

## First Peoples Child & Family Review

An Interdisciplinary Journal Honouring the Voices, Perspectives, and Knowledges of First Peoples through Research, Critical Analyses, Stories, Standpoints and Media Reviews



# Understanding Innu normativity in matters of customary “adoption” and custody

Sébastien Grammond et Christiane Guay

Volume 12, numéro 1, 2017

URI : <https://id.erudit.org/iderudit/1082439ar>

DOI : <https://doi.org/10.7202/1082439ar>

[Aller au sommaire du numéro](#)

### Éditeur(s)

First Nations Child and Family Caring Society of Canada

### ISSN

1708-489X (imprimé)

2293-6610 (numérique)

[Découvrir la revue](#)

### Citer cet article

Grammond, S. & Guay, C. (2017). Understanding Innu normativity in matters of customary “adoption” and custody. *First Peoples Child & Family Review*, 12(1), 12–23. <https://doi.org/10.7202/1082439ar>

### Résumé de l'article

*This article presents the preliminary results of a research project on customary custody and “adoption” in the Innu community of Uashat mak Mani-Utenam in northeastern Québec. From a legal pluralist perspective, the authors used a biographical method to understand the workings of the ne kupaniem/ne kupanishkuem Innu legal institution, which can be compared in certain respects to adoption in Western legal systems. The authors present certain characteristics of this institution in order to expose the limits of bills that seek to recognize “indigenous customary adoption” in Québec law. Innu “adoption” stems from an agreement between the concerned persons, which can crystallize gradually, which never breaks the original filial link, and which does not immediately create a new filial link. In theory, this type of adoption is not permanent. As such, a Québec law that only recognizes indigenous adoptions that create a new filial link runs the risk of either being ineffective, or of distorting the Innu legal order.*

## An Interdisciplinary Journal

*Honoring the Voices, Perspectives and Knowledges  
of First Peoples through Research, Critical Analyses,  
Stories, Standpoints and Media Reviews*

# Understanding Innu normativity in matters of customary “adoption” and custody<sup>1</sup>

Sébastien Grammond,<sup>2</sup> Christiane Guay<sup>3</sup>

<sup>2</sup> Faculty of Law, University of Ottawa, Ontario, Canada

<sup>3</sup> Department of Social Work, Université du Québec en Outaouais, Québec, Canada

Corresponding author: Sébastien Grammond, [sebastien.grammond@uottawa.ca](mailto:sebastien.grammond@uottawa.ca)

## Abstract

*This article presents the preliminary results of a research project on customary custody and “adoption” in the Innu community of Uashat mak Mani-Utenam in northeastern Québec. From a legal pluralist perspective, the authors used a biographical method to understand the workings of the ne kupaniem/ne kupanishkuem Innu legal institution, which can be compared in certain respects to adoption in Western legal systems. The authors present certain characteristics of this institution in order to expose the limits of bills that seek to recognize “indigenous customary adoption” in Québec law. Innu “adoption” stems from an agreement between the concerned persons, which can crystallize gradually, which never breaks the original filial link, and which does not immediately create a new filial link. In theory, this type of adoption is not permanent. As such, a Québec law that only recognizes indigenous adoptions that create a new filial link runs the risk of either being ineffective, or of distorting the Innu legal order.*

**Keywords:** customary adoption, Innu law, ne kupaniem/ne kupanishkuem

## Introduction

The phenomenon that anthropologists refer to as “child circulation” exists in every society in various forms and under different names, such as adoption, custody transfer or fosterage. In the case of the Indigenous peoples, the human stakes inherent in this phenomenon are amplified by colonial issues: the State regulates child circulation in a manner that leads to negative consequences for Indigenous communities. Whether pursuant to the child welfare system or to the rules on adoption, the State claims the right to remove Indigenous children from their families and to determine the orientation that best suits the interests of the children. Where such a measure is implemented, the child in question is often placed with a non-Indigenous foster family. The devastating impacts of this system on Indigenous peoples were recently recalled by the Truth and Reconciliation Commission, which asserted that “Canada’s child welfare system has simply continued the assimilation that the residential school system started” (TRC

---

<sup>1</sup> This paper originally appeared in French in the McGill Law Journal, Vol. 61(4), pgs. 885 – 906, (2016).

2015, pg. 138).

This article presents the preliminary results of a research project seeking to identify alternative means of ensuring the security and development of Indigenous children. More specifically, this project deals with the recognition of Innu law in matters which Western legal scholars refer to as custody and the customary adoption of children. In collaboration with Uauitshitun, the social services centre of the Innu community of Uashat mak Mani-Utenam, in northeastern Québec, we sought to understand how, today, these issues are subject to Innu norms, independently of any attempt on the part of Québec law to regulate them. Our ambition is that these Innu norms will enable the resolution of problematic situations without requiring the involvement of the Québec system.

Our research project is not complete; however, we believe that it is useful to publish certain preliminary results and observations regarding the mindsets and attitudes that must be changed in order to ensure an adequate recognition of Innu norms regarding the custody and adoption of children. Hence, after having set out the general outline of our research methodology, we will analyse how certain rules or principles of Québec law stand in the way of the recognition of certain Innu norms that we have tentatively established.

## Innu law as an alternative

Like many other Indigenous communities facing the impacts of the child welfare system, Uashat mak Mani-Utenam is looking for alternatives. One potential solution is found in section 37.5 of the **Youth Protection Act**. This provision authorizes the Government of Québec to enter into an agreement with Indigenous communities for the establishment of a parallel child welfare system, which may be subject to different rules than those set out in the Act.

With a view to preparing for the negotiation and implementation of such an agreement, Uauitshitun (the social services centre of Uashat mak Mani-Utenam) asked us to undertake research on certain Innu practices, specifically parental practices, customary adoption and land-based healing practices. This article will only deal with customary adoption. We aim to highlight the existence, and to analyse the contents, of Innu adoption practices and to determine which legal and institutional frameworks promote a respectful dialogue (Otis 2010, pg. 22) between the Innu and the State legal order. In other words, this will enable an Innu child welfare system to be grounded in Innu knowledge. Actions taken in respect of Innu children can therefore be in keeping with the distinctive features, values and history of Innu society.

Our perspective is that of legal pluralism (Grammond 2013, pgs. 30-35, 365-91), which means that we consider that laws exist in each society, even if they take on different forms. Hence, law is not only made up of written laws or decisions handed down by State courts, it also consists of norms that regulate the social life of the Indigenous peoples. John Borrows has shown that these norms may originate from various sources, including not only sacred or natural sources, such as stories describing the creation of the world or the interaction between human beings and their environment, but also human sources, such as ceremonies or deliberative processes or customary law in the strict sense, namely a constant practice that is deemed to be compulsory (Borrows 1996, 2010; Webber 2009).

**That being said, the occasional use of the word "tradition" to describe Indigenous legal systems**

must not make it sound like these systems are stuck in the past. As Glenn (2014) has clearly shown, **tradition is not impervious to change. We are interested in those norms that govern today's Innu family.** We are not seeking to implement the approach set by the courts to identify Aboriginal rights based on practices that were in effect a long time ago. In this sense, we recognize that Indigenous legal systems are dynamic, that is to say that the content of Indigenous norms is liable to evolve, either by way of an express decision made by an Indigenous authority or by way of some sort of tacit deliberation which, according to Webber (2009), characterizes custom as a source of law. The legal sphere is therefore one of the places where the historical action of Indigenous peoples can take place. In sociology, historical action is the conscious action of the members of a society to direct the historical development of that society. According to Martin (2009), Indigenous peoples are no less capable thereof than any other society. They do not, in a passive and deterministic fashion, suffer the influence of Western society. Rather, through their actions, they seek to alter the course of events and to create a form of modernity that is consistent with their interests, culture and values.

To pursue this project, we adopted the biographical approach, based on the telling of each **participant's life story in connection with the theme under study. This approach allows the researcher to avoid imposing his or her theoretical framework or worldview, since participants are entirely free to frame their discourse as they wish. Indeed, it is up to the participant to decide what to share with the researcher, and how. In addition, this method recognizes the participant's voice and affords him or her legitimacy, as** it recognizes that the participant possesses knowledge and expertise from which new knowledge can be drawn. Finally, the biographical approach has the advantage of not decontextualizing the practices on which the research is focused and of taking into account the time dimension, that is to say the history of colonization and its repercussions on the reality under study (Guay 2016).

We therefore recorded life stories with a dozen participants from Uashat mak Mani-Utenam by way of non-directive interviews. The interview plan was divided into three major themes: the socio-cultural aspects in relation to the community of origin, the significant events of the participant's personal life path and aspects regarding his or her experience as an adoptee or adopter. The stories were transcribed verbatim, and then put in narrative form. They were then validated with the participants. **These stories represent "a type of analysis that is just as relevant and legitimate as the analysis performed by the researcher" (Guay 2016). A reading thereof is replete with valuable teachings regarding** customary adoption and the reality within which it takes place. That being said, the stories are also subjected to analysis by the researchers with a view to condensing them based on an analytical grid devised in an iterative manner in light of the research questions and a preliminary reading of the stories. Subsequently, the research results will be subjected to a community consultation with a view to obtaining a consensus as to Innu normativity regarding adoption. At that time, it will be possible to resort to the methodology developed by the Indigenous Law Research Unit at the University of Victoria in order to extract the Indigenous law based on life stories, current practices, traditional tales or legends (Friedland & Napoleon 2015).

We must specify, **at this juncture, what our notion of "law" and "Innu law" is.** Québec legal practitioners usually have a positivist concept of law. In this view, the law is made up of a set of rules pre-determined by the authorities recognized as having the power to enact **them (or to "posit" them, hence the phrase "positive law").** These authorities include the National Assembly, municipal councils, certain

regulatory agencies, etc. In some cases, according to the common law tradition, the courts may also participate in the definition of what the law is.

On the other hand, such a concept is wholly useless in traditional Innu society, where there were no specialized authorities tasked with enacting laws or handing down judgments. This does not mean Innu society is lawless or devoid of norms. Rather, Innu normativity does not follow the same form of law as in Western societies, so much so that there is no expression in the Innu language to translate the word “law” (Lacasse 2004, pgs. 23, 47, 71). As in the case of other Indigenous peoples, Innu normativity is not necessarily made up of rules, prohibitions, powers or duties, but rather emphasizes values and their transmission, as well as dispute resolution processes (Law Commission of Canada 2006).

**The use of the term “law” to describe** this form of normativity is not dictated by any purportedly objective definition. Instead, it is a choice that aims to ensure a more egalitarian dialogue between the normative traditions of the two societies examined. Indeed, Innu normativity is of no less value, and does not deserve lesser recognition, just because it does not have the same form as Western positive law. This choice is also consistent with Article 34 of the United Nations Declaration on the Rights of Indigenous Peoples, which asserts the right of Indigenous peoples to promote, develop and maintain their “**juridical systems or customs.**”

Moreover, one must also refrain from the temptation of looking to Innu law for norms of general application that would apply to individuals without any possibility for adaptation. As we shall see below, Innu law in matters of adoption is characterized by the very broad freedom given to individuals to reorganize their family relations. Under such circumstances, legal research cannot disregard the manner in which individuals usually exercise their freedom.

## Overcoming hurdles to the recognition of Innu law

Since at least 30 years, the Indigenous peoples of Québec have sought official recognition of customary adoption. A bill to that effect, Bill 113, was recently tabled before the National Assembly and we do not know, at the time of writing, the exact shape of the mechanisms that will enable the recognition of customary adoption in Québec law. Whatever the outcome of that process, it is worthwhile reflecting about the hurdles resulting from differences in structure and content between the Québec and the Innu legal systems with respect to family relations. This exercise might allow for potential solutions to emerge that do not require the enactment of legislation or that might form part of an Innu child welfare system. Whatever its practical repercussions may be, such an analysis will also bring into sharper focus certain theoretical challenges arising from the will to foster a respectful dialogue between two legal orders that are so different.

Hence, we will, in turn, present three features of Québec law: the fact that issues of filiation and adoption are deemed to be matters of public order (or public policy); the permanent nature of adoption or, in child welfare matters, the search for permanent solutions; and the fact that the State intervenes as the compulsory guardian of the best interests of the child. Finally, we will illustrate, using our preliminary results, why these features of Québec law cannot be transferred to Innu law and how insisting on these features hampers the application or recognition of Innu law.

## Filiation and adoption, matters of public order

The *Civil Code of Québec* (“CCQ”) contains a set of rules regarding filiation (a civil law term that describes the legal link between a person and the person’s parents) and adoption. These rules allow for a determination of who the father and mother of a child are, for proof of paternity where it has not been declared and for change of filiation by way of adoption. The information regarding a person’s filiation must be recorded in a register maintained by a State official, the Registrar of Civil Status, who has sole authority to issue certificates evidencing a person’s filiation. Once filiation has been established, certain rights and obligations flow from the Code, specifically as regards parental authority, the duty to pay alimony or estates.

One feature of these rules is that they leave little room for the exercise of individual choice. On the contrary, the dominant ideology underlying these provisions of the Code is that legal filiation is intended to reflect biological reality (Bureau 2009), even if the reforms made in 2002 regarding assisted procreation and LGBT parenting have somewhat relaxed this principle. Hence, civil status is a “matter of public order” or is “unavailable” (*indisponible*), meaning that individuals cannot agree, for instance by way of contract, to change a person’s filiation or, in any other way, to transfer a child from one family to another. This principle is so deeply engrained in the mindset of jurists that it is not even expressly set out in the relevant provisions of the Code; it must be inferred instead.

Similarly, private adoptions or adoptions by way of contract are prohibited. Adoption must be sanctioned by the court (CCQ art. 566) and the Code sets out the procedure to be followed. The rigidity of this principle is even reinforced by penal sanctions: section 135.1 of the *Youth Protection Act* makes it an offence to adopt a child contrary to the applicable legislative provisions. As the Court of Appeal recently underscored in a decision, “If the only requirement to obtain adoption [...] was consent, then there would be a total absence of judicial control over such adoptions, and filiation would risk becoming an amorphous if not volatile legal institution” (*Adoption — 152*, 2015 QCCA 348 at para. 98). The public order nature of filiation and adoption is therefore closely associated with the involvement of the courts, which represent the power of the State, in order to approve any change to civil status.

These features, however, differ from those we were able to observe in Innu law. Indeed, our main finding is that Innu law is based on individual freedom to restructure one’s family relations in a manner which, ultimately, but not in all cases, may lead to the creation of new bonds of filiation. In particular, Innu law recognizes the freedom of individuals to agree to entrust the custody of a child to persons other than its biological parents. As one participant stated, “The agreement between us is that I leave her my daughter to raise.” In the majority of cases, the persons are the grandparents of the child (often, the mother still lives with her parents), but it may also be other more or less remote relatives or, sometimes, unrelated persons.

Let us stress from the outset that the Innu do not use the term “adoption”, but rather that of “custody” to describe this reality. As one participant put it:

Customary adoption doesn’t exist, it doesn’t resonate, it is not in our language; I don’t even know what word to use in Innu to define it. I dare not say lend the child to the elder or keeping the child for some time when there are family problems between the mother and the grandmother.



The term “adoption” is generally used to refer to a legal adoption in accordance with Québec law. In the Innu language (*innu aimun*), children who are adopted (or cared for by someone else) are designated by the terms *ne kupaniem* (in the masculine) and *ne kupanishkuem* (in the feminine), which literally mean “a child cared for temporarily.” That said, despite the use of these concepts, in many cases, people speak of children under their custody as being their own children and they do not make this terminological distinction.

Since traditional Innu society did not have any hierarchical authority, such agreements are made between the persons concerned and do not require the involvement of any third party. Today, such agreements are entered into without any involvement on the part of state authorities and in the absence of any official requirements, even if, in some cases, the parents ultimately choose to carry out a legal adoption or to resort to tutorship in order to facilitate interaction with Québec institutions.

All the participants describe these transfers as an informal, paperless process, resulting from an agreement or a consensus among the parties involved. Contrary to some Indigenous nations in British Columbia (Atkinson 2010, pg. 48), there is no adoption ceremony.

In some cases, it is even difficult to determine the precise timing of the agreement between the parties. Hence, one participant who was experiencing personal hardship at the time of the birth of her child said that she left her child with her sister on weekends. When her problems worsened, she and her sister ultimately agreed that the child would be better off with her sister. Adoption, in this case, is a *de facto* situation that crystallizes gradually. Another participant even said that, as far as one of her daughters was concerned, the adoption happened “automatically”, which suggests that the parties’ wishes are not expressed at a specific point in time but rather progressively.

In short, even if non-Innu people often refer to it as a customary adoption, the Innu legal institution of *ne kupaniem/ne kupanishkuem* does not mirror adoption in Québec law. It does not have the same features. Those differences cannot be ignored in the design of an interface between Québec and Innu law.

## The search for permanence

In current Québec law, an adoption breaks the original bonds of filiation and it is confidential (arts. 577, 582 CCQ). It is also definitive, in the sense that an adoption, as opposed to tutorship, is considered a permanent change in filiation, which can only be changed again by a new adoption of the same child, which rarely, if ever, happens. The rules governing adoption therefore seek to guarantee permanence in the new circumstances of the child by wholly breaking off bonds with the original family.

The law governing youth protection seeks to achieve the same objectives. Basing itself on the bonding theory in psychology, the *Youth Protection Act* was amended in 2007 to reduce the “bandying about” of children between various foster families and to set maximum placement periods, following which a permanent solution must be found (Ricard 2014 pgs. 39-40). Within Indigenous communities, one of the effects of this mindset is to increase resort to adoption or placements in non-Indigenous foster families until the child reaches adulthood (Guay and Grammond 2010, pg. 105). In addition, youth protection orders may require contacts between the child and his or her original family to be supervised or may, in certain exceptional cases, prohibit such contact altogether.

Although it forms part of a broader reform that would acknowledge certain forms of adoption that would give some recognition to original filiation, the recognition of customary adoption proposed in Bill 113, as it stands at the time of writing, nevertheless still pursues the goal, at least implicitly, of ensuring that the Indigenous child has a new permanent filiation. Bill 113 would add a new article 543.1 to the Civil Code, which would only recognize “adoptions” that create new bonds of filiation at a set date. There is no provision for a termination of such an “adoption”.

In Innu law, agreements with respect to the care of a child do not displace original filiation. These agreements are not confidential; the small size of the communities would, in any event, make any such confidentiality illusory. The child still knows who his or her biological parents are and will usually continue to maintain contact with them. In fact, it is quite possible that the maintenance of contacts with the original family may be considered to be a compulsory rule that restricts the freedom of the parties to restructure their family relations. This rule is illustrated by the story of one participant to whom the Director of Youth Protection (“DYP”) proposed a life plan for a child she had been caring for for some time. She stated that she accepted, adding however that she had told the DYP that she would never accept a contract prohibiting any contact with the birth mother. This would, therefore, be a case where an Innu actor **apparently insisted on the rules of “her” legal order prevailing.**

Do these agreements create new bonds of filiation? The words used by the participants to describe kinship, as well as their statements on the relative weight of biological and social kinship, lead to the conclusion that, with the passage of time, very strong emotional ties are created and the child can consider himself or herself to be a full-fledged member of the adoptive family. He or she may refer to his or her adoptive parents as being his **or her “real parents”** or call the adoptive mother “Mommy”. **In certain cases, the child will use words such as “Mommy” to refer both to his or her biological mother and his or her adoptive mother,** with variations reflecting the degree of contact with each. In other instances where **contact with the original family is more frequent, the child may continue to use the term “grandparents”** to describe those who raised him or her, explaining, **“I rather saw them as my parents; I never called them Daddy and Mommy because I knew they were my grandparents, but they were the ones doing the parenting.”** Ultimately, it appears that the persons involved in each situation attempt to combine the (French) vocabulary of terms of kinship to describe nuances in their own circumstances and the relationship between biological parents and social parents. Hence, one participant stated, **“In the end, I had two mommies: my aunt and my mother.”** Finally, one adoptive mother referred to herself as **“mémère”** with her adoptive children whereas she used the term **“môman”** to refer to their biological mother.

One participant asserted that the prohibition on incest would apply equally to the natural and adopted children of the same family, which tends to show that true bonds of filiation flow from the institution of *ne kupaniem/ne kupanishkuem*, at least where it lasts for a long time. However, one should stress that this issue does not arise frequently, since most adoptions take place within an extended family, resulting in uncles and aunts of the adopted child becoming his or her brothers and sisters. Other stories also allude to the principle of equal treatment of natural and adopted children, which tends to show that certain adoptions create true bonds of filiation.

Contrary to adoption in Québec law, agreements with respect to the care of children or adoption are considered to be temporary. The return of the child to his or her original family is considered to be a



normal, if not desirable, event. However, in most cases, this return is left up to the child and it was found that the child often tended to return to his or her adoptive family after a brief stay with his or her original family. Other children refused outright to return, even if urged by the adoptive mother. In point of fact, our findings were that adoptions were more permanent than the statements of the participants seemed to imply.

In brief, what one may refer to as “customary adoption” in Innu law is much more fluid than an adoption under Québec law, even if it may lead to the creation of true bonds of filiation. The creation of these bonds, however, does not take place at a specified moment in time; rather, it crystallizes gradually. Theoretically, it is temporary and reversible, although a child that has stayed a long time with his or her adoptive family will often refuse to return to his or her original family. This flexibility will no doubt stand in the way of its recognition under Québec law, since it will be difficult to **determine the “date of adoption,”** or the time as of which one can state that new bonds of filiation have been created. The participants we met simply do not approach the issue in these terms.

## The state as guardian of the best interests of the child

For several decades, the child’s best interests have become the overarching principle that informs all legislation with respect to children. Article 33 of the CCQ provides that “[e]very decision concerning a child shall be taken in light of the child’s interests,” a statement that is echoed in section 3 of the *Youth Protection Act*. This includes decisions regarding adoption, which, theoretically, cannot be made taking into account the interests of the parents or the community, but only those of the child. Yet, it has been observed that Québec law on filiation, including adoption, is increasingly making room for the wishes of adoptive parents to have children and has incidentally been criticized for this reason (Pratte 2003). The safeguarding of the best interests of the child is no doubt the main rationale for the public order nature of filiation and of adoption: if the State supervises individual conduct and prohibits private agreements, it is to ensure that parents are not making decisions based only on their personal interests, to the detriment of **their children’s**. Thus, the State evaluates adoptive families and, in child welfare matters, foster families, to ensure their ability to raise children.

In its current form, Bill 113 would reiterate the gist of this principle, by requiring that the Indigenous authority certifying a customary adoption make sure, **“in light of an objective appraisal, that the adoption is in the interest of the child.”** It is difficult not to see in this requirement for an “objective” appraisal an expression of distrust on the part of Québec child welfare authorities towards customary adoption. The Bill would also add section 71.3.2 to the *Youth Protection Act*, which would prohibit the issue of any Indigenous customary adoption as of the time the Director of Youth Protection receives a report on a child, **except with the Director’s advice. Such a provision could have the practical effect of subordinating customary adoption to the child welfare system.**

These restrictions on the recognition of customary adoption assume that the latter does not guarantee the best interests of the child in question. Is this in fact the case? Our preliminary results highlight the fact that Innu law contains mechanisms that allow for the consideration of the best interests of the child. Hence, parents entrust the care of their child to another person chiefly because they realize their own inability to care for them adequately, often due to personal problems (alcohol or drug use, teenage motherhood, etc.), to the death of one of the parents, sometimes also because it is difficult to

bring a very young child in the bush, or for employment-related or education-related reasons. One participant described this situation as follows:

**[S]ometimes it is precisely because the child’s parents are aware of their inability to adequately care for him or her that they decide to place him or her with people who will better be able to do so. A mother cannot give what she does not have. Sometimes, she does not have the requisite health or psychological balance to raise the child adequately. It is an act of love and humility to admit one’s inability to care for one’s child. It is often because the mother is not able to care for herself that she acts this way.**

It appears that these reasons justifying a transfer of custody represent one way to give concrete effect to the child’s best interests principle. In this respect, the institution of *ne kupaniem/ne kupanishkuem* would somehow represent a manner for Innu society to ensure the protection and welfare of its children.

Moreover, the participants assert that the transfers of the child between his or her original family and adoptive family take place in keeping with the wishes of the child. The child’s autonomy and respect for his or her decisions (Guay 2015) actually constitute important values, as can be seen from our interviews. They are related to the broader principle of non-interference, which is common to many Indigenous societies (Lacasse 2004, pgs. 58-60). Pursuant to this principle, it is inappropriate to prescribe a course of conduct or to criticize the actions of another person; a certain amount of deference is therefore necessary when one seeks to influence the conduct of another.

This is especially apparent in the case of a return to the original family, as discussed above. This return often takes place at the end of childhood or at the beginning of adolescence and the child is then in a position to assess what is most suitable, which no doubt explains the fact that many children prefer to remain with their adoptive family. Even where children are younger, their parents will take into account the preferences of the child: for example, where a child of tender years reacts poorly to a return to his or her original family, the original parents take note thereof and return the child to the family that cared for the child for some time. One participant described the circumstances of her “adoption” by her grandparents in the following manner:

When I was born, my parents lived with my grandparents. When I was one year old, they got their house and moved, taking me with them, but, apparently, I kept returning to my grandmother’s. When my grandparents saw that I did not want to live with my true parents, I stayed with my grandparents. I even believe that I was the one to ask my grandmother to adopt me!

One participant claims to have “decided” to stay with her adoptive parents, even though she was only a few months old at the time. Even if this seems implausible, it reflects the Innu’s belief in the autonomy and decision-making power of the child. We even witnessed a case of an eight year-old girl, who, upon seeing the social worker coming to her house, herself arranged her own adoption by her aunt.

Whatever one may think of a child who cannot yet speak making a choice or expressing his or her wishes, these assertions no doubt reflect the main concern of Innu parents for the welfare of children. Stating that a one year-old child has decided to stay with his or her grandparents is tantamount to acknowledging that it is in the child’s best interests to remain with the grandparents. Statements to the

effect that the child made a choice and that the parents respected that choice are actually statements about the best interests of that child.

One of the objections sometimes voiced to the recognition of Indigenous customary adoption is **the fear that it might be carried out exclusively in the parents' interests as opposed to those of the child.** This raises the issue of the motives for the adoption. Yet, the motives mentioned by most participants are related to the values of sharing and mutual aid. In this sense, adoptive parents care for children in order to help the original parents who are unable to do so (whether due to personal problems resulting from alcohol or drug addiction, a parent moving away for employment or educational purposes, even the death of one of the parents, etc.) and in order to help the children themselves. One participant claims that mutual aid is one of the greatest values that inform her life and that it was handed down to her by her grandmother, who raised her. The significance attaching to sharing and mutual aid is compatible with the existing literature about the Innu (Lacasse 2004, pgs. 56-57, 78-80).

Based on fieldwork conducted in the early 1970s, Robert Lanari asserted that adoption among the Innu resulted from the **"social duty to give back,"** within a general system of reciprocity. In this sense, adoption supposedly enabled adopters to enhance their social status; it would also allow infertile couples to have children (Lanari 1973, pgs. 141-145). According to Lanari, adoption was chiefly for the benefit of adopters. However, the stories we have collected make no mention of such motives. Some participants refer to the existence of a tradition whereby a woman would give her firstborn to her own mother. The story of one participant, who was the eldest of her siblings and raised by her grandparents, might be consistent with this tradition, although the participant made no mention of it. Aside from this exception, no participant was adopted for this reason and this tradition was referred to as being a thing of the past.

Therefore, we can see that the Innu legal institution of *ne kupaniem/ne kupanishkuem*, in its own way, ensures the consideration and protection of the best interests of children. It is therefore unwarranted to exclude its application outright where a child has been brought under the Québec child welfare system.

## Conclusion

The preliminary results of our research already allow us to take note of the originality of the Innu legal institution of *ne kupaniem/ne kupanishkuem*, that non-Innu persons call customary adoption, and of its irreducibility to an adoption under Québec law. Indeed, at the risk of grossly oversimplifying, one could assert that Innu customary adoption is a gradual process, based on a tacit or explicit agreement between the original and adoptive parents, that may or may not lead to the creation of additional bonds of filiation, but never to a severance of the original bonds of filiation.

The enactment of legislation recognizing customary adoption is a welcome development. However, the tendency to seek an equivalent of an adoption under Québec law and to set conditions in order to guarantee compliance with the best interests of the child leads to a system that risks rendering such recognition illusory or forcing Indigenous peoples to change their laws with respect to family relations so as to make them consistent with the interface that Québec law will provide. Will the Innu want to embark on the latter path? That is a matter for them to decide.

Other solutions can, however, be contemplated. It is not necessary to make customary adoption fit into the mould of Québec adoption governed by the Civil Code. One could, in this respect, follow the

model of Aboriginal rights to land. The latter do not fall within the categories of the Civil Code in matters of property rights. Instead, they are overlaid on the rules of the Code and even take precedence over the latter due to their constitutional protection. Hence, the rules of Québec law are required to adapt to the existence of Aboriginal rights, and not the other way around. In family matters, that would mean that concepts such as parental authority or tutorship could be resorted to to reflect the Innu legal institution of *ne kupaniem/ne kupanishkuem* where the latter does not, or does not yet, result in the creation of new bonds of filiation.

## References

- Atkinson, G. (2010). Adoption Practices: A First Nation Perspective. In J. Carrière (ed.), *Aski Awasis/Children of the Earth: First Peoples Speaking on Adoption*, Black Point (N.S.), Fernwood.
- Borrows, J. (1996). With or Without You: First Nations Law (in Canada). *McGill Law Journal*, 41(3), 629.
- Borrows, J. (2010). *Canada's Indigenous Constitution*. Toronto: University of Toronto Press.
- Bureau, M.F. (2009). *Le droit de la filiation entre ciel et terre : étude du discours juridique québécois*. Cowansville : Éditions Yvon Blais.
- Friedland, H., & Napoleon, V. (2016). Gathering the Threads: Developing a Methodology for Researching and Rebuilding Indigenous Legal Traditions. *Lakehead Law Journal*, 1(1), 16.
- Glenn, P. (2014). *Legal Traditions of the World: Sustainable Diversity in Law*, 5th ed. Oxford: Oxford University Press.
- Grammond, S. (2013). *Terms of Coexistence: Indigenous Peoples and Canadian Law*. Toronto: Carswell.
- Guay, C., & S. Grammond (2010). À l'écoute des peuples autochtones? Le processus d'adoption de la "loi 125". *Nouvelles pratiques sociales*, 23(1), 99.
- Guay, C. (2015). Les familles autochtones : des réalités sociohistoriques et contemporaines aux pratiques éducatives singulières. *Intervention*, 141(2), 17.
- Guay, C. (2016). La légitimité des discours narratifs autochtones dans le développement des connaissances en travail social. *Recherches amérindiennes au Québec*, 45(2-3), 17.
- Lacasse, J.P. (2004). *Les Innus et le territoire : Innu tipenitamun*. Québec : Septentrion.
- Lanari, R.E. (1973). *L'adoption chez les Amérindiens Montagnais-Naskapis, North West River Labrador (master's thesis)*. Memorial University of Newfoundland, Newfoundland and Labrador.
- Law Commission of Canada (2006). *Justice Within: Voices of Indigenous Legal Traditions*. Ottawa.
- Martin, T. (2009) Pour une sociologie de l'autochtonisme. In N. Gagné, T. Martin, & M. Salaün (Eds.), *Autochtonies : Vues de France et du Québec*. Québec : Presses de l'Université Laval.
- Otis, G. (2010). Cultures juridiques et gouvernance : cadre conceptuel. In G. Otis et al., (Eds.), *Cultures juridiques et gouvernance dans l'espace francophone : Présentation générale d'une problématique*. Paris : Éditions des archives contemporaines.

- Pratte, M. (2003). La filiation réinventée : l'enfant menacé?. *Revue générale de droit*, 33(4), 541.
- Ricard, L. (2014). L'évolution récente de la conception de l'enfant dans le droit québécois : l'exemple de la Loi sur la protection de la jeunesse et des récents projets de loi en matière d'adoption. *Revue de droit de l'Université de Sherbrooke*, 44(1), 27.
- Truth and Reconciliation Commission of Canada ("TRC") (2015). *Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada*. Montréal: McGill-Queen's University Press.
- Webber, J. (2009). The Grammar of Customary Law. *McGill Law Journal*, 54(4), 579.