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NUNAVIK REGIONAL BOARD OF HEALTH AND SOCIAL SERVICES
RÉGIE RÉGIONALE DE LA SANTÉ ET DES SERVICES SOCIAUX NUNAVIK



LP^{MA}
Société Makivik
Makivik Corporation

COMMENTS

**PRESENTED BY MAKIVIK CORPORATION
AND THE NUNAVIK REGIONAL BOARD OF HEALTH AND SOCIAL SERVICES**

**TO THE COMMITTEE ON INSTITUTIONS OF THE
NATIONAL ASSEMBLY OF QUEBEC**

**CONCERNING THE DRAFT BILL TO AMEND THE CIVIL CODE AND OTHER LEGISLATIVE
PROVISIONS AS REGARDS ADOPTION AND PARENTAL AUTHORITY**

JANUARY 2010

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1. Introduction

Nunavik is a territory that occupies a large land mass (660,000 km²) above the 55th parallel in Québec. It covers an area that is equivalent to one-third the area of Québec. The *Québec Boundaries Extension Act, 1912* transferred the territory to Québec on condition that the indigenous rights in the territory be recognized. The Nunavik Territory is now organized under the James Bay and Northern Quebec Agreement (JBNQA). There are fourteen (14) Inuit communities along Ungava Bay, Hudson Strait and Hudson Bay and one Inuit community on James Bay. These communities are located at a distance of between 1500 and 2500 km north of Montréal. Only three of the communities have populations of over one thousand. Nunavik's Inuit population is approximately 10,200. Roughly 90% of Nunavik's total population is Inuit. There are no roads between the Nunavik communities, nor are there roads linking Nunavik to the south. Air service provides the only year round cargo and passenger transportation. The cost of living in Nunavik has been established at 69% higher than elsewhere in the province of Québec. A 2001 Statistics Canada report on Harvesting and Community Well Being among Inuit establishes the cost of staple food items in Kuujuaq at 2.4 times the cost of the same foods in Montreal¹. The Inuit of Nunavik are not subjected to the *Indian Act* and pay all federal and provincial sales and income tax at the same rate as other Canadians.

The population of Nunavik is very young. Over 75% of Nunavimut are under the age of 35 and 50% are under the age of 20 years. The percentage of children 0-5 years of age is 2.5 times higher in Nunavik than in the rest of Québec. This age group of approximately 1600 children represents 16% of the Nunavik population. The language of the Inuit is Inuktitut, and it is spoken and used by nearly all Inuit. It is a principal language of instruction in the schools from kindergarten to grade 3 and is used exclusively in the childcare centres.

An important tradition that still prevails in the Nunavik communities is the customary adoption. About one out of every five newborns in Nunavik is adopted. According to the Santé Québec Health Survey Among the Inuit of Nunavik (1992), 23% of the population over 15 years of age declared having been adopted and almost as many men as women had been adopted. 57% of the individuals over 15 years of age who were surveyed had adopted or given up for adoption at least one child.

¹ Harvesting and community well being among Inuit in the Canadian Arctic: Preliminary findings from the 2001 Aboriginal Peoples Survey- Survey of the Living Conditions in the Arctic.

2. Presentation of the Makivik Corporation and the Nunavik Regional Board of Health and Social Services

Makivik Corporation (Makivik) was created in 1978 by *An Act to Establish the Makivik Corporation* (R.S.Q., c. 18.1). Makivik is the recognized Inuit Party to the JBNQA and to the Nunavik Inuit Land Claims Agreement (NILCA). A not for profit corporation, its central mandate is the protection of the integrity of hereinabove treaties and their implementation. Makivik focuses on the political, social and economic development of the Nunavik region. The members of the Makivik Board of Directors include sixteen (16) community representatives and five (5) executive directors universally elected by the Inuit residents of Nunavik. The members of the corporation are all Nunavik Inuit beneficiaries of the JBNQA.

The Nunavik Regional Board of Health and Social Services (NRBHSS) is part of the Québec network of organizations and institutions working toward the population's health and wellbeing. Its principal partners are the Ministère de la Santé et des Services Sociaux (MSSS), the seventeen (17) other regional boards of health and social services, the region's two health centres—Inuulitsivik and Tulattavik—the community organizations, the Kativik Regional Government, the Kativik School Board and Makivik. Created in 1995 by virtue of *An Act respecting health services and social services* (R.S.Q., c. S-4.2), the NRBHSS is administered by a board of directors consisting of representatives of each of the fourteen (14) communities in the territory, as well as representatives of both health centres, the users and the regional government.

3. Customary Adoption by the Inuit of Nunavik

Customary adoption is widely practiced across Nunavik and has been well documented by scholars over the years. Recognition for purposes outside of Inuit communities was enabled, until 1994, through practical means. Baptism certificates were considered legal documents until 1994 and religious authorities would confirm customary adoption by printing the name of the adopters in the church registers.

In the early 1990s, in preparation for the changes to the Civil Code that took place in 1994, the NRBHSS and Makivik initiated a consultation process in Nunavik. In 1995, the NRBHSS adopted a resolution concerning customary adoption accepting the establishment of a procedure by which customary adoption could be recognized. In 1996, the Kativik Regional Government adopted a similar resolution, adding that each community may establish a local advisory committee on adoption to be consulted before confirming a customary adoption; in effect, no committee has ever been established. Further to the NRBHSS and KRG

resolutions, the region came to the administrative arrangement, currently in place, with the Quebec Director of Civil Status. Under this arrangement, the Director issues birth certificates replacing the lineage (filiation) of a child and indicating the names of the adoptive parents upon receipt of a duly completed form. The form requires basic information about the child and the biological and adoptive parents, and an attestation by the mayor or secretary-treasurer and landholding president that the adoption was made in accordance with Inuit customary adoption procedures and that the child is recognized and known within the community as the child of said adoptive parents.

Recent judgments have questioned the legality of such administrative arrangement. In theory, Québec law does not accommodate customary adoptions. Both the Civil Code of Québec and the Youth Protection Act have provisions at odds with the concept of Customary Adoption. We can now add that the Draft Bill to amend the Civil code and Other Legislative Provisions as regards Adoption and Parental Authority (Draft Bill), as presented, is of the same venue. The fact that recent judgments have questioned the legality of the administrative procedure installed between the Inuit of Nunavik and the Quebec Civil Status supports the need for a prompt and full recognition of the traditional practice at the corpus of provincial laws.

Yet, we cannot presume to define Inuit Customary Adoption, nor describe every rule associated with its practice in Nunavik. Some aspects of the tradition are nevertheless known and documented. The practice of customary adoption has always been prevalent, and continues to date. The circumstances leading to a decision to give a child for adoption vary. In recent years, it is often the young age of the mother that leads to the decision. In most of the cases, the adoptive parents are chosen by the biological parents and/or their families, before the child is born. The adoption usually takes place immediately upon the birth of the child. It often, but by no means always, takes place within the immediate or extended family. Arrangements are always made verbally. Furthermore, the notion of confidentiality concerning the biological parents does not exist. From a very young age (as soon as they are able to understand), traditionally adopted children know their biological parents and the latter have access to their children. The ties between the adopted children and their birth families are not severed.

In an internal report submitted in 1996 to the Ungava Social Services (Kuujjuaq), some important aspects noted were that between adopted and non-adopted children, adopted children have significantly older parents, and that there is no gender preference in adoption. It should be noted that there are many cases where the biological grandparents adopt the child, which would account for the observation that adopted children have older parents than non-adopted children. In addition, children who are adopted by their biological grandparents often live in the same home as their biological mother.

In practice and as opposed to 'legal' adoption, which takes place under the Youth Protection Act and where the adoptive family is subjected to an evaluation, Youth Protection services will currently intervene in a customary adoption only if the situation is such that the child is at serious risk within the meaning of the Youth Protection Act. Recent judgments have expressed concerns with the fact that there is no evaluation of adoptive homes in cases of Customary Adoption². The region has not yet taken a position on this issue. It must be noted, and it is an important note, that the majority of Inuit customary adoptions proceed with no difficulty or danger to the child, the concept of traditional adoption originating from a donation (*don*), and not from an abandonment (*abandon*) or negligence as per the Youth Protection Act.

Also, the current state of law does not recognize in their effects the Inuit customary adoption. Under the Civil Code of Québec, judicial recognition must be obtained prior to an adoption. In *M.Q.*, (2005) R.J.Q. 2441 (C.Q. Saint-Hyacinthe 13-01-2005) Judge Viviane Primeau states (*Unofficial English translation*):

"Without calling into question the basis for the agreements accommodating Aboriginal rights, including in particular customary adoption, we must comply with current legislation, which clearly has not been amended to take this practice into consideration. ...if the child's filiation cannot be disputed in the present context, in our view the amendment to the child's act of birth that establishes a new filiation without judicial recognition may be contested because it fails to comply with the current state of the law."

Unless it is legally recognized, Inuit Customary Adoption, a system where the best interest of the child is primordial and where parents cannot rationally be considered as abandoning their children, could be seen as contradicting subsection 38a) of the Youth Protection Act:

38. For the purposes of this Act, the security or development of a child is considered to be in danger where
(a) his parents are deceased or do not, in fact, assume responsibility for his care, maintenance or education;

In any event, and despite the current state of provincial laws, we are of the opinion that the right of Inuit to practice customary adoption is protected by section 35 of the Constitution Act of 1982. The JBNQA, a constitutionally protected treaty, further recognizes 'customary adoption' in the definitions of Section 3 (Eligibility) and Section 24 (Hunting, Fishing and Trapping)³.

² See, for example, Judge Bédard's obiter dictum *In the Matter of X*, (2006) C.Q. Abitibi 07-09-2006.

³ JBNQA Section 3.1.6 "Adoption" is the adoption of a child who has not reached the age of majority at the time of the adoption, which adoption was effected pursuant to the laws relating to adoption in any of the provinces of Canada or pursuant to the customs of the Native people in the Territory, and JBNQA Section 24.1.11 "Family" means the extended family comprising persons related or allied by blood, or by legal or customary marriage or adoption.

4. The Working Group on Customary Adoption in Aboriginal Communities

In February 2007, Makivik and the NRBHSS presented a brief to the *Working Group on the Adoption Regime in Québec* to present the customary regime of Inuit traditional adoption. Following, a *Working Group on Aboriginals Customary Adoption Regimes in Québec* has been created by the MSSS and the MJQ and on which sit representatives of the First Nations and of Inuit (Makivik and NRBHSS). The Working Group is mandated to analyze customary adoption within the Aboriginal communities of Québec, to propose the conditions, effects and means that can be put in place in the event that customary adoption practices are recognized in these communities and to recommend, if deemed appropriate, the scenarios or hypotheses seeking to recognize customary adoption within the context of the statutes of Québec.

Although the Inuit customary adoption practices are already recognized within the communities, the region committed to further define the tradition. Consequently, the leaders of the Nunavik organization have met at a Discussion Forum (October 2, 2009) to have set the parameters for the coming consultation process, to be undertaken through three (3) concurrent phases. The elders are first to be interviewed with the support of the Avataq Cultural Institute, for archiving purposes amongst other, to have defined the values of the Inuit traditional adoption that should act as requisites whenever customary adoptions are contemplated. Following, interveners from the communities' organizations and health sectors are to be questioned, while the communities are to be toured for all-inclusive discussion sessions. The intent, in carrying such assessment, is not to prove the prevalence or existence of the Inuit customary adoption, a fact not to be debated. As stated before, in practice, customary adoptions in Nunavik are recognized by Inuit communities and, to a certain extent, by the Quebec Civil Status. The issue remains recognition outside of said communities.

The intent for the conduct of the consultation is also, while ensuring a full legal recognition of the tradition and of its effects and consequences, to analyze how the region wishes to see it managed within a modern context. The region is aware of the issues, concerns and new social challenges that have arisen in recent years in the communities, as further developed at the April 2007 report of the *Commission des droits de la personne et des droits de la jeunesse du Québec*. The leaders that participated to the Forum of Discussion endeavor to improve the customary adoption system. Hence, considerations on the protection of the children are to be discussed while carrying the consultations, along with other concerns already identified by the participants, such as the age of the adoptive parents, the recovery of child by biological parents, disagreement of one adoptive or biological parent, the non-beneficiary status of the biological/adopting family member(s), etc.

Makivik and the NRBHSS remain committed in having solutions on management/supervision of the Inuit traditional adoptions found by and for Nunavik, and are confident that the Working Group will succeed in carrying its proposed mandate and objectives, and in consequence will permit the recognition of the Inuit tradition on adoption. We nevertheless consider that the work of said committee should have been integrated at the present reflection on potential changes to the general regime on Adoption.

5. Comments with respect to the Draft Bill to amend the Civil code and Other Legislative Provisions on Adoption and Parental Authority

The Inuit customary adoption has been part of the Inuit culture from time immemorial. As part of the aboriginal rights of the Inuit of Nunavik, it bears protection by the Constitution Act, 1982. It is furthermore acknowledged and recognized by a treaty, the JBNQA, which in turn is also protected by the Constitution. Yet, such a fact, existence and recognition have not been reflected at the corpus of law of the Province of Québec. The Minister of Justice now tables a Draft Bill intended to amend the Civil Code and other legislative provisions on adoption and parental authority, in an effort to modernize the state of laws in conformity with changes in the civil society.

We nevertheless consider that, before looking in the future, a society must first look in the past, and acknowledges customary laws and immemorial traditions that, in the matter of adoption, were, are and will continue to be practiced by the Inuit of Nunavik. The proposed Draft Bill may be presented as modern and unique, but the revision of the Adoption regime in the province of Québec will not be complete until aboriginal traditional adoption practices be fully recognized and incorporated at the proper provincial laws and statutes.

Presently, provisions of the Youth Protection Act and the Civil code of Québec conflict with the principles of Inuit Customary Adoption, and the Constitution Act, 1982, and JBNQA Treaty. Within the communities, the customary adoptive parents are recognized as having the same rights and obligations as biological parents and the adopted child has the same rights and obligations as the other children in the adoptive family. The intention remains that the adopted child be fully recognized as a member of the adoptive family. Therefore, customary adoptive parents in Nunavik must have, in the eye of governmental and legal bodies, the same rights and obligations as parents who have undergone the legal adoption process.

The Draft Bill introduces new forms of adoption, while referring to open adoption concepts, and for adoption in which the bond of filiation with the original parents is not dissolved. Although some may be tempted to assimilate such concepts with the Inuit traditional adoption, the notions are not the same in essence and have to be differentiated. The Inuit customary adoption exists on its own, and assimilating such to foreign concepts developed at current provisions on adoption (Civil Code and Youth Protection Act) or at future provisions on said matter (Draft Bill) is to deny its distinctive essence and privileged protection.

6. CONCLUSIONS

Considering that the practice of customary adoption by the Inuit of Nunavik is constitutionally protected in its existence and effects, but has yet to be reflected under provincial legislative provisions;

Considering that a Working Group on Customary Adoption in Aboriginal Communities was mandated by the Minister of Justice, the Minister of Health and Social Services and by various Nations of Québec to circumscribe further the concept of aboriginal traditional adoption;

Considering that, within the mandate of said Working Group or else, the priority of the Nunavik region is to see the Inuit Customary Adoption practice fully recognized in its existence and effects by the various instances, governments, courts and civil status departments;

We are of the opinion that the present revision of the adoption regime in the Province of Québec should have been inclusive of the Customary Adoption practice of the Inuit of Nunavik and, subsidiary, of the work of the Working Group on Customary Adoption in Aboriginal Communities.

No revision of the proposed Draft Bill is hence to be offered, to the exception that said Draft Bill is, throughout its revision and possible enactment, without prejudice to the customs on adoption, aboriginal rights and other treaty rights held by the Inuit of Nunavik.

Finally, we hoped that the present document will assist the Committee on Institutions and the Minister of Justice in developing a greater understanding of Inuit customary adoption and the need to ensure its recognition.
