



SPECIAL COMMISSION ON THE RIGHTS OF THE CHILD AND YOUTH PROTECTION

The system is “broken”: concrete actions are needed to end systemic discrimination

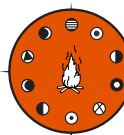
JOINT BRIEF PRESENTED BY

THE ASSEMBLY OF FIRST NATIONS QUEBEC-LABRADOR (AFNQL)

AND

THE FIRST NATIONS OF QUEBEC AND LABRADOR HEALTH AND SOCIAL SERVICES COMMISSION (FNQLHSSC)

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Assembly of First Nations
Quebec-Labrador



FIRST NATIONS OF QUEBEC
AND LABRADOR HEALTH
AND SOCIAL SERVICES
COMMISSION



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Preamble

Many articles of the *United Nations Declaration on the Rights of Indigenous Peoples* affirm the rights of our children, families and peoples in connection with their cultures, languages, values, ceremonies, territories and modes of governance. The First Nations have never ceded to the government the right to decide the future and education of their children. Current systems have been imposed on them and the consequences of a “broken” system are unfortunately too numerous.

The context in which we are tabling this brief is tinged with the instability of the political relationship with the Government of Quebec since the latter opposed, by way of a reference to the Court of Appeal of Quebec, *An Act respecting First Nations, Inuit and Métis children, youth and families*, a federal law recognizing the inherent right of First Nations to pass laws and reach agreements with the provinces in certain fields of activity. By asking the Court of Appeal of Quebec to rule on the constitutionality of this law, the Government of Quebec considers that it constitutes an appropriation of the exclusive jurisdiction of the provinces in matters of social services and youth protection.

The Government of Quebec has also refused to participate in the working group created by the Government of Canada on the forced sterilization of Indigenous women. This refusal to discuss with stakeholders of the health networks of other provinces and territories perpetuates a colonial attitude, while ignoring the fundamental issues that have had major consequences on the health of our women and the survival of our peoples.

Most recently, the same government has shown a great lack of sensitivity towards the families and relatives of missing children in Quebec health institutions (whether public, private or religious) in trying to avoid passing a separate law to correct mistakes and make amends to the children and families concerned.

In closing, we would like to express loud and clear that our collaboration with the Government of Quebec will be carried out as a First Nations government, as part of a relationship based on equality, without ever renouncing our areas of jurisdiction and for which we will continue to exercise our right to self-determination and self-government.





Introduction

On May 30, 2019, the Government of Quebec created by decree the Special Commission on the Rights of the Child and Youth Protection (hereinafter “the Commission”). Its mandate is “to investigate youth protection safeguards, in the various response networks concerned, in order to identify issues and obstacles and formulate recommendations on improvements to be made.”¹

This brief presents the joint point of view of the Assembly of First Nations Quebec-Labrador (AFNQL) and the First Nations of Quebec and Labrador Health and Social Services Commission (FNQLHSSC). These two organizations have advocated together for a long time for child and family services in Quebec to be exercised so as to respect the rights and culture of children and families and so that they can ultimately fall under the authority of First Nations.

This brief concisely presents our organizations and explains the institutional and legislative context in which child and family services for First Nations in Quebec evolve. It also sets out the limits of the Quebec legal framework and proposes legislative and administrative improvements which result from numerous steps taken with the Government of Quebec, as well as findings that stem from the work carried out as part of various consultation processes and commissions of inquiry.

It also presents the unprecedented advances in recent federal legislation, *An Act respecting First Nations, Inuit and Métis children, youth and families*² (hereinafter “Bill C-92”), which explicitly recognizes the inherent self-government rights of First Nations as recognized and confirmed by section 35 of the *Constitution Act, 1982* including jurisdiction over child and family services,³ which includes the power to legislate to design, organize and implement their own services. In addition to contributing to the implementation of the *United Nations Declaration on the Rights of Indigenous Peoples*, this law constitutes a major step forward in terms of recognizing the right to self-determination of Indigenous peoples, while establishing national principles for all youth protection organizations, which they must apply and comply with.

1 See the website of the Special Commission on the Rights of the Child and Youth Protection.

2 S.C. 2019, c. 24.

3 Bill C-92, subsections 8 a) and 18 (1).

1. DESCRIPTION OF THE ORGANIZATIONS

1.1 ASSEMBLY OF FIRST NATIONS QUEBEC-LABRADOR (AFNQL)

Created in May 1985, the AFNQL unites the Chiefs of the 43 First Nations communities in Quebec and Labrador through periodic meetings. It organizes four Chiefs assemblies per year, during which it receives its political mandates.

MISSION AND OBJECTIVES:

- Affirmation and respect of the rights of the First Nations.
- Recognition of First Nations governments.
- Greater financial autonomy for First Nations governments.
- Development and training of the First Nations public administration.
- Coordination of the First Nations position-taking mechanism.
- Representation of their positions and interests before various forums.
- Definition of action strategies to advance common positions.
- Recognition of First Nations cultures and languages.

1.2 FIRST NATIONS OF QUEBEC AND LABRADOR HEALTH AND SOCIAL SERVICES COMMISSION (FNQLHSSC)

The FNQLHSSC is a non-profit association responsible for supporting the efforts of First Nations in Quebec to, among other things, plan and offer culturally appropriate and preventive health and social services programs.

Its mission is to accompany Quebec First Nations in achieving their health, wellness, culture and self-determination goals.



2. CURRENT CHILD AND FAMILY SERVICES CONTEXT

The following is a description of the organization of First Nations child and family services in Quebec:

Fifteen First Nations child and family services agencies provide youth protection services to 19 First Nations communities, through provincial delegation agreements and funding agreements reached with Indigenous Services Canada (ISC) and three provincial institutions (CISSS/CIUSSS), which provide youth protection services that serve eight communities.

A total of 27 First Nations communities offer prevention services to their populations through funding agreements with ISC.

Most of the communities served by the three provincial institutions (CISSS/CIUSSS) are in talks with ISC and Quebec in order to take over and deliver these youth protection services through provincial delegation agreements and funding agreements reached with ISC as part of the First Nations Child and Family Services (FNCFS) Program.⁴

In Quebec, with the exception of the communities covered by an agreement,⁵ the funding invested by the federal government in child and family services for 2018-2019 is in the range of \$100 million to \$104 million, with half of this amount being spent on child placements.

2.1 DATA CONCERNING INDIGENOUS CHILDREN IN CHILD PROTECTION

The forced implementation of provincial child protection services in the communities (under colonial policies) has only exacerbated socio-economic problems and perpetuated the loss of identity. According to several studies, Indigenous children are overrepresented at all stages of the youth protection intervention process. The most recent work on the subject indicates that this overrepresentation begins at the assessment stage of the child's situation where, for every 1,000 children, the rate of First Nations children is 4.4 times higher than the rate of non-Indigenous children. This disparity is accentuated throughout the process at the placement stage (rate 7.9 times higher) and in terms of recurrence (reopening of the child's file after it is closed since the child's safety or development is deemed to be compromised) (rate 9.4 times higher). Neglect and risk of neglect are the main causes of entry into the youth protection system.⁶

The overrepresentation of Indigenous children in youth protection is associated with risk factors existing in the child's living environment and family characterized by, among other things, overcrowding, poverty, violence and addiction. It is largely due to the unfavourable socio-economic conditions inherited from the colonial system which underfunds public and residential infrastructure as well as public services in the community, thus marginalizing the populations who reside there.⁷ Indeed, Bill C-92 mentions that a child can no longer be taken into care solely for socio-economic reasons.

It is important for communities to be able to develop child and family services, including child protection services, which take into account Indigenous realities and are based on First Nations culture.⁸ First Nations children are overrepresented in youth protection, and it is clear that the *Youth Protection Act* (hereinafter "YPA")⁹ reinforces this trend, since it takes little account of realities, cultures, values and certain concepts, including those relating to family.

4 See appendix, FNQLHSSC, 2020. *Table of youth protection agreement types with delegated responsibilities to First Nations communities in Quebec.*

5 Meaning the Cree and Inuit signatories to the *James Bay and Northern Quebec Agreement of 1975* (JBNQA) and the Naskapi signatories to the *Northeastern Quebec Agreement of 1978*.

6 AFNQL and FNQLHSSC (2016). *Culture: The Key to First Nations Wellness*. Brief submitted jointly by the Assembly of First Nations Quebec-Labrador (AFNQL) and the First Nations of Quebec and Labrador Health and Social Services Commission (FNQLHSSC) to the National Assembly of Québec as part of the consultations on Bill 99: An Act to amend the Youth Protection Act and other provisions, p. 4.

7 Data from the 2015 Regional Health Survey indicates that one-third of adults (33%) reported living in a household with incomes of less than \$20,000 in the year preceding the survey. Also, almost a quarter of children and one in ten adults live in overcrowded housing. (Overcrowded housing has more people than rooms according to CMHC, 2016). As for their condition, more than one in five adults reported living in housing requiring major repairs (work to repair plumbing or electrical wiring, or structural work to repair walls, floors or ceilings according to CMHC, 2015). Source: FNQLHSSC, Quebec First Nations Regional Health Survey, 2015, Wendake, 2018.

8 FNQLHSSC (2017). *Another Step Toward Self-Determination and Upholding the Rights of First Nations Children and Families. Consultation Process for the Reform of the First Nations Child and Family Services (FNCFS) Program*, p. 10.

9 CQLR, c. P-34.1.

3. QUEBEC'S YOUTH PROTECTION ACT: CONTEXT AND RELATIONS WITH FIRST NATIONS

In reports published by First Nations and the Report of the Royal Commission on Aboriginal Peoples,¹⁰ First Nations social services jurisdiction is considered a key element of self-government and self-determination. Yet, this important element has been overlooked in the Quebec youth protection system, which has retained its universal mode of application.

3.1 MAXIMUM PERIODS OF FOSTER CARE

In 2006, an amendment to the YPA¹¹ initiated, among other things, the maximum periods of placement in an alternative environment. A time limit is prescribed within which the decision whether or not to return the child to their family environment must be made. After this period, if the child's safety and development are still compromised and their return to the family environment is not possible, the court must make a decision to impose on the child a stable and permanent living environment.

The AFNQL and the FNQLHSSC have raised the possible consequences of the introduction of maximum periods of foster care in alternative environments and strongly denounced this provision insofar as these maximum periods were likely to result in the placement of First Nations children outside their communities and the "breaking of ties between the child and his family, which [could] represent a disastrous social, cultural, and linguistic break."¹² In 2007, this risk was deemed even greater since the First Nations lacked sufficient financial and human resources, on one hand, to implement adequate preventive social services to support families in difficulty in responding to children's needs within the prescribed periods¹³ and, on the other, find enough foster families in the community to avert the placement of children in non-Indigenous families in cases where the alternative life plan becomes necessary.¹⁴ Despite these concerns, the Government of Quebec has gone ahead with the addition of this provision to the YPA. Years later, the Public Inquiry Commission on relations between Indigenous Peoples and certain public services in Québec: Listening, reconciliation and progress (hereinafter "Viens Commission") recommended in 2019 what the AFNQL and the FNQLHSSC had already recommended in 2007, that there be an exemption for First Nations regarding the maximum periods of foster care.

It must also be emphasized that the youth protection system served as the main gateway to social services for children and families living in the communities, preventive services having only appeared since 2009. This can greatly influence access to services and the intensity of care.

Since 2007, the data confirms the concerns raised: more and more First Nations children are placed outside their family environments; financial, material and human resources continue to be insufficient; and First Nations families are not necessarily receiving all the services they need.

Although continuity of care and stable ties for a child are essential and constitute the objectives underlying the maximum periods of foster care, the need to avoid cultural disruption for First Nations children is very clear and also constitutes a fundamental element to consider in the analysis of their interests.¹⁵ Despite the importance of preserving cultural identity and the duration of the healing process for parents or guardians who have experienced multiple traumas that may prove to be longer (while some services are not easily accessible), all of these elements should be considered to explain the First Nations exemption from the maximum periods provided for in the YPA, as recommended in call to action 108 of the Viens Commission report.¹⁶ It was the attachment theory that led the legislator to add the maximum periods of foster care in the YPA.¹⁷

10 AFNQL and FNQLHSSC (2019). Brief by the AFNQL and the FNQLHSSC: Bill C-92, *An Act respecting First Nations, Inuit and Métis children youth and families*. Submitted to the Standing Committee on Indigenous and Northern Affairs and the Senate of Canada, p. 4.

11 S.Q. 2006, c. 34.

12 AFNQL and FNQLHSSC (2006). Brief of the AFNQL and the FNQLHSSC: *Highlights and recommendations*. Submitted to the National Assembly of Québec as a supplement to the brief tabled for Bill 125, p. 5.

13 *Ibid.*

14 Commission des droits de la personne et des droits de la jeunesse (2005). Mémoire à la Commission des affaires sociales de l'Assemblée nationale – projet de loi n° 125.

15 AFNQL and FNQLHSSC (2016), note 8, p. 14.

16 AFNQL and FNQLHSSC (2016), note 6, p. 14.

17 Government of Quebec, Public Inquiry Commission on relations between Indigenous Peoples and certain public services in Québec: listening, reconciliation and progress, Final report, 2019, p. 436. (Viens Commission).

The principle of the attachment theory is that a child needs, for normal social and emotional development, to develop an attachment relationship with at least one person who takes care of them in a consistent and ongoing manner.¹⁸ Moreover, as expressed by Mr. Sébastien Grammond, judge at the Federal Court, the attachment theory is not appropriate in an Indigenous environment,¹⁹ in that:

“Attachment theory has not necessarily been tested with Indigenous children. It was, I believe, primarily developed in the United States and the question should be asked whether it truly applies in a society where the extended family plays such an important role. Is it really harmful to the child [...] at a certain point in its childhood to move from its parents’ home to the home of its uncle or aunt, or its grandmother’s home? Sometimes, all these individuals are living under the same roof, due to the housing crisis. In a society where the extended family has a great deal of influence, one might question the validity of attachment theory.”²⁰

As one study on the impacts of the YPA indicates, half of parents don’t realize they have a certain amount of time to make changes in their lives. The deadlines seem unrealistic to them in terms of being able to make the changes necessary for the return of the children. The parents feel that they are committed to the change but perceive that the Director of Youth Protection and the judges do not recognize the progress made.²¹ Especially since for Indigenous parents who have experienced trauma, the healing process can be longer. It is about recognizing and applying the principle of substantive equality, a principle recognized under Bill C-92. As Mr. Grammond mentioned during the Viens Commission: “It is not enough to treat all individuals equally; we also have to ask whether applying a single rule has discriminatory effects.”

3.2 INTERVENTION TOOLS

The interveners rely on several tools to make decisions and apply them. As the Viens Commission report confirmed, no tool used by the institutions is culturally adapted to the realities of the First Nations.²² Also, several communities have developed their own tools or modified certain Western tools to better reflect Indigenous realities. Many communities use the medicine wheel as a tool. The institutions should use it as a source of inspiration. For example, since section 3 of the YPA on the best interests of the child has been amended to consider the preservation of cultural identity, a community in the North Shore region modified its intervention plan to include this aspect. Unfortunately, we doubt that this was widespread throughout the province. Moreover, the intervention plans do not take into account the social, economic, cultural and political determinants of the First Nations. When caregivers make decisions that do not consider the social determinants of First Nations, this can reduce their ability to make fair and informed judgments regarding families and their situations.²³ Therefore, we recommend that the tools used by interveners be modified to take into account Indigenous realities, in collaboration with First Nations.

3.3 CRITERIA FOR BECOMING A FOSTER FAMILY

The general criteria determined by the Minister for becoming a foster family should be made more flexible, since many families fail to comply with the requested criteria, including those relating to indoor and outdoor arrangements, bedrooms and the healthy and safety of the environment, “which can result in children being placed off-reserve. These children are thus at risk of losing their ties to their family, their community, their language and their culture.”²⁴ There are possible exemptions, but these are not well known by the interveners in the environments concerned.

In addition, certain criteria such as the criterion on the criminal record in connection with the function are very subjective and do not target only the applicant, but also the people who reside in their environment. Only a criminal record which could affect the skills required and the conduct necessary to perform the resource function should be considered.²⁵ Furthermore, considering that this wording leaves it completely to the interveners to decide what has an impact on aptitude and conduct, its application is very uneven. Some may decide that a particular history has an impact on the resource’s ability to perform the function, while this same history, for another family or in another region, may not have an impact on the resource’s ability to perform the function.

18 <http://dictionnaire.sensagent.leparisien.fr/Théorie%20de%20l'attachement/fr-fr/>.

19 Viens Commission. p. 436.

20 *Ibid.*

21 Drapeau, S. et al. *supra* note 46 on p. 41.

22 Viens Commission, note 17, p. 447.

23 *Ibid.*, p. 448.

24 FNQLHSSC. Final report. *Consultation Process for the Reform of the First Nations Child and Family Services (FNCFs) Program*, 2017, p. 36., p. 55.

25 Support document for the IR-FTR framework, p. 10.

3.4 CARE CONSIDERING TRADITIONAL HEALING

We also recommend that the YPA be amended to reflect the calls to action 109 and 125 of the Viens Commission by amending the YPA to include a provision for care consistent with Indigenous traditions inspired by Ontario's *Child, Youth and Family Services Act, 2017*.²⁶ Such a provision would recognize that the development and/or safety of the child is a collective responsibility, which is not recognized within the meaning of the YPA. Moreover, when members of the same family want to intervene to resolve the situation of compromise, they are faced with the confidentiality rules provided for under the YPA and they are therefore not informed of the situation. Bill C-92 recognizes, in its section 10 concerning the interests of the child, the importance for the child to receive care, including care provided in accordance with the customs or traditions of their community. Although several studies have demonstrated their effectiveness, cultural resources and therapies are not recognized by the Court of Quebec (Youth Division) and the Direction de la protection de la jeunesse as valid solutions to put an end to the situation of compromise.²⁷

3.5 INDIGENOUS CUSTOMARY ADOPTION AND TUTORSHIP

The effects of Indigenous customary adoption and tutorship have been recognized since 2018 and these can now constitute permanent life plans for Indigenous children. However, the communities cannot remunerate adopters or guardians due to the wording of a section of the YPA which reads as follows:

71.3.3. Financial assistance may, in the cases and on the terms and conditions prescribed by regulation, be granted by an institution operating a child and youth protection centre to facilitate Aboriginal customary tutorship to or adoption of a child whose situation is taken in charge by the director of youth protection.

This section was added to Bill 113²⁸ at the last minute, without the First Nations and Inuit being consulted. Indeed, only an institution can grant financial assistance for customary adoption and tutorship. A First Nations Child and Family Services (hereafter, "FNCFS") agency is not considered an institution within the meaning of the *Act respecting health services and social services*,²⁹ which prevents the FNCFS agency from being able to remunerate guardians or adopters in their community, thereby reducing their autonomy. And yet, they are already paying their foster families. In addition, it is curious that the province prevents the agencies from remunerating their members, when the funding comes from the federal government.

This comment had already been made when the draft financial assistance regulation to promote the adoption and tutorship of children was submitted to the Gazette officielle, but it was not taken into account. We recommend modifying the wording of section 71.3.3 of the YPA to allow an agency to remunerate their guardians and adopters.

3.6 PROJET INTÉGRATION JEUNESSE³⁰

Technical, political, administrative and legal barriers remain and currently prevent optimal access to certain provincial information management systems, including the Projet intégration jeunesse (PIJ). The majority of communities that use French in addition to their traditional language as languages of use that offer youth protection services have access to this system. However, they cannot use it optimally, especially for clinical supervision, since the system accesses used by the managers and supervisors in the provincial network are not available to them. With a view to offering holistic services, the participants in the dialogue sessions mentioned that an information system combining first-line data with youth protection data would ensure a fluid continuum of services that would better respond to the First Nations' vision of social services. The obstacles posed by the provincial and federal governments in this regard place First Nations communities in a hazardous position regarding the right to receive adequate services within the meaning of the YPA and the *Act respecting health services and social services*.³¹ To ensure better accountability and analysis of the situation, it will be useful for the interveners to ask families whether they are Indigenous. This would make it possible to analyze whether the changes to the YPA are successful in that there are fewer children reported and assessed.

We recommend allocating the resources necessary for the creation of a bilingual information management system, designed by and for First Nations, which integrates data relating to the clientele of the first-line services and second-line services. This system could also be used by communities that are interested in developing and implementing their own laws, regulations and policies under Bill C-92. They would then be able to reach an agreement with the provincial government when required.

26 *Child, Youth and Family Services Act, 2017*, S.O. 2017, c. 14, Sched. 1.

27 Viens Commission, p. 470.

28 *An Act to amend the Civil Code and other legislative provisions as regards adoption and the disclosure of information* (S.Q. 2017, c. 12).

29 CQLR c S-4.2.

30 FNQLHSSC, note 25, p. 36.

31 *Act respecting Health Services and Social Services* (chapter S-4.2).

3.7 RELATIVE FLEXIBILITY OF THE QUEBEC LEGISLATIVE FRAMEWORK TOWARDS THE NEEDS EXPRESSED BY THE FIRST NATIONS

The First Nations have invested a lot of effort and shown determination in order to have their culture and their desire for autonomy taken into account in Quebec laws that affect them, as is the case with the YPA. Note that there is currently no real recognition of the right to autonomy of the First Nations by the Government of Quebec, but rather, an awareness and a greater sensitivity to the cultural realities of the First Nations.³²

The Government of Quebec has gradually amended several laws to try to adapt the YPA to the First Nations and Inuit context. Among the adopted legislation are the *Act to amend the Youth Protection Act and other provisions*,³³ and *An Act to amend the Civil Code and other legislative provisions as regards adoption and the disclosure of information*.³⁴ Despite these numerous changes, Bill C-92 goes much further and gives communities more autonomy. In addition, the YPA will have to be amended to incorporate the principles of Bill C-92.

The YPA now allows for preserving the cultural identity of First Nations children and fostering community involvement by providing for the participation of a representative of the Indigenous community in the legal process. In particular, it insists on the importance of culture and the preservation of ancestral customs and traditions, as well as on the willingness of First Nations organizations offering child and family services to participate in all stages of the provision of these services. Certain provisions of the law are the result of long and laborious collaboration with the First Nations within various working groups.

The *Civil Code of Québec*³⁵ now officially recognizes the effects of customary adoption and customary tutorship in the provincial system.³⁶ Each community or nation may appoint a competent authority to recognize the Indigenous customary adoption or tutorship. The competent authority must check whether the customary tutorships and adoptions comply with the established conditions and is responsible for sending the various forms required. There is therefore no need to go to court. It took more than 10 years of work with the Government of Quebec for the bill to be drafted and adopted.

In Quebec, the provincial government has always considered that the YPA is the only acceptable tool available to First Nations to guarantee the safety and development of a child considered to be compromised. Many changes have been made to the YPA to facilitate the delegation of a greater number of exclusive powers from the provincial Director of Youth Protection to First Nations child and family services agencies (section 37.6 and 37.7 of the YPA). These amendments were finally made at the request of First Nations through fiercely negotiated agreements involving a long and difficult process.

For example, the YPA now includes a provision authorizing that agreements be reached with the Government of Quebec for the establishment of a special youth protection system managed by an Indigenous nation or group for any Indigenous child whose safety or development is or can be considered compromised within the meaning of this law. This system allows communities to take over all or part of the youth protection services and to establish methods of application that are different from the YPA and better suited to the cultural context of Indigenous communities (37.5 guidelines).³⁷

It is important to mention that since this section was added in 2001, only one First Nation tribal council acting on behalf of two communities has been able to reach an agreement for the creation of a special youth protection system with the provincial government.³⁸ In addition, the 37.5 agreement must respect the general principles and rights of children found in the YPA. Therefore, although the 37.5 agreement is a step forward, it does not allow for full autonomy, as is the case under Bill C-92, since it allows communities to develop their own policies. Provincial delegation agreements under 37.6 and 37.7 are only seen as a transitional measure towards the full exercise of First Nations jurisdiction, including the eventual adoption of their own laws in matters of child and family services. The fact remains that the exercise of these responsibilities is granted on a discretionary basis by the Director of Youth Protection, who sometimes denies agencies from being able to exercise one or more responsibilities without any justification.

32 The right to self-government of Indigenous people was recognized by the Government of Quebec on February 9, 1983 by the adoption of 15 principles relating to the recognition of the Indigenous nations and the need to establish harmonious relations with them. Unfortunately, that did not lead to concrete and meaningful gains.

33 S.Q. 2017 chap. 18.

34 S.Q. 2017 chap. 12.

35 CQLR c CCQ-1991.

36 *Reference Guide. Appointing a Competent Authority for Customary Adoption and Tutorship in First Nations Communities/Nations* (p. 3): http://cssspnql.com/docs/default-source/services-sociaux/reference-guide---customary-adoption-and-tutorship_v3.pdf?sfvrsn=0.

37 Guidelines for establishing a special youth protection program for Native people, MSSS, 2016, p. 1.

38 Although this council has been campaigning and working for a system under section 37.5 since it was added to the YPA, the agreement was not reached until January 29, 2018.

While the changes made by Quebec to its bills represent a certain amount of progress, additional measures will have to be implemented to ensure that the interests and rights of First Nations are respected in the YPA. The importance of preserving cultural identity for the exemption of First Nations from maximum periods of foster care must be taken into account by considering, on the one hand, the intergenerational trauma suffered by the First Nations and, on the other hand, the fact that quality services are often less accessible for them. First Nations governments that do not yet wish to adopt their own laws and who wish to remain within the framework imposed by the YPA will then be able to benefit from the improvements made to it.

The National Inquiry into Missing and Murdered Indigenous Women and Girls (NIMMIWG) revealed that many Indigenous children were reported missing after being removed or that they died while in the care of private or public health institutions in Quebec between 1950 and 1970. It turns out that these institutions worked to deliberately hide the fates of these children from their families. As for the Government of Quebec, in terms of responding to call for justice No. 20 of the NIMMIWG, it preferred to ignore its responsibility for the tragedy experienced by the families of missing or deceased children by avoiding, until now, to adopt a specific law to this effect. It instead chose to urgently incorporate a few provisions into a bill without any connection to the matter and without taking the time to hear and consult with the families concerned. This insensitive approach obviously does not suit these families, who have the right to experience their sorrow with honour and dignity. The Government of Quebec has the duty to table as soon as possible a separate bill to this effect and to invite families and their representatives to express their opinions on its contents.

4. POSITION AND CHANGES EXPECTED FROM THE GOVERNMENT OF QUEBEC WITH REGARD TO AN ACT RESPECTING FIRST NATIONS, INUIT AND METIS CHILDREN, YOUTH AND FAMILIES:³⁹

The AFNQL has long advocated for child and family services to fall under the jurisdiction of First Nations.

For more than 30 years now, the particularities of the realities of the First Nations have been repeatedly emphasized in reports from various studies and consultations. In Quebec, the First Nations participated in several of these, starting with the Jasmin report of 1992 entitled **La protection de la jeunesse... plus qu'une loi (youth protection... more than a law)**,⁴⁰ which is an evaluation of the application of the YPA, 12 years after it came into force. This first report recalled that "the heart of the social system is the family triad, the first cell which surrounds and protects the child. This cell is attached to the extended family, the community, the day care center, the school, the places of recreation and the culture" [unofficial translation].⁴¹ In 1998, the *Telling it like it is* report was published,⁴² which aimed to study the recommendations of the Jasmin report, conduct extensive consultations with First Nations in Quebec and produce an action plan intended for the authorities of the First Nations and public authorities. During these consultations, it was recommended that "the provincial and federal governments recognize the jurisdiction and competence of the

Councils to manage and control their own social services and develop their own systems for assistance to and protection of children and youth. These services are at the heart of the areas of competence of autonomous Aboriginal governments."⁴³

As for the report of the Truth and Reconciliation Commission (TRC), it recommended to the federal government, according to call to action number 4:

"[...] We call upon the federal government to enact Aboriginal child-welfare legislation that establishes national standards for Aboriginal child apprehension and custody cases and includes principles that affirm the right of Aboriginal governments to establish and maintain their own child-welfare agencies [...]"⁴⁴

39 S.C. 2019, c. 24.

40 Government of Quebec. Ministère de la Santé et des Services sociaux and ministère de la Justice (January 2012). Rapport du groupe de travail sur l'évaluation de la Loi sur la protection de la jeunesse, *La protection de la jeunesse... plus qu'une loi*.

41 *Ibid.*, p. 7.

42 FNQLHSSC (January 1998). *Telling it like it is*. Consultation on the Contents and Application of the *Youth Protection and Young Offenders Acts* in Communities of the First Nations – Report and recommendations, Wendake.

43 *Ibid.*, p. 140.

44 TRC (2012). Truth and Reconciliation Commission of Canada: Calls to Action. Winnipeg, 13 pages, see recommendation 4 (i).

We also find in the report of the Viens Commission this same observation:

“it is necessary and urgent to reduce the control exercised by government officials. I believe that, by continuing to impose or develop policies that ignore the will of Indigenous people, the government is helping to keep communities fragile and merely delaying an internal transformation that is already well under way.”⁴⁵

The AFNQL considers that Law C-92 recognizes the jurisdiction of First Nations in matters of child and family services and that it constitutes a great step forward for them. This law recognizes their inherent legislative jurisdiction and clearly encourages the Government of Quebec to accentuate the scope of the ongoing discussions on this jurisdiction, whether they are in their early stages or in the process of being realized. The coordination agreements proposed in the federal law between the Indigenous governing bodies and the provincial government constitute, in a manner of speaking, their logical extension. This law, which came into force on January 1, 2020, confirms the jurisdiction of our political authorities in matters of child and family services, and it allows a community or a group of communities to promulgate its law in matters of child and family services, regardless of where the children and families reside.

It should be noted that Bill C-92 recognizes principles that apply across Canada in terms of Indigenous youth protection. These principles, which are found in sections 9 to 17, must henceforth be respected by all interveners in the youth protection sector in Quebec. Bill C-92 recognizes, among other things, in section 10, a much more comprehensive and culturally focused definition of the best interests of the child than what is found in section 3 of the YPA. Contrary to the framework established by the YPA, the federal law provides that a child should not be taken into care solely because of their socio-economic condition for reasons such as poverty or lack of housing or suitable infrastructure. Bill C-92 focuses more on preventive care, since these services take precedence over other services. Youth protection must no longer be seen as the first gateway to obtaining services. The AFNQL believes that the provisions of this law and its principles on the best interests of the child, cultural continuity and the placement of First Nations children must be integrated into the work already initiated with Quebec. The AFNQL will ensure their implementation until each First Nations political body can apply and enforce the laws adopted under its legislative authority.


Furthermore, the AFNQL sees in Bill C-92 an opportunity to tackle issues related to provincial borders. The First Nations are not responsible for the divisions between Nations created by Canadian federalism, which is a source of great dissatisfaction among First Nations and provincial youth protection organizations with regard to intergovernmental issues. Provincial border issues are also a source of dissatisfaction between Nations and government agencies regarding customary adoption. This law will finally allow the Indigenous governing bodies to reach cooperation agreements between them concerning their respective territories with regard to these issues. **The AFNQL intends to organize meetings with the Chiefs of the First Nations and its regional organizations to develop transition plans that will finally resolve these issues.**

Since the entry into force of the federal law and despite the reference to the Court of Appeal of Quebec on December 18, 2019, any community that wants to exercise its legislative jurisdiction in this matter can do so by sending a notice to this end to the other two levels of government while asking to reach a coordination agreement with them on certain matters. A coordination agreement defines how the federal and provincial governments support the implementation of Indigenous laws.⁴⁶ Such an agreement would make it possible to avoid a significant number of obstacles by establishing joint mechanisms aiming to provide the necessary support to First Nations children through the provision of services and funding and effectively exercising their rights. If the province does not show itself willing to reach a coordination agreement with the Indigenous governing bodies twelve months after the submission of their notice, the legislative texts they have adopted will nevertheless have the force of law to the same extent as a Canadian law, as provided for in subsection 20(3) of the federal law (unless the work on the coordination agreement is extended). The Indigenous law will then take precedence over the contrary provisions of a provincial law such as the YPA.

Clearly, it would be in everyone's best interest for the different jurisdictions to agree on how they will interact and collaborate, particularly with regard to the provision of emergency services. It is important for the provincial government to recognize First Nations jurisdiction over child and family services to allow communities to discuss a significant number of issues. It is important to keep in mind that the federal transfers to the provinces of the health and social services intended for the population include a portion for the provision of services to First Nations that are comparable to those of the general population. It would be unacceptable for the rights of a child to not be respected for reasons of jurisdictional conflict between the federal government and the province.

⁴⁵ Viens Commission, p. 89.

⁴⁶ Options for a First Nation to enact and enforce its laws, AFN.



In order to facilitate the application of Bill C-92 in Quebec, the Chiefs of the AFNQL supported the creation of a tripartite committee of experts whose mandate will be to provide advice and guidance to the communities. The provincial and federal governments are invited to join this committee, which will more specifically have the mandate to:

- Issue professional and technical opinions and advice on the development of coordination agreements and their implementation;
- Identify the common concerns of the communities and organizations;
- Ensure fluid communication with the various stakeholders: First Nations communities and organizations, the provincial government and the federal government;
- Discuss the financial arrangements required for the effective exercise of legislative authority and the take-over and delivery of child and family services;
- Identify and clarify the roles, responsibilities and accountability of all stakeholders: First Nations communities and organizations, the federal government, the provincial government, etc.

Given the repeated failures of Quebec's youth protection system towards Indigenous children and families, we are convinced that by implementing the framework provided for in Bill C-92, First Nations children and families will be better supported while benefitting from quality services in line with their needs, cultures and values.



UNITED NATIONS DECLARATION ON THE RIGHT OF INDIGENOUS PEOPLES (UNDRIP)

The current context in which Quebec society finds itself constitutes an opportunity to formalize its full support for the principles of the Declaration, as recommended by the NIMMIWG and the Viens Commission in their reports. In addition, Bill C-92 draws on the UNDRIP and other reports such as the TRC's. According to a note from the AFNQL on April 3, 2018, the UNDRIP is the most comprehensive international instrument on the fundamental rights and freedoms of Indigenous peoples (in terms of culture, identity, religion, language, territory, health, education, cooperation, etc.).

A motion was adopted by all Quebec parliamentarians on October 8, 2019 regarding the implementation of this Declaration, but no concrete action has yet been taken.

See the TRC's call to action no. 43, call for justice no. 19 of the NIMMIWG and call to action no. 3 of the Viens Commission.

5. CONCLUSION

The event that led to this Special Commission raised many concerns about the shortcomings of Quebec's youth protection system and the measures to support vulnerable families. The testimonies that have been heard and the documents filed demonstrate the existence of many failures. It is to be hoped that the reflection initiated on these services and the YPA which governs them will make it possible to carry out an in-depth overhaul of this law and the system which has been put in place.

For First Nations, the systemic nature of the deficiencies in Quebec's youth protection services is no surprise. Their children and families have always been faced with this system that is based on principles and values that are said to be universal and are therefore imposed on everyone without exception, regardless of cultural differences. It is an ethnocentric, demagogic, bureaucratic and inflexible system, which unfortunately suffers from outdated ideas and lack of adaptability to new realities, especially when it comes to questioning its own practices. Through its ethnocentric approach, Quebec's youth protection system is designed to meet the needs of the Quebec population in general, regardless of the cultural and socioeconomic realities that exist in the First Nations communities or their unique jurisdictional situation. Due to its blindness, this system is responsible for having displaced, both temporarily and permanently, a large number of First Nations children far from their families, outside their communities and in non-Indigenous foster homes where their well-being and development have been, and continue to be, profoundly devastated by an assimilating culture with values that are different from those of their environment of origin and their roots.

This illustrates the perpetual struggle that the First Nations are faced with in trying to convince the government and the public services of Quebec that they must change their ways of doing things by working in a spirit of collaboration.

All of these factors reinforce the desire of the First Nations to exercise their inherent rights to self-determination as recognized in the *Constitution Act, 1982*⁴⁷ and more recently in Bill C-92. They are reaching a turning point in their history which offers them the opportunity to exercise their right to self-determination in an area which is at the heart of their concerns. It is up to them to make this decision when they deem it appropriate.

The Government of Quebec is invited to take note of the wishes of the First Nations and to support them in their approach towards autonomy. The Government of Quebec must also stop challenging the constitutionality of Bill C-92 and accept in good faith to work jointly with the Chiefs to negotiate the necessary coordination agreements aimed at defining measures to support the application of the Indigenous laws. Where appropriate, the Government of Quebec is also invited to start negotiations to make the YPA more flexible so that the needs of the communities who prefer to continue under this system can be met.



⁴⁷ *Canada Act 1982, 1982, c. 11 (U.K.) Part II.*

Recommendations

AN ACT RESPECTING FIRST NATIONS, INUIT AND MÉTIS CHILDREN, YOUTH AND FAMILIES

- The AFNQL calls for the withdrawal of the reference filed with the Court of Appeal of Quebec by the Government of Quebec to challenge *An Act respecting First Nations, Inuit and Métis children, youth and families*.
- The AFNQL calls for the Government of Quebec to negotiate in good faith, with the representatives designated by the First Nations governments and the federal government while respecting the jurisdictions of the three levels of government, coordination agreements providing for the establishment of a system where the family support and youth protection services align with the needs and realities of First Nations children and families.
- The AFNQL calls for the Government of Quebec to reach an agreement, with the representatives designated by the First Nations governments and the federal government, concerning the collection, analysis, conservation, use and communication of information regarding the child and family services provided for First Nations children.
- The AFNQL calls for the Government of Quebec to make the necessary administrative and legislative changes to allow First Nations governments or the organizations they designate to have easy access at all times to data relating to their populations, particularly regarding health and social services.
- The AFNQL calls for the composition of the restorative justice circles to include the participation of representatives of First Nations families.
- The AFNQL asks the Government of Quebec to provide financial support for the creation of a post of Commissioner for Children and Youth position that is specific to First Nations and whose role and responsibilities will be defined by the Chiefs of the AFNQL.

BILL 31

- The AFNQL calls for the Government of Quebec to withdraw subsections 5.1 to 5.6, which were introduced by the amendments to Bill 31: *An Act to amend mainly the Pharmacy Act for the purpose of facilitating access to certain services and to authorize the communication of personal information concerning certain missing or deceased Aboriginal children to their families*, considering that they do not reflect the wishes of the First Nations and Inuit, in either form or content, or Call for Justice number 20 of the supplementary report on Quebec as part of the National Inquiry into Missing and Murdered Indigenous Women and Girls.
- The AFNQL calls for the Government of Quebec to introduce a separate bill allowing for the establishment of a mechanism for families to access personal information held by the departments and agencies of the Government of Quebec concerning missing or deceased Indigenous children, after consulting with the families and relatives concerned as well as representatives of the First Nations and Inuit.
- The AFNQL calls for the Government of Quebec to follow the other recommendations made by the Québec Ombudsman in her letter dated January 24, 2020 addressed to the ministers concerned.

YOUTH PROTECTION ACT

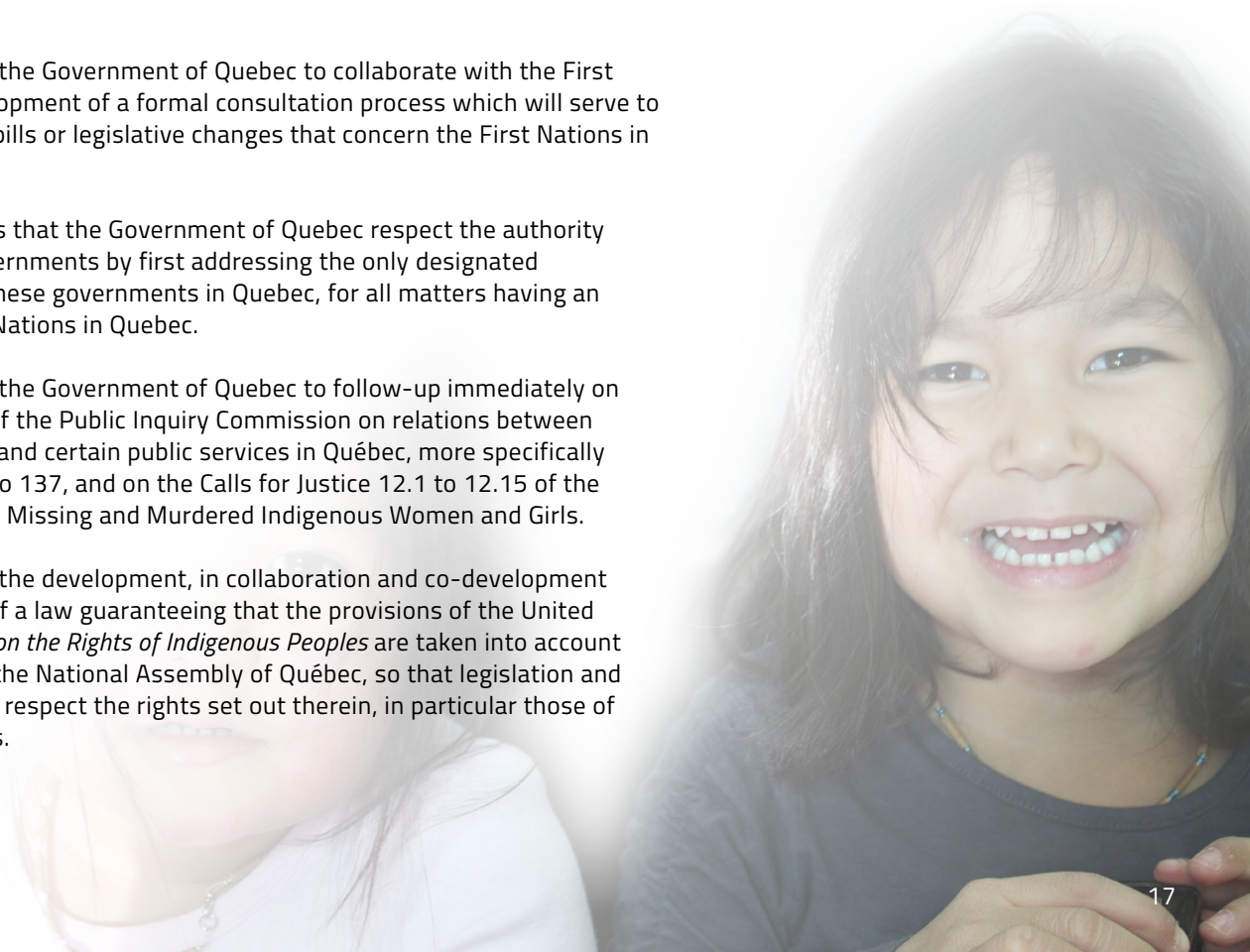
- The AFNQL calls for the Government of Quebec to amend the YPA to include the principles of *An Act respecting First Nations, Inuit and Métis children, youth and families*, following its entry into force on January 1, 2020, and to facilitate the application of community laws regarding child and family services.
- The AFNQL calls for Indigenous children to be exempted from the application of maximum periods of accommodation.
- The AFNQL calls for the YPA to be amended to take into account Calls to Action 109 and 125 of the Viens Commission, namely by including a provision relating to care consistent with Indigenous traditions inspired by Ontario's *Child, Youth and Family Services Act, 2017*.
- The AFNQL demands that the tools used by the interveners be modified so that they consider the realities of the First Nations, in collaboration with the First Nations.
- The AFNQL calls for the regulation on financial assistance to promote the adoption and tutorship of a child to be amended to allow FNCFS agencies to remunerate their tutors and adopters.
- The AFNQL calls for the Government of Quebec to allocate the resources necessary for the creation of a bilingual information management system by and for the First Nations, and which integrates data relating to the clientele of the first-line and second-line services.

More generally:

- The AFNQL calls for the Government of Quebec to collaborate with the First Nations in the development of a formal consultation process which will serve to guide all legislative bills or legislative changes that concern the First Nations in Quebec.
- The AFNQL demands that the Government of Quebec respect the authority of First Nations governments by first addressing the only designated representatives of these governments in Quebec, for all matters having an impact on the First Nations in Quebec.
- The AFNQL calls for the Government of Quebec to follow-up immediately on the **Calls to Action** of the Public Inquiry Commission on relations between Indigenous Peoples and certain public services in Québec, more specifically Calls to Action 108 to 137, and on the Calls for Justice 12.1 to 12.15 of the National Inquiry into Missing and Murdered Indigenous Women and Girls.
- The AFNQL calls for the development, in collaboration and co-development with First Nations, of a law guaranteeing that the provisions of the United Nations *Declaration on the Rights of Indigenous Peoples* are taken into account and its adoption by the National Assembly of Québec, so that legislation and government policies respect the rights set out therein, in particular those of children and families.

FORCED STERILIZATION OF INDIGENOUS WOMEN

- The AFNQL calls for the full participation of the Government of Quebec in the steps that will be initiated on this subject by the First Nations in Quebec.



Appendix

FORMETABLE OF YOUTH PROTECTION AGREEMENT TYPES WITH DELEGATED RESPONSIBILITIES TO FIRST NATIONS COMMUNITIES IN QUEBEC

NATION	COMMUNITY	CENTRE JEUNESSE WITH WHICH THE COMMUNITY OR INAC HAS AN AGREEMENT ¹	RESPONSIBILITIES DELEGATED UNDER SECTION 32 OF THE YOUTH PROTECTION ACT (YPA)	RESPONSIBILITIES DELEGATED UNDER SECTION 33 OF THE YOUTH PROTECTION ACT (YPA)
ABENAKIS	Odanak/Wôlinak (Grand Conseil de la Nation Waban-Aki)	Centre jeunesse de la Mauricie et du Centre-du-Québec		x ²
ALGONQUIN	Kitigan Zibi	Centre jeunesse de l'Outaouais		x
	Lac-Simon, Kitcisakik and Pikogan	Centre jeunesse de l'Abitibi-Témiscamingue (CJAT)		
	Barriere Lake	Centre jeunesse de l'Outaouais		
	Timiskaming First Nation, Long Point and Kebaowek	Centre jeunesse de l'Abitibi-Témiscamingue (CJAT)		
ATIKAMEKW	Manawan (Conseil de la Nation Atikamekw)	Centre jeunesse de Lanaudière	x ⁵	x ⁵
	Opitciwan	Centre jeunesse de la Mauricie et du Centre-du-Québec	x	x
	Wemotaci (Conseil de la Nation Atikamekw)	Centre jeunesse de la Mauricie et du Centre-du-Québec	x ⁵	x ⁵
HURON-WENDAT	Wendake	Centre jeunesse de Québec – Institut universitaire		x ³
INNU	Pessamit	Centre de protection et de réadaptation de la Côte-Nord (CPRCN)		x
	Mashteuiatsh	Centre jeunesse de Saguenay-Lac-Saint-Jean	x	x
	Uashat mak Mani-Utenam	CPRCN		x
	Matimekush–Lac-John	CPRCN		x
	Nutashkuan	CPRCN		x
	Pakua Shipu, Unamen Shipu and Ekuanitshit (Mamit Innuat)	CPRCN		x
	Essipit	CPRCN		x ⁴
MI'GMAQ	Listuguj	Centre jeunesse Gaspésie-Les Îles	x	x
	Gesgapegiag	Centre jeunesse Gaspésie-Les Îles	x	x
MOHAWK	Kahnawake	Centre jeunesse de la Montérégie	x	x
	Kanesatake	Centre jeunesse des Laurentides		
NASKAPI	Kawawachikamach	This treaty community does not have an agreement with a Centre jeunesse. The community is served by the Centre de protection et de réadaptation de la Côte-Nord (CPRCN), and the services are funded by Quebec. The responsibilities defined in sections 32 and 33 of the YPA are exercised by the Direction de la protection de la jeunesse and authorized employees of the CPRCN.		

1 Zone de texteThe coloured boxes indicate bipartite agreements between the community and the Centre jeunesse, while the white boxes indicate agreements between the Centre jeunesse and INAC. The names CISSS and CIUSSS were not used as the agreements in force were signed prior to the merger of the provincial network institutions.

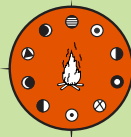
2 While it is possible for responsibilities to be delegated under the bipartite agreement signed, the Grand Conseil de la Nation Waban-Aki does not currently have any staff working under the YPA.

3 While it is possible for responsibilities to be delegated under the bipartite agreement signed, the community of Wendake does not currently have any staff working under the YPA.

4 While it is possible for responsibilities to be delegated under the bipartite agreement signed, the community of Essipit does not currently have any staff working under the YPA.

5 The CNA have concluded and are implementing a special youth protection program agreement under section 37.5 of the YPA





Assembly of First Nations
Quebec-Labrador



FIRST NATIONS OF QUEBEC
AND LABRADOR HEALTH
AND SOCIAL SERVICES
COMMISSION

