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**Presentation to the
Public Inquiry Commission on relations between Indigenous
Peoples and certain public services in Québec: listening,
reconciliation and progress**

**Background and Perspectives on *An Act to amend the Civil Code
and other legislative provisions as regards adoption and the
disclosure of information* (Bill 113, 2017)**

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OVERVIEW OF PRESENTATION

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SUMMARY OF KEY POINTS

- Bill 113 (2017), *An Act to amend the Civil Code and other legislative provisions as regards adoption and the disclosure of information* (**Bill 113**) is a **positive step** in the **reconciliation process** between the Government of Quebec and Indigenous people
- The provisions of Bill 113 dealing with customary adoption and customary guardianship (“**tutorship**”):
 - were developed **collaboratively** with Indigenous groups
 - reflect the right of Indigenous communities to **govern their own affairs** regarding children and families
 - demonstrate **acknowledgment** and **recognition** of the Government of Québec of the **distinct** Indigenous Nations in Québec, with **their own identity and rights**, in accordance with the resolution of the Quebec National Assembly dated **March 20, 1985**

[N.B. - Please refer to copy of this resolution.]

SUMMARY OF KEY POINTS

- The provisions of Bill 113 dealing with customary adoption and customary guardianship also:
 - **bridge Indigenous customary law and Quebec civil law**, clarifying legal effects of Indigenous customary adoptions and guardianships
 - this will allow for easier recognition of these legal effects by persons and bodies outside of our communities, including by **provincial public services**
 - will help to **reinforce and strengthen** customary adoption and customary guardianship practices, for the benefit of Indigenous children, families, communities and Nations

SUMMARY OF KEY POINTS

- These provisions of Bill 113 also:
 - help promote **pro-active, traditional approaches** to situations where a child should not, or cannot, be with his or her biological parents
 - these situations might otherwise end up in a youth protection system often perceived by Indigenous people as **intrusive** and “**foreign**”
 - may **decrease** involvement required of youth protection services for Indigenous children and families, as a direct result of strengthened customary adoption and guardianship practices

SUMMARY OF KEY POINTS

- These pro-active, customary processes are **fundamentally based in our families and our communities** and require **strong collaboration** of extended family members
- It is critical that extended family members are able to **reside in their communities**, in a healthy and sustainable manner, for these institutions to function well
- This requires **adequate and appropriate housing** in the Cree communities
 - currently, there is an **acute shortage of housing** in the Cree communities
 - **urgent action** is needed to address **over-crowded, substandard housing**
- The **importance of quality housing** to the overall **health and well-being** of Indigenous people and communities cannot be emphasized enough
 - this extends to customary practices **based fundamentally on our close family and community bonds**, such as customary guardianship and customary adoption

SUMMARY OF KEY POINTS

- Bill 113 is an important step in the **reconciliation process** between the Government of Quebec and Indigenous people, and Bill 113 has been **welcomed** by Indigenous groups
- These legislative changes carry **additional** responsibilities for the Indigenous communities that choose to participate, and require financial and other **resources** to implement **properly** (as **recommended** by the *Working Group on Customary Adoption*)
 - these changes must be coupled with **planning and allocation** of sufficient resources – determined on a Nation-to Nation basis between Québec and Indigenous groups
 - without proper resources, Bill 113 would be an **incomplete** initiative, which would set the stage for **implementation problems**
 - inadequate funding would also **fail to respect** the important work achieved by the *Working Group on Customary Adoption* and the historical legislative changes of Bill 113
- Funding to Indigenous communities and Nations by Quebec **cannot be delayed** - if necessary, Quebec and Canada can determine between them how to share these costs

THE CREE AND CUSTOMARY ADOPTION AND CUSTOMARY GUARDIANSHIP

- Customary adoption and customary guardianship have been practiced by the Cree throughout **many generations**
- There are no direct, literal translations in the Cree language for the terms “adoption” or “guardianship” (“tutorship”) of a child
 - notions in our language are closer to concepts of a person “raising a child” of other parents, or “supporting” such a child for a given period of time or to adulthood
- Nevertheless, according to Cree customs, some of these customary situations are **temporary arrangements** and can be understood as a form of **guardianship**
- Other of these customary situations result in the child **becoming part** of their adoptive families **permanently** and these can be understood as a form of **adoption**

THE CREE AND CUSTOMARY ADOPTION AND CUSTOMARY GUARDIANSHIP

- These customary practices, whether permanent or temporary, allow parents to **share or transfer their parental responsibilities to family or community members**, if parents cannot assume these responsibilities for different reasons
- Cree customary adoption and guardianship take place in the **interest of the child**, while taking into account that, for the Cree, the notion of interest includes the interest of the family, of the community and of the Cree Nation
- This has always been a **consensual process** between or within Cree families, often with the support of the community
 - **usually a verbal arrangement** - no written documentation – it “happens naturally”

THE CREE AND CUSTOMARY ADOPTION AND CUSTOMARY GUARDIANSHIP

- Despite dark period of **residential schools** and so-called “**Sixties Scoop**”, customary adoption and guardianship are still **practiced widely** today by the Cree
- These customary adoption and customary guardianship practices remain an **integral part** of our Cree culture and identity
- Traditionally, the Cree ensured our children were **taken care of** and that their **interests** were protected
- The Cree Nation is taking appropriate measures to help to ensure that this continues to be the case, including through the development of an implementation framework for the new administrative-legal regime established pursuant to Bill 113

CREE RIGHTS – CUSTOMARY ADOPTION

- Cree customary adoption is an **Aboriginal and treaty right** confirmed by Section 3 of the *James Bay and Northern Québec Agreement* (“**JBNQA**”), a **constitutionally-protected** modern treaty
- The Cree have the right to choose **either** customary adoption, or to choose a “mainstream” adoption process under Québec legislation
- The Cree have always taken the position that Cree customary adoption **already had** legal effect under provincial and federal legislation, even before Bill 113 was enacted
- Basically, even without Bill 113, Cree customary adoption is **valid** under Cree customs and domestic law, has **legal effects** and is **constitutionally protected**

CREE CUSTOMARY ADOPTION AND PRACTICAL CONSIDERATIONS

- **However**, Bill 113 is so important as these legal effects are **not always recognized by non-Cree third parties**, such as authorities, government officials and **government public services** such as youth protection, health and social services and education services outside of our communities
- This has led to **problems** for Cree families and children who need to have these legal effects recognized to exercise responsibilities as adoptive parents or guardians, including:
 - registering a child for school
 - obtaining a health insurance card (RAMQ *carte soleil*)
 - consenting to care in a health and social services setting
 - receiving government benefits for children
 - applying for a passport

CREE CUSTOMARY ADOPTION AND PRACTICAL CONSIDERATIONS

- In some cases, this non-recognition of customary adoption even resulted in children **being taken away** from the Cree, a reminder of the days of the residential schools and the so-called “Sixties Scoop”
- While the Cree already have the required jurisdiction and rights to deal with adoption matters, we have supported the idea of **clarifying the *Civil Code of Québec*** and other legislation to facilitate recognition of effects of these adoptions
- This is effectively what has been accomplished by Bill 113, which now provides **concrete ways** to help address these problems, as well as similar issues relating to temporary, customary guardianship situations
 - Bill 113 provides **important, practical solutions** to these issues
- Before discussing Bill 113 further, it is important to understand **how** these important legislative changes came about

WORKING GROUP ON CUSTOMARY ADOPTION IN ABORIGINAL COMMUNITIES

- In its report “*Pour une adoption québécoise à la mesure de chaque enfant*” (2007), the Working Group on Adoption in Québec noted that the statutory adoption regime no longer met the needs of Québec families and children, and it proposed several legislative amendments in response
 - however, it declined to make any proposals regarding Aboriginal customary adoption, and instead **recommended that another working group be established** for this purpose
- In 2008, the *Working Group on Customary Adoption in Aboriginal Communities* (“**Working Group**”) was formed to make recommendations for legislative clarification of effects of Indigenous customary adoption, among other things
- This Working Group was made up of representatives from **Québec** (Ministry of Justice and Ministry of Health Services and Social Services, including a Director of Youth Protection), and from **Inuit and First Nations organizations**, including myself, designated to represent the Grand Council of the Crees (Eeyou Istchee)/Cree Nation Government and the Cree Board of Health and Social Services of James Bay

WORKING GROUP ON CUSTOMARY ADOPTION IN ABORIGINAL COMMUNITIES

- Our Working Group helped to facilitate important discussions regarding customary adoption, including collaborative efforts to consider **how its legal effects** could be reflected in the *Civil Code* and other legislation
- The Working Group report (2012) makes important findings and recommendations, including legislative proposals, to **clarify legal effects** of certain customary adoptions
- Many of the findings and recommendations of the Working Group report are **reflected in Bill 113**
- These findings and recommendations also influenced the approach taken later in the legislative process on Bill 113 with respect to provisions on **customary guardianship** (“Aboriginal customary tutorship”)

WORKING GROUP ON CUSTOMARY ADOPTION IN ABORIGINAL COMMUNITIES

- The findings of the Working Group report include the following:
 - 1.1 Aboriginal customary adoption has **always existed** and it **still exists**;
(...)
 - 1.3 it is **up to Aboriginal Nations or communities**, and **not the Québec legislature**, to determine the **conditions** and the **effects** of customary adoption for **their respective milieu**;
 - 1.4 customary adoption takes place in the **interest of the child** and respecting the child's needs, while taking into account that in the Aboriginal context, the notion of interest includes the interest of the **family**, of the **community** and of the **Nation**, and particularly emphasizes the **protection of identity, culture, traditional activities and language**;
 - 1.5 customary adoption is **consensual**, involving at a minimum the consent of the biological parents, the adoptive parents and, if appropriate, the child;

[N.B. - emphasis added throughout]

WORKING GROUP ON CUSTOMARY ADOPTION IN ABORIGINAL COMMUNITIES

The findings of the Working Group report also include:

- 1.10 Aboriginal Nations or communities may, at their discretion, **adapt or develop their customary adoption regimes** in accordance with their **needs, traditions and customs** and also to respond to **new social realities**;
- 1.11 Québec legislation rarely mentions customary adoption and this situation **creates problems**, both for the individuals concerned and for the administrative authorities, particularly with respect to the **exercise of parental responsibilities**;
- 1.12 since the early 1980s, **Aboriginal peoples have sought the recognition of legal effects of customary adoption** within and for the purposes of Québec legislation;
(...)
- 1.17 customary adoption regimes remain **evolutive** and any adaptations or clarifications brought by Aboriginal nations and communities or by the Québec legislature, **do not freeze customary adoption** in any way.

WORKING GROUP ON CUSTOMARY ADOPTION IN ABORIGINAL COMMUNITIES

The recommendations of the Working Group report include:

- 2.1 to facilitate the recognition of legal effects of customary adoption within and for the purposes of Québec legislation, particularly with respect to filiation and parental authority, such be **recognized in the *Civil Code of Québec* and in other Québec legislation**;
(...)
- 2.4 the legislation provide*:
 - 2.4.1 that it is up to **Aboriginal Nations or communities to determine** whether a customary adoption has taken place and they may provide a **mechanism** for the involvement of an Aboriginal authority, for their respective *milieu*, which is competent for these purposes;
(...)
 - 2.4.4 that on request, the **competent authority attests to the Québec authorities** that a customary adoption has taken place when it creates a **new bond of filiation**, mentioning in particular the exchanges of consent, the effects of the adoption on filiation and the fact that the child has been entrusted to the adoptive parents;
(...)

WORKING GROUP ON CUSTOMARY ADOPTION IN ABORIGINAL COMMUNITIES

The recommendations of the Working Group report also include that:

- 2.5 customary adoption **must not** be subject to an **assessment by the director of youth protection** or a **court decision**;
(...)
- 2.7 the *Youth Protection Act* recognize, in cases where the situation of an Aboriginal child has been taken in charge by the director of youth protection, that **customary adoption** pursuant to the *Civil Code of Québec* is an **option** in the context of the development of a **permanent life plan** for the child;
(...)
- 2.12 the relevant **provincial and federal authorities** take correlative measures in relation to the changes to Québec legislation with respect to: the **support** of; interactions with; **development** of; **financing** of; and the **implementation** of, the **Aboriginal mechanisms** that will be associated with the recognition of effects of customary adoption within and for the purposes of Québec legislation*.

[* Please note that parties to the James Bay and Northern Québec Agreement and the Northeastern Québec Agreement maintain that the legislation implementing these agreements and other related Acts and regulations recognize legal effects of Aboriginal customary adoption.]

[N.B. – The above note forms part of the Working Group report.]

WORKING GROUP COLLABORATION AND BILL 113 (2017)

- The report of the Working Group, including its findings, recommendations and legislative proposals, was the product of **close collaboration** between representatives of Quebec and Indigenous Groups
- This important work helped to **shape Bill 113**, as it also helped to shape the two previous bills that “*died on the order paper*” with the calling of elections
- As recommended by the Working Group, Bill 113 essentially provides that it is an **Indigenous Nation or community that determines** if a given customary adoption or guardianship has been carried out according to its customs
 - this is done through the “**competent authority**” that it designates officially to Québec – this authority can be an **entity** or an **individual person**, as long as the person is not a party to the adoption or guardianship

WORKING GROUP COLLABORATION AND OVERVIEW OF BILL 113 (2017)

- This approach of Bill 113 is consistent with Working Group’s recommendation that a customary adoption **not be subject to a Court decision**, or to an **assessment by a Director of Youth Protection**, to have legal effect
- Similar approaches are taken for **customary guardianship** (in the language of Bill 113, an “Aboriginal customary tutorship”), which is also attested to by an Indigenous competent authority, instead of being given effect by a Court decision
 - this “Aboriginal customary tutorship” is based on the new legal concept of “suppletive tutorship” in the *Civil Code*
 - suppletive tutorship allows a parent or parents to share or delegate parental authority and tutorship of a child to certain persons if one or both of them cannot assume those duties and whereby these functions are suspended, but can be reinstated

OVERVIEW OF BILL 113 (2017)

- For both a customary adoption or a customary guardianship, on application of relevant persons, the **relevant Indigenous “competent authority”** ensures that the adoption or guardianship was carried out **according to custom**, including that:
 - required **consents** have been given (i.e., biological and adoptive parents/guardians, and as applicable, the child)
 - the child is **in the care** of the adoptive parents/guardians
 - the adoption or guardianship is in the **interest** of the child
- If this is the case, the competent authority **attests** to the customary adoption or guardianship by means of a **certificate** issued by the competent authority to:
 - the Quebec Registrar of Civil Status, in the case of an adoption, and whereby the latter then automatically changes the birth certificate of the child; **OR**
 - the customary guardians (tutors) directly, and whereby the certificate of the competent authority has legal force

OVERVIEW OF BILL 113 (2017)

- To reiterate, Quebec authorities or Courts **do not play a role** in determining whether or not a customary adoption or guardianship has occurred
- However, if a Director of Youth Protection (**DYP**) is **already intervening** in relation to the child, the DYP would have to **provide an opinion to the Indigenous authority** on whether or not the adoption or guardianship is in the interest of the child and respects his or her rights
- The DYP and Indigenous authority have to **exchange information** to allow the DYP to give this opinion, which must be in writing, with reasons and disclose the confidential information on which it is based
 - it would then be up to the **Indigenous authority to decide** whether or not to issue the relevant certificate

OVERVIEW OF BILL 113 (2017)

- Even if a DYP is not intervening in the case of a child, an Indigenous competent authority **may request** the DYP to provide similar information, and the DYP may share this information without a court order or the consent of the persons concerned
- Under Bill 113, where the adopter and child, or the guardian and child, are of **different Nations**, only the **competent authority of the child** can attest to the adoption or guardianship
 - this is consistent with the Cree position that only the Cree can confirm that the adoption of a Cree child is carried out according to Cree customs
 - other Nations have taken similar positions

PERSPECTIVES ON BILL 113 (2017) AND RELATED CONSIDERATIONS

- Bill 113 demonstrates acknowledgment and recognition of the Government of Québec of the **distinct** Indigenous Nations in Québec, with **their own identity and rights**, in accordance with the resolution of the Quebec National Assembly dated **March 20, 1985**
[N.B. - Please refer to copy of this resolution.]
- Bill 113 also reflects the right of Indigenous Nations to **govern their own affairs** regarding their children and families
- Overall, Bill 113 **begins to harmonize** provincial laws with Cree Aboriginal and treaty rights regarding customary adoption
 - it provides mechanisms to **bridge Indigenous customary law and Quebec civil law**, by clarifying legal effects of customary adoptions and guardianships
 - It provides clear measures for persons and bodies outside of our communities, including **provincial public services**, to easily **recognize these legal effects**

PERSPECTIVES ON BILL 113 (2017) AND RELATED CONSIDERATIONS

- However, the administrative and legal regime proposed by Bill 113 **does not affect the Aboriginal and treaty rights of the Cree** regarding customary adoption
- In other words, this Bill 113 regime does not **replace or change** the constitutionally protected, **“traditional” Cree customary adoption regime and its effects**
 - these **two regimes exist in parallel**
 - Cree families may choose **whether or not** to have a customary adoption attested to by the Cree “competent authority” under Bill 113 - even if not attested, Cree customary adoptions have **legal effect**
 - Cree families may also opt for a **“mainstream” adoption** process, if they wish

PERSPECTIVES ON BILL 113 (2017) AND RELATED CONSIDERATIONS

- The provisions of Bill 113 dealing with customary adoption and customary guardianship will also help to:
 - **reinforce and strengthen** customary adoption and customary guardianship practices, for the benefit of Indigenous children, families, communities and Nations
 - promote **pro-active, traditional approaches** to situations where a child should not, or cannot, be with his or her biological parents – where these matters might otherwise end up in a youth protection system that is often **perceived as intrusive and “foreign”** by Indigenous people
 - **decrease** levels of involvement of youth protection services for Indigenous children and families, as a direct result of strengthened customary adoption and customary guardianship practices

PERSPECTIVES ON BILL 113 (2017) AND RELATED CONSIDERATIONS

- There is **general support** for Bill 113 among the many Cree people that I have spoken with regarding these matters, and there is also support for the **collaborative process** that led to the development of Bill 113
- Many Cree people see this legislation as a way to **strengthen** and breathe new life into our traditional practices regarding these matters
- Others see it as a way to emphasize the importance of **traditional, family-based approaches** to these issues, as opposed to more institutional types of approaches that may be associated with youth protection services
 - All in all, these legislative changes have been **well received** to date

PERSPECTIVES ON BILL 113 (2017) AND RELATED CONSIDERATIONS

- These pro-active, customary processes are **fundamentally based in our families and our communities** and require **strong collaboration** of extended family members
- It is critical that extended family members are able to **reside in their communities**, in a healthy and sustainable manner, for these institutions to function well
- This requires **adequate and appropriate housing** in the Cree communities
 - currently, there is an **acute shortage of housing** in the Cree communities
 - **urgent action** is needed to address **over-crowded, substandard housing**
- The **importance of quality housing** to the overall **health and well-being** of Indigenous people and communities cannot be emphasized enough
 - this extends to customary practices **based fundamentally on our close family and community bonds**, such as customary guardianship and adoption

PERSPECTIVES ON BILL 113 (2017) AND RELATED CONSIDERATIONS

- Bill 113 is an important step in the **reconciliation process** between the Government of Quebec and Indigenous people, and Bill 113 has been **welcomed** by Indigenous groups
- These legislative changes carry **additional** responsibilities for the Indigenous communities that choose to participate, and require financial and other **resources** to implement **properly** (as **recommended** by the *Working Group on Customary Adoption*)
 - these changes must be coupled with **planning and allocation** of sufficient resources – determined on a Nation-to Nation basis between Québec and Indigenous groups
 - without proper resources, Bill 113 would be an **incomplete** initiative, which would set the stage for **implementation problems**
 - inadequate funding would also **fail to respect** the important work achieved by the *Working Group on Customary Adoption* and the historical legislative changes of Bill 113
- Funding to Indigenous communities and Nations by Quebec **cannot be delayed** - if necessary, Quebec and Canada can determine between them how to share these costs



Meegwetch!

Questions?

This presentation is provided for information purposes only, and expresses the views of the presenter only. It may not be used for purposes of interpreting the *James Bay and Northern Quebec Agreement* or any other agreement and it is without prejudice to any rights of the Cree.