FIRST NATIONS OF QUEBEC AND LABRADOR HEALTH AND SOCIAL SERVICES COMMISSION

Family Law: The Perspective of First Nations in Quebec

Bill 56, *An Act respecting family law reform and establishing the parental union regime*

Joint brief submitted to the Commission on Institutions

National Assembly of Québec
May 6, 2024

AFNQL
ASSEMBLY OF FIRST NATIONS QUEBEC-LABRADOR

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1. INTRODUCTION

On March 27, 2024, Minister of Justice Simon Jolin-Barrette tabled Bill 56, *An Act respecting family law reform and establishing the parental union regime* (hereinafter "the Bill") in the National Assembly. In response to the Bill, the Assembly of First Nations Quebec-Labrador (AFNQL) and the First Nations of Quebec and Labrador Health and Social Services Commission (FNQLHSSC) submit this joint brief before the Committee on Institutions as part of the special consultations.

The joint brief outlines the legal particularities of the context of First Nations and proposes legislative improvements.

2. ABOUT THE ORGANIZATIONS

a. Assembly of First Nations Quebec-Labrador (AFNQL)

Created in 1985, the AFNQL is the meeting place for the Chiefs of 43 communities of 10 First Nations in Quebec and Labrador. It deals with many issues, such as the defence of First Nations titles and Aboriginal and treaty rights, federal and provincial government policies, and legislation that affect their customs and way of life, funding levels, decisions by and relations with both levels of government, community economic development, all social, economic, and cultural issues, all matters relating to First Nations self-government, as well as international and national relations with governments.

b. First Nations of Quebec and Labrador Health and Social Services Health and Social Services Commission (FNQLHSSC)

The FNQLHSSC is a non-profit association created through a resolution of the AFNQL Chiefs in 1994. It is responsible for supporting the efforts of First Nations in Quebec to plan and offer culturally appropriate and preventive health and social services programs, among other things. Its mission is to accompany Quebec First Nations in achieving their health, wellness, culture and self-determination goals. Its main fields of intervention are related to governance, early childhood, health, social services, social development, research and information resources.

3. SOCIO-DEMOGRAPHIC REALITIES OF FIRST NATIONS

In an effort to define the effects of the Bill, this section presents socio-demographic data on the realities experienced by First Nations.[1]

First, it is important to note that the most frequent form of union among First Nations in Quebec is the common-law or *de facto* relationship. Indeed, 20.2% of First Nations adults aged 18 to 64 report living in such a relationship.[2,3]

Thus, common-law or *de facto* relationships are common in First Nations communities, and every such couple has 1.81 children on average.[4] More than half of these children live with both biological parents.[5]

Given the nature of the Bill, it is also important to note that the majority of First Nations members in common-law/*de facto* relationships live in band housing (73.8%), while 23.9% report living in a privately owned dwelling.[6] These data are relevant, since private dwellings in communities serving as family homes are, as we will see below, subject to specific legal rules of partition, use, or alienation in the event of separation, marriage breakdown, or death.

A household of two adults in a common-law/*de facto* relationship earns an average of $42,838.67 per year.[7] Although it is impossible to distinguish between married and common-law/*de facto* couples in the statistical surveys consulted, the average annual income of Canadian couples is $88,500 per year.[8] That is a wide gap and, on average, First Nations households have lower incomes than Canadian households. Since poverty is more common in households with lower incomes, it may be inferred from the statistics that poverty is more common in First Nations households.

In short, First Nations common-law/*de facto* couples with at least one child are numerous and have lower incomes. This portrait shows that the Bill will potentially affect a significant number of First Nations individuals.

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[1] The statistical data presented in this brief relate to First Nations people living in communities, with the exception of the Cree.
[2] FNQLHSSC, "First Nations Labour and Employment Development Survey," online: cssspnql.com < https://cssspnql.com/en/produit/first-nations-labour-and-employment-development-survey-fnled/ >.
[3] The terms "common-law relationship," "*de facto* union," "common-law partner," and "*de facto* spouse" refer to the same concept.
[4] *Supra*, note 2.
[5] FNQLHSSC, "RHS – Report of the Quebec First Nations Regional Health Survey – 2015," online: cssspnql.com <https://cssspnql.com/en/produit/report-of-the-quebec-first-nations-regional-health-survey-2015/>
[6] FNQLHSSC, *supra* note 2.
[7] *Ibid.*
[8] Statistics Canada, "Economic family unit income statistics for income sources and taxes by family characteristics: Canada, provinces and territories, census metropolitan areas and census agglomerations with parts," online: 150.statcan.gc.ca<https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=9810007501&pickMembers%5B0%5D=1.26&pickMembers%5B1%5D=2.1&request_locale=en>.

4. INTERACTION OF FEDERAL AND PROVINCIAL FAMILY LAWS

a. Civil Code of Québec

In Quebec, family law is governed by both provincial and federal laws.[9] The choice of matrimonial regime and the division of the family patrimony is determined primarily by the *Civil Code of Québec.*[10] When people have to make a decision regarding their family relationships, they must take into account their rights and obligations, as well as those of their spouse and any children involved.

In the case of First Nations, the situation is more complex, since the Parliament of Canada can enact laws regarding "Indians and lands reserved for the Indians."[11] The first such law enacted was the *Indian Act*.[12] Because this statute governs several aspects of the lives of First Nations members, including the ownership of land and immovable property in communities,[13] it can have a direct impact on the application of the rules of the *Civil Code of Québec* on the division of property in family law. Indeed, provincial and territorial laws do not apply to the division of matrimonial immovable property in First Nations communities.[14]

To fill this legal gap, in 2013, the federal government passed the *Family Homes on Reserves and Matrimonial Interests or Rights Act* (FHRMIRA).[15]

b. *Family Homes on Reserves and Matrimonial Interests or Rights Act* (FHRMIRA)

The FHRMIRA gives First Nations two options: create their own laws or use the transitional provisions until they have their own laws in place. In Quebec, the communities of Wendake,[16] Odanak,[17] and Akwesasne[18] have already availed themselves of the first option.

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[9] For example, the *Divorce Act,* R.S.C., 1985, c. 3 (2nd Supp.), the *Indian Act*, R.S.C., 1985, c. I-5, and the *Family Homes on Reserves and Matrimonial Interests or Rights Act* , S.C. 2013, c. 20.
[10] *Civil Code of Québec*, arts. 414 to 492. Note that the *Code of Civil Procedure* also applies to First Nations communities.
[11] *Constitution Act, 1867* (U.K.), 30 & 31 Vict., c. 3, s. 91(24), reproduced in R.S.C. 1985, Schedule II, No. 5.
[12] R.S.C. 1985, c. I-5.
[13] *Ibid*., ss. 20-29 and s. 42-46.
[14] Cain Lamarre, "Les impacts de la Loi sur les foyers familiaux situés dans les réserves et les droits ou intérêts patrimoniaux," online: caij.qc.ca < https://edoctrine.caij.qc.ca/publications-cabinets/cain/2014/a83252/fr/pc-ax83274-1 >.
[15] S.C. 2013, c. 20.
[16] The Wendake community has adopted its own matrimonial real property law, the *Loi sur les biens immobiliers* (LBIM), which already contains provisions similar to Bill 56. Section 7 of the LBIM provides, for example, for the creation of a "*union de fait*" (*de facto* or common-law relationship) for persons who have been in a conjugal relationship for at least one year without interruption and who are the natural or adoptive parents of a child. Subsequently, section 11 of the LBIM gives children the right to occupy and enjoy the family home, regardless of changes in the parents' relationship, including those in a *de facto*/common-law relationship. The LBIM also contains other provisions relating to the exclusive occupation of the family home by one of the spouses (chapter VII) or the division of family property after separation (chapter VIII), which also apply to *de facto*/common-law partners. There are also references to the *Civil Code of Québec*.
[17] The Odanak community has enacted the *Loi sur les droits ou intérêts matrimoniaux des Abénakis d'Odanak*, which includes provisions covering *de facto*/common-law partnerships and sets out family home occupation rights (chapter 6). When issuing an order involving the family home, the court is required to act in the children's best interests and wellness (chapter 13).
[18] Under the Akwesasne law, the "Iatathróna Raotiientáhtsera" (couples property law) contains protective provisions and defines a common-law relationship as a marriage-like relationship of at least one year when there is a child of the union (section 2.0). It also includes provisions for possession of the family home (section 9.0), including the exclusive right to raise the child in the family home (section 9.2). Moreover, decisions concerning the possession of the family home must be taken based on the child's best interest (section 9.6). There are no provisions concerning the family vehicle.

The FHRMIRA applies only to communities with "reserve" status within the meaning of the *Indian Act*.[19] Among communities that have Indian settlement status,[20] to which provincial laws apply, only Kanesatake is an exception. Also, the FHRMIRA does not apply to Indigenous communities that have signed a self-government agreement that includes land management provisions, such as the *James Bay and Northern Quebec Agreement* and the *Northeastern Quebec Agreement*.

It should also be noted that section 10 of the FHRMIRA provides that the Attorney General of Quebec must be notified of any legislation enacted by the Indigenous communities concerned, allowing the provincial government to avoid a potential conflict of laws.[21]

Several First Nations in Quebec have adopted framework agreements for the management of their lands. In many cases, they contain provisions regarding common-law/*de facto* relationships and how to divide immovable property on community lands in the event of a separation.[22]

As it stands, the FHRMIRA and the land regulations specific to certain Indigenous communities do not contain provisions on movable property, which means that only the family home is affected by these statutes or regulations.

Thus, the FHRMIRA applies to married couples and common-law/*de facto* partners – of whom at least one is a registered Indian – living in a First Nations community that has not passed its own law or does not have a self-government agreement or an internal land code that includes specific provisions for couples, whether married or common-law/*de facto*.

c. Indian Act

The FHRMIRA does not provide a definition of common-law partners. Reference should be made to section 2 of the *Indian Act*, which defines a common-law partner as "a person who is cohabiting with the individual in a conjugal relationship, having so cohabited for a period of at least one year."

Section 81(1)(p.2) of the *Indian Act* provides that a band council may adopt by-laws to provide for the rights of common-law partners and children who reside in First Nations communities with respect to any matter in relation to which the council may make its own by-laws.

The *Indian Act* also contains various provisions that make Indigenous property located on "reserve" exempt from seizure by non-First Nations persons or seizable under various conditions. For example, section 29 of the Act states that reserve lands are not subject to seizure under legal process.

Section 88 of the *Indian Act* states that all laws of general application in force in a province are applicable to "Indians in the province," provided that those laws are consistent with the *Indian Act*

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[19] *Supra*, note 15, s. 2 (2) and s. 2 (6).
[20] The lands of this community do not constitute a reserve within the meaning of the *Indian Act*, but Parliament passed legislation in 2001 that created the interim territory of Kanesatake. The act in question provides that the community is under federal jurisdiction, while giving land management rights to the Kanesatake community.
[21] Section 7(3) of the FHRMIRA provides that, when a First Nation intends to enact a law, it must notify its province's Attorney General.
[22] On June 17, 1999, the *First Nations Land Management Act* came into force. This Act allowed First Nations to withdraw from the application of some 40 provisions of the *Indian Act.* Then, on December 15, 2022, the *Framework Agreement on First Nation Land Management Act* came into force, replacing the 1999 Act. For example, in Quebec, the communities of W8linak, Mashteuiatsh, Kahnawà:ke, among others, have specific land management provisions for partners who are married or in a common-law relationship. The communities of Mashteuiatsh and Odanak also have regulatory particularities applicable in the event of the death of a common-law partner.

or with other laws or treaties applicable to Indigenous contexts. In addition, section 89 renders property situated on a reserve inalienable and states that it may not be subject to seizure or execution. Only a leasehold interest or a chattel with a right of property is subject to seizure or execution.

The *Indian Act* thus establishes a separate legal regime for property that lawmakers must take into account when drafting legislation concerning property, as it is doing with this Bill and the creation of parental union patrimony. As we shall see, the same applies to the particularities of youth protection in Indigenous communities.

d. Youth protection in an Indigenous context

Since Bill 56 amends the *Youth Protection Act*[23] (hereinafter YPA), we find it important to paint a portrait of youth protection in an Indigenous context, even though the YPA applies in only specific cases.

For the majority of communities in Quebec, First Nations Child and Family Services (FNCFS) agencies have certain youth protection responsibilities and provide front-line preventive services. A total of seventeen FNCFS agencies provide youth protection services to twenty-four communities under provincial delegation and funding agreements with Indigenous Services Canada (ISC), while three provincial institutions (Integrated Health and Social Services Centres [CISSS])[24] provide youth protection services to four communities. These institutions (CISSS or Integrated University Health and Social Services Centres [CIUSSS]) delegate the exercise of responsibilities under the YPA to FNCFS agencies.

Additionally, the YPA includes a provision authorizing agreements with the Government of Quebec to establish a special youth protection system managed by, among others, an Indigenous nation or group for any Indigenous child whose safety or development is or may be considered in danger within the meaning of that Act.[25] This system allows communities to take over all or part of youth protection services and establish methods of application that are different from the YPA and better suited to the cultural context of Indigenous communities.[26] Since section 131.20 of the YPA came into force, only one tribal council acting on behalf of two communities has been able to reach an agreement with the provincial government[27] to establish a special youth protection system.

In June 2019, the federal government enacted the *Act respecting First Nations, Inuit and Métis children, youth and families*[28] (hereinafter the federal Act), which came into force on January 1, 2020. Among its purposes is the affirmation of the inherent right to self-government, which includes jurisdiction over child and family services and the establishment of principles applicable to the provision of child and family services to Indigenous children across the country.[29] To date, under the federal Act, the community of Opitciwan has drafted its own youth protection law, which entered into force on January 17.[30] It provides for various conflict resolution mechanisms.

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[23] CQLR, c. P34-1.
[24] Namely, the CISSS-AT (Timiskaming First Nation and Kebaowek), the Outaouais CISSS (Barriere Lake). and the Laurentian CISSS (Kanesatake).
[25] *Youth Protection Act*, CQLR c. P-34.1, s. 131.20.
[26] Government of Quebec, "Guidelines for Establishing a Special Youth Protection Program for Native People," online: publications.msss.gouv.qc.ca, <https://publications.msss.gouv.qc.ca/msss/fichiers/2015/15-838-01A.pdf>.
[27] The Atikamekw Nation Council.
[28] S.C. 2019, c. 24.
[29] *Ibid*. Art. 8.
[30] Atikamekw of Opitciwan Council, online: opticiwan.ca,
< https://www.opitciwan.ca/pdf/LSPAO%20%20Loi%20sur%20la%20protection%20sociale%20Opitciwan.pdf >.

In Quebec, 16 communities have given notice of their intention to exercise their inherent jurisdiction over child and family services, and 22 communities have asked to enter into a coordination agreement with the federal and provincial governments.[31]

5. CONSIDERATIONS FOR BILL 56

a. Division of property in First Nations communities

In light of the laws referred to above, including the FHRMIRA, the *Indian Act*, and the various specific land-related legal regimes adopted by several First Nations communities, the division of property following the separation of married spouses or common-law/*de facto* partners in a First Nations community is subject to various exemptions.

In other words, the parental union regime proposed by the Bill is inapplicable when it involves a member of an Indigenous community living in a First Nations community. Future articles 521.30 and 521.34 of the *Civil Code of Québec*, which will be added by the Bill, will therefore not apply to property located in a First Nations community since they would be inconsistent with sections 29 and 89(1) of the *Indian Act* or with the community's by-laws.

For example, in the case of a separation of Indigenous common-law/*de facto* partners – or of a couple with one non-First Nations common-law/*de facto* partner – residing in a First Nations community, the partner whose claim is successful could find themselves incapable of enforcing a decision regarding movable and immovable property.

In this regard, the Supreme Court of Canada stated in *Derrickson v. Derrickson*[32] that provincial and territorial laws do not apply to matrimonial real property on reserves by virtue of the *Indian Act.* Consequently, no division of family patrimony involving immovable property on reserve is possible under provincial legislation.

In *Paul v. Paul*,[33] the Supreme Court also stated that, where a certificate of possession of a family home on Indigenous land is held under section 20 of the *Indian Act*, even a temporary right of occupation under a provincial law is inapplicable because of that Act. The future article 521.28 of the *Civil Code of Québec* will therefore be inapplicable on Indigenous reserves. A non-First Nations claimant will have to obtain the approval of the local band council to occupy the family home, which is prevented by sections 20 and 24 of the *Indian Act* or by the various territorial land management by-laws of several Indigenous communities.

b. Indigenous customary adoption

Since June 2018, the Government of Quebec has recognized the legal effects of Indigenous customary adoption.[34] Customary adoption transfers filiation from the parents of origin to adoptive

[31] This figure includes the Inuit.
[32] *Derrickson v. Derrickson*, [1986] 1 SCR 285 at paras. 46 and 60.
[33] *Paul v. Paul*, [1986] 1 SCR 306 at paras. 7 and 8.
[34] *An Act to amend the Civil Code and other legislative provisions as regards adoption and the disclosure of information*, SQ 2017, c. 12.

parents in a traditional way.[35] Parental authority is transferred to the adoptive parents, and the child's birth certificate is amended.[36]

Section 521.20 of Bill 56 provides that "[a] parental union is formed upon *de facto* spouses becoming the father and mother or the parents of the same child. The same applies where the father and mother or the parents of the same child become *de facto* spouses or become *de facto* spouses again."[37] Section 521.20 also states that "*de facto* spouses are two persons who share a community of life and who represent themselves publicly as a couple, regardless of how long they have shared a community of life. Persons who cohabit and are the father and mother or the parents of the same child are presumed to share a community of life."[38]

To our understanding, even though the Bill does not contain specific provisions concerning customary adopters, we believe that customary adoption may entail the establishment of a parental union patrimony. However, as discussed previously, provincial and territorial laws do not apply to the division of matrimonial real property in First Nations communities.

c. The interest of the child

In the context of various bills relating to family law, we have repeatedly suggested an amendment to article 33 of the *Civil Code of Québec* based on, among other things, the amendment to section 3 of the YPA made by *An Act to amend the Youth Protection Act and other provisions*.[39] Since that amending statute, the definition of the interest of the child in the YPA has been further amended to take into account historical, social, and cultural factors relating to First Nations and Inuit.[40] We have also argued that there must be an alignment with the principles found in the *Act respecting First Nations, Inuit and Métis children, youth and families*.[41] Nevertheless, no changes have been made to article 33 of the *Civil Code of Québec*, despite the fact that judges make decisions affecting First Nations children and families.

Accordingly, we recommend that article 33 of the *Civil Code of Québec* be amended to take into account principles 9 and 10 of the *Act respecting First Nations, Inuit and Métis children, youth and families*:

> Consideration is given, in addition to the moral, intellectual, emotional and physical needs of the child, to the child's age, health, personality and family environment, including the presence of family violence, which includes spousal violence, or sexual violence, and to the other aspects of his situation, <u>including the importance for that child of having an ongoing relationship with his or her family and with the Indigenous group, community or people to which he or she belongs and of preserving the child's connections to his or her culture</u>.[42]

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[35] FNQLHSSC, "Reference Guide – Appointing a Competent Authority for Customary Adoption and Tutorship in First Nations Communities and Nations, online: cssspnql.com < https://files.cssspnql.com/s/UmvljP4aEakBC1r >.
[36] *Ibid*.
[37] Bill 56, *An Act respecting family law reform and establishing the parental union regime*, Forty-third Legislature, First Session.
[38] *Ibid*.
[39] S.Q. 2017, c. 18.
[40] 131.4. In determining the interests of an Indigenous child, in addition to the factors listed in the second paragraph of section 3, the following factors must be taken into consideration:
(a) the culture of the child's Indigenous community, including the language, customs, traditions and spirituality;
(b) the child's relationships with his extended family and members of that community;
(c) the child's access to the territory surrounding that community and other places that its members frequent; and
(d) the sociohistorical traumas of Indigenous people and their socioeconomic conditions.
[41] S.C. 2019, c. 24, s.9 and s. 10.
[42] The underlined passages are the proposed amendments.

We take issue with the fact that, although this Bill concerns family law, it makes no reference to the interest of the child. For example, section 521.28 states that "[t]he court may order either spouse to leave the family residence during any proceeding to settle the consequences of the end of the union." This provision should state that decisions regarding the occupation of the family home must be based solely on the interest of the child.

d. Scope of "judicial violence"

The Bill introduces the concept of "judicial violence". This recent concept in the Quebec justice system was introduced in 2023.[43] Without referring directly to it, it touches on the notion of "coercive control." It should be noted that Parliament is currently attempting to criminalize behaviours related to coercive control.[44]

The work of sociologist Evan Stark describes coercive violence as a pattern of behaviour that seeks to intimidate, degrade, and exploit a person and create a climate of fear and threat to their life.[45] Through this coercive behaviour, victims are isolated, stripped of their rights, prevented from accessing resources, exploited in various ways, and made to follow rigid rules in their choices and behaviours. The perpetrator thereby exerts coercive control over the victim. Victims of coercive control can suffer significant psychological and social consequences. Therefore, coercive violence is one manifestation of the various possible forms of family violence, including spousal violence.

Although the concept of judicial violence is new in Quebec, the use of the justice system to perpetuate spousal violence after a separation is a long-standing phenomenon. One notorious and well-documented case from 1989 is *Tremblay v. Daigle*.[46] Chantal Daigle wanted to have an abortion after suffering spousal violence at the hands of Jean-Guy Tremblay. He used the justice system to try to prevent her from doing so.[47] We now understand that Jean-Guy Tremblay was seeking to exercise a new form of abusive control over his former spouse, and that he used the justice system to this end. Chantal Daigle was one of the first publicized victims of a blatant case of "judicial violence."

That said, the notion of "equal balance of power between the parties" in section 27 of the Bill is likely to be interpreted restrictively. This would be to the detriment of victims of family violence, including those of Indigenous origin, from an ethnic minority, or from a disadvantaged socioeconomic background.

In light of these comments, we recommend that particulars on the balance of power involved be added and that the Bill enumerate various possible manifestations of violence and the possible origins of victims as an analytical factor. This would allow these important elements to be known and debated by lawyers who will be required to interpret the provision:

> … an equal balance of power between the parties, in particular given <u>their socioeconomic status; their cultural, ethnic and socio-historical origins;</u> incidents of family violence, which includes spousal violence<u>, whether that violence is physical, psychological, moral, judicial, sexual or other, or related to coercive control behaviours</u>.

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[43] *Droit de la famille — 23796*, 2023 QCCS 2054 (CanLII); *Droit de la famille — 231579,* 2023 QCCS 3557 (CanLII); *Droit de la famille — 232068,* 2023 QCCA 1547 (CanLII).
[44] Bill C-332: *An Act to amend the Criminal Code (controlling or coercive conduct),* Forty-fourth Parliament, First Session, 2024.
[45] Evan Stark, *Coercive Control: How Men Entrap Women in Personal Life* (Oxford: Oxford University Press, 2007).
[46] *Tremblay v. Daigle,*1989 CanLII 33 (SCC), [1989] 2 SCR 530.
[47] Chantal Daigle, "Le seul choix, le mien", *Sérénité inc*. magazine (Montréal: 1990).

e. Charter of human rights and freedoms

In 1996, Professor Pierre Bosset, a lawyer at the time, described the provisions of Chapter IV of the *Charter of human rights and freedoms* as "poor relatives."[48] In light of recent case law, this statement still holds. On the eve of its fiftieth anniversary, several aspects of the *Charter* must be rethought.[49] Only section 48 has significantly protected the rights of persons made vulnerable by age or disability against any form of exploitation.[50]

If Chapter IV is not significantly amended, we recommend adding specific economic and social rights for children and victims of family violence and considering the addition of *de facto* relationships to section 47. This would give the courts an additional tool to ensure the safety of victims of family violence, and it would send a strong message from the legislature on the eve of the *Charter*'s fiftieth anniversary that it now grants economic and social rights to children and victims of spousal violence.

Therefore, we recommend that the notion of *de facto* relationships[51] be added to the first paragraph of section 47 and that a third paragraph be added to provide for the right of children and victims of family violence and sexual violence to safely occupy a residence.

> Married or civil union spouses have, in the marriage, <u>*de facto* relationship or</u> civil union, the same rights, obligations and responsibilities.
>
> Together, they provide the moral guidance and material support of the family and the education of their common offspring.
>
> <u>Common offspring and victims of family violence, including spousal violence or sexual violence, have the right to safely occupy a residence during legal proceedings that affect the rights of one of the spouses, parental obligations and responsibilities, or the family regime.</u>

f. Information management in youth protection

Section 131.20 of the YPA makes it possible for a community or group of communities to establish different ways of applying the YPA that are better adapted to the cultural context of Indigenous communities.[52] Under this provision, communities may create their own dispute resolution mechanisms. The decision-making structure within the special youth protection system may be inspired by traditional Indigenous models that prioritize consensus decision-making and involve the extended family or a community body.[53] For example, a community may rely on family or elder councils.

However, section 44 of the Bill provides that "[a] judge of the Superior Court who is seized of a case in a family matter and who orders the production of an order, application, agreement or

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[48] Pierre Bosset, "Les droits économiques et sociaux : parents pauvres de la charte québécoise?" online: canlii.ca,https://canlii.ca/t/2rmv.
[49] The *Charter* was passed unanimously on June 27, 1975.
[50] The first major decision to this effect, which has been amply cited in the case law, is *Commission des droits de la personne (Szoldatits) c. Brzozowski,* 1994 CanLII 1792 (QC TDP). It defines the three elements necessary to establish exploitation, namely (1) the exploitation (2) of a person in a position of strength, (3) to the detriment of more vulnerable interests.
[51] It should be noted that "*de facto* union" is defined in section 61.1 of the *Interpretation Act*, CQLR, c. I-16.
[52] Ministère de la Santé et des Services sociaux, "Guidelines for establishing a special youth protection program for Native people", online: publications.msss.qc.ca < https://publications.msss.gouv.qc.ca/msss/fichiers/2015/15-838-01A.pdf >.
[53] *Ibid*.

decision relating to youth protection concerning the child who is the subject of the family matter may receive a copy or duplicate of those documents and take cognizance of them, as may the clerk of the court." As most cases under the special youth protection system are not brought to court, this section does not apply. In addition, section 44 of the Bill would not allow a Superior Court judge or a court clerk to obtain a copy of a youth protection decision under a special Indigenous youth protection system .

6. CONCLUSION

Although the establishment of the parental union would be an important step forward for Quebec society, it is clear that First Nations operate in a vastly different legal context. In this regard, the Government of Quebec must be sensitive to the realities of First Nations and the applicable laws, as the circumstances require. In the same vein, we ask that judges, notaries, and lawyers receive training in this regard. We hope that this brief has shed light on this subject.

We urge the Government of Quebec to consider our recommendations, which would benefit not only First Nations, but also all Quebec citizens. As stated in the *United Nations Declaration on the Rights of Indigenous Peoples*,[54] States must take effective measures to improve economic conditions, particularly for Indigenous women and youth. They must also take measures, in conjunction with Indigenous peoples, to ensure that Indigenous women and children enjoy full protection and guarantees against all forms of violence and discrimination.

[54]United Nations, *United Nations Declaration on the Rights of Indigenous Peoples*, online: un.org <https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf>.

7. SCHEDULE: LIST OF RECOMMENDATIONS

→**We recommend** that article 33 of the *Civil Code of Québec* be amended to take into account principles 9 and 10 of the *Act respecting First Nations, Inuit and Métis children, youth and families*:

… Consideration is given, in addition to the moral, intellectual, emotional and physical needs of the child, to the child's age, health, personality and family environment, including the presence of family violence, which includes spousal violence, or sexual violence, and to the other aspects of his situation, including the importance for that child of having an ongoing relationship with his or her family and with the Indigenous group, community or people to which he or she belongs and of preserving the child's connections to his or her culture.[55]

We question the fact that, although this Bill concerns the subject of family law, it makes no reference to the interest of the child. For example, section 521.28 states that "[t]he court may order either spouse to leave the family residence during any proceeding to settle the consequences of the end of the union." This provision should state that decisions regarding the occupation of the family home must be based solely on the interest of the child.

→**We recommend** that particulars regarding the balance of power involved be added and that the Bill enumerate various possible manifestations of violence and the possible origins of victims as an analytical factor. This would allow these important elements to be known and debated by lawyers who will be required to interpret the provision:

… an equal balance of power between the parties, in particular given their socioeconomic status; their cultural, ethic and socio-historical origin; incidents of family violence, which includes spousal violence, whether that violence is physical, psychological, moral, judicial, sexual or other, or related to coercive control behaviours."

→**We recommend** that the notion of *de facto* relationships[56] be added to the first paragraph of section 47 of the *Charter of human rights and freedoms* and that a third paragraph be added to provide for the right of children and victims of family violence and sexual violence to safely occupy a residence.

Married or civil union spouses have, in the marriage, *de facto* relationship or civil union the same rights, obligations and responsibilities.

Together, they provide the moral guidance and material support of the family and the education of their common offspring.

Common offspring and victims of family violence, including spousal violence or sexual violence, have the right to safely occupy a residence during legal proceedings that affect the rights of one of the spouses, parental obligations and responsibilities, or the family regime.

[55] The underlined passages are the proposed amendments.
[56] It should be noted that "*de facto* union" is defined in section 61.1 of the *Interpretation Act*, CQLR, c. I-16.

VISION

First Nations individuals, families and communities are healthy,
have equitable access to quality care and services,
and are self-determining and culturally empowered.

MISSION

To accompany Quebec First Nations
in achieving their health, wellness, culture
and self-determination goals.

FIRST NATIONS OF QUEBEC AND LABRADOR HEALTH AND SOCIAL SERVICES COMMISSION

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