant to use services that are available to them from non-Indigenous traditions. Their negative experiences with government services and the fact that they are not adapted to the culture of the First Nations and Inuit add a significant barrier when it comes to consultation and the search for resources. Once again, the reality of Indigenous and non-Indigenous people is completely different and the *Bill* needs to be better adapted to the Indigenous reality of the concept of healing and restorative justice.

In many Indigenous traditions and communities, "therapy" is not imposed on the abuser: the healing process involves the entire community and is very inclusive. Both the victim and the abuser are part of the process, as are their respective families. In various situations, the broader community is also included in this healing process, making the healing process a long but very comprehensive one. Contrary to the Western approach, it is not only the abuser who is involved in the healing process⁴.

QNW's Native Shelters Network of Quebec has also been aware that it is essential to integrate the man in the healing process in order to protect and promote the well-being of Indigenous women and children for over 20 years. In fact, the slogan of our organization's awareness campaign for Indigenous men with violent behaviours is "*Men are part of the solution*". So we welcome the idea of imposing therapy on the abuser, but it must not end with him simply returning to the community.

⁴ There is a very developed scientific literature on the healing process specific to First Nations people. Among others, Mylène Jaccoud's article "Indigenous Healing and Sentencing Circles in Canada" explains very well the concept of the inclusion of women and men as well as the entire community in the traditional healing process of the communities. The Indigenous Healing Foundation's book also provides a complementary explanation of the Indigenous healing process.

There must be culturally appropriate and inclusive accompaniment of sufficient length and appropriateness to ensure that the whole situation with the perpetrator, the victim, the children, and the community is stabilized.

Proposed amendments to *Bill S-205*

This section presents QNW's proposed amendments to *Bill S-205, An Act to amend the Criminal Code and to make consequential amendments to another Act (interim release and domestic violence recognizance orders)*.

It should be noted that our proposed amendments go hand in hand with the first part of this brief. We are proposing amendments that allow the *Bill* to be culturally appropriate to the specific context of Indigenous communities. In this sense, we are open to continuing discussions with Senator Boisvenu's team in order to perfect and standardize the proposed amendments. However, we will remain firm in our position regarding the fact that, to date, the *Bill* is not sufficiently adapted to the reality of First Nations and Inuit. It is therefore very detrimental to the safety and well-being of Indigenous women and their children.

Criminal Code

Section 501(3) of the *Criminal Code*, as amended by *Bill S-205*, adds paragraph (c. 1) and reads as follows

I Subsection 501(3) of the Criminal Code is amended by adding the following after paragraph (c):

(c.1) wear an electronic monitoring device

QNW proposes to add a paragraph:

c.2) Where a remote monitoring device is worn on an Indigenous reserve as defined in section 2 of the *Indian Act*, the measures must be appropriate to the geographic context, the size of the reserve and the proximity of the inhabitants.

Section 515 of the *Criminal Code*, as amended by *Bill S-205*, adds paragraph 3.1 and reads as follows:

(3.1) Before making an order under subsection (2) in respect of an accused who is charged with an offence in the commission of which violence was used, threatened or attempted against the accused's intimate partner, the justice must ask the prosecutor whether the intimate partner of the accused has been consulted about their safety and security needs.

QNW proposes to add a paragraph to paragraph 3.1:

The judge shall ensure that there is appropriate follow-up with the accused's intimate partner so that he or she is informed of the proceedings and the status of the order.

Section 515(4) of the *Criminal Code*, as amended by *Bill S-205*, adding paragraphs (e.1) and (e.2), reads as follows

(2) Subsection 515(4) of the Act is amended by adding the following after paragraph (e) As follows:

e.1) wear an electronic monitoring device

e.2) attend, under the supervision of the court, a treatment program approved by the province where the accused resides, such as an addiction treatment program or a domestic violence counselling program;

QNW proposes to add a paragraph to paragraph (e.1):

Where an electronic monitoring device is worn on an Indigenous reserve as defined in section 2 of the *Indian Act*, the measures must be appropriate to the geographic context, the size of the reserve and the proximity of the inhabitants.

QNW proposes to amend paragraph (e.2):

e.2) attend, under the supervision of the court, a treatment program, culturally adapted, approved by the province where the accused resides, such as an addiction treatment program or a domestic violence counselling program

QNW also proposes to add a paragraph to Section 2, paragraph e.3):

e.3) The culturally appropriate treatment program should be of such duration that its impacts are significant.

Section 810.03 of the *Criminal Code*, as amended by *Bill S-205*, reads as follows:

7a) attend, under the supervision of the court, a treatment program approved by the province where the accused resides, such as an addiction treatment program or a domestic violence counselling program;

7d) wear an electronic monitoring device;

QNW proposes to amend paragraph 7a):

7a) attend, under the supervision of the court, a treatment program, culturally adapted, approved by the province and the community where the accused resides, such as an addiction treatment program or a domestic violence counselling program

QNW proposes to add a paragraph to Section 7(d):

When the wearing of a remote monitoring device occurs on an Indigenous reserve as defined in section 2 of the *Indian Act*, the measures must be appropriate to the geographic context, the size of the reserve and the proximity of the reserve's inhabitants.

Section 810.02 of the *Criminal Code*, as amended by *Bill S-205*, reads as follows:

(9) The provincial court judge shall consider whether it is desirable, in the interests of the informant's safety or that of any other person, to prohibit the defendant from possessing any firearm, crossbow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance, or all of those things. If the judge decides that it is desirable to do so, the judge shall add that condition to the recognizance and specify the period during which the condition applies.

QNW proposes to amend paragraph 9:

(9) The provincial court judge shall consider whether it is desirable, in the interests of the informant's safety or that of any other person, to prohibit the defendant from possessing any firearm, bladed weapon, crossbow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance, or all of those things. If the judge decides that it is desirable to do so, the judge shall add that condition to the recognizance and specify the period during which the condition applies.

*** QNW recognizes that the term "knife" is very broad and inclusive. However, our organization believes that knives, which can be everyday items, can be a significant threat in cases of domestic violence. QNW therefore believes that it is essential to address the issue.

Section 811.1(1) of the *Criminal Code*, as amended by *Bill S-205*, as amended by paragraphs (c), (d) and (e.1) reads as follows

c) abstains from possessing a firearm, crossbow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance and surrenders those in their possession and surrenders any authorization, licence or registration certificate or other document enabling the acquisition or possession of a firearm (sections 83.3, 810, 810.01, 810.03, 810.1 and 810.2 of the Criminal Code)

d) participates in a treatment program (sections 810. 01, Insertion start 810. 03, Insertion end 810. 1 and 810. 2 of the Criminal Code);

e.1) wears an electronic monitoring device (section 810. 03 of the Criminal Code)

QNW proposes to amend paragraph (c):

c) abstains from possessing a firearm, knife, crossbow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance and surrenders those in their possession and surrenders any authorization, licence or registration certificate or other document enabling the acquisition or possession of a firearm (sections 83.3, 810, 810.01, 810.03, 810.1 and 810.2 of the Criminal Code)

QNW proposes to amend paragraph (d):

d) participates in a culturally adapted treatment program (sections 810. 01, Insertion start 810. 03, Insertion end 810. 1 and 810. 2 of the Criminal Code);

QNW proposes to add a paragraph to paragraph 3.1):

Where the wearing of an electronic monitoring device occurs on an Indigenous reserve as defined in section 2 of the *Indian Act*, the measures must be appropriate to the geographic context, the size of the reserve and the proximity of the reserve's inhabitants.

Youth Criminal Justice Act

The amendments that QNW is proposing to the *Criminal Code* also apply to the *Youth Criminal Justice Act*:

- Treatment programs must be culturally appropriate and long enough to have direct impacts
- Knives must be included in prohibited weapons, where appropriate
- The wearing of the remote monitoring device must be appropriate to the geographic

context, the size of the reserve, and the proximity of the reserve's inhabitants as defined in section 2 of the *Indian Act*

- There must be appropriate follow-up with the intimate partner of the accused

Merci, Thank you, Nia:wen, Migwetc, Tshinashkumitin, Wela'lin, WliWni, Tiawenhk