

**MALIGARNIT QIMIRRUJIIT**  
**NUNAVUT LAW REVIEW COMMISSION**

**ISSUE:** *Aboriginal Custom Adoption*

**RECOMMENDATION:** *An Act Recognizing Aboriginal Custom Adoption*

**SUMMARY OF ISSUE**

Nunavut inherited the Aboriginal Custom Adoption Recognition Act on April 1, 1999 from the Northwest Territories.

I. *Aboriginal Custom Adoption Recognition Act (NWT)*

In 1996, the Government of the Northwest Territories enacted the *Aboriginal Custom Adoption Recognition Act*. The intent of this act was to reflect and recognize legally the traditional way Aboriginal peoples have practiced custom adoption. The primary purpose of this Act was to allow individuals who were custom adopted to obtain birth certificates in an easier, timely and more simplistic manner. The new Act also introduced Custom Adoption Commissioners in each community, acting as resource personnel for custom adopted persons to legalize adoptions and to obtain birth certificates at no cost.

Prior to this Act coming into force, the custom adoption process was formal and cumbersome. A custom adopted person was required to apply to the court, either for a change of name or for a private adoption to 'legalize' the adoption and obtain birth certificates once the custom adoption had already been placed. Because of difficulties in obtaining birth certificates containing their adoptive name, many could not apply for other identification cards and thus apply for employment, income tax benefits or other identification-required benefits. It was also seen as undignified for custom adopted children to overcome the many obstacles preventing them from being recognized as children of their adoptive parents.

In our First Report, the Commission made a series of recommendations regarding the *Aboriginal Custom Adoption Recognition Act*. Our initial findings indicated that the process to obtain birth certificates was still cumbersome for many Nunavummiut.

Today, despite the introduction of the Act in 1996, there are still difficulties encountered by custom adopted persons when trying to obtain birth certificates. The following are some of the points of concern:

- Surname inaccuracies of both the natural parents and the adoptive parents are not uncommon and hinder the process. Therefore, the Commission recommended in its First Report a one step process for simple birth registration and name corrections for all necessary changes that would take place during a one-year amnesty period.
- Custom Adoption Commissioners, although paid a \$100 fee for each custom adoption process, often end up spending from their own personal funds for such expenses as mailing and telephone charges to finish a case. These expenses add up, especially when the paperwork must be sent back and forth to various birth registration offices and courts if problems with the case arise. The \$100 remuneration fee then becomes insufficient as an incentive to complete a case.
- Custom Adoption Commissioners do not have offices and are not properly trained. This in turn discourages Custom Adoption Commissioners to continue with their employment and many communities end up with no available resource people to assist with the Custom Adoption process.
- Often it is also much more difficult for either custom adopted persons or Commissioners to find birth registration records outside of Nunavut in order to begin the process. Nunavut residents who were born outside of Nunavut have a hard time finding their birth registrations in Quebec, Ontario, Manitoba, Alberta and the Northwest Territories because of name spelling variations and incorrect registration records and to which, birth registration staff in these jurisdictions are not always attuned.

*Thus, the Commission in this Final Report re-iterates recommendations from the First Report. To highlight this issue, this Final Report contains many actual comments and questions from Nunavummiut regarding the problems associated with obtaining custom adoption birth certificates.*

## *II. Aboriginal Custom Adoption Recognition Act*

Again, in the First Report, the Commission noted that it would return to the issue of custom adoption in its' Final Report when it received more feedback from Nunavummiut.

This Report contains more of the substance of custom adoption. Many Nunavummiut had numerous concerns about custom adoption other than obtaining birth certificates. Several participants noted that there are many problems and challenges with unregulated custom adoption. Nunavummiut would like to see more comprehensive legislation to deal with many aspects of custom adoption. Yet, at the same time, Nunavummiut do not want to see legislation that significantly alters their practices and customs or legislation that would restrict their practices and customs.

One of the issues that has significantly influenced adoption practices is the significant change in Inuit lifestyles over the past 50 years. Thus, custom adoption practices have

also changed significantly within those years. This traditional practice has evolved for many reasons:

- changes in lifestyles from hunting to employment
- changes from country food to store-bought food
- changes in how food is obtained from hunting to government cheques
- changes in travel from dogsleds to airplanes
- changes in conjugal relationships from traditional two parent families to single parent or widowed families and cross cultural marriages
- changes in population
- changes in how elders participated in decision-making processes to the younger generation making decisions for themselves
- changes in how agreements are carried through
- changes in how elders and camp leaders handled child cases to how Social Services handles cases

Thus, the Commission recommends legislation that introduces a framework that is not stringent and allows discretion to solve disputes and provide resolutions that reflect Inuit practices and beliefs and that also reflects the evolution of custom adoption. Its' purpose would be to provide a framework that Inuit can use to their benefit to accommodate and retain their decision-making authorities retaining their own unique viewpoints.

This framework would allow consistency, fairness, predictability and reliability. It would also be expected to be very much like the current family law system that is non-arbitrary and is used at the discretion of the individual rather than imposed by the state.

## PART ONE

### Background

#### *1. HISTORY*

In earlier times, custom adoption was not practiced to the extent that it is today. Historically survival was hard and a baby's only nourishment was the mother's breast milk. When a baby was adopted, often its only other source of nourishment was seal broth or plain water. It could not be easily fed to the baby like sucking a nipple. Traditionally, seal broth was given to a baby in a cup-like instrument on a regular basis. This became cumbersome to do at night or while traveling from camp to camp.

Inuit also developed a sack-like bottle from the dried lining of a seal bladder. Some Inuit practiced feeding a baby by dripping water into its' mouth from their mouth. Babies would also suck water from the adult's mouth. One adoptive mother reported that her mouth had been sucked so often that she has a permanent dent on her lip.

Some younger women started breast feeding their adopted baby from their breasts, even though they were not pregnant or bearing an infant. It was not uncommon for some women who already were breast-feeding their own children to breast feed someone else's adopted child for them. Some natural mothers breast-fed the child she had given up for adoption until it could feed for itself. In some cases adopted babies learnt to eat solid food early in infancy because feeding them with broth or water on a daily basis was difficult.

If the family or community had difficulty finding food, it was hard on the baby as well, as it solely depended on the food or the seal broth. A child that was kept by the natural mother had the safety net of their mother's breast milk. However, once the natural mother herself no longer had nourishment in her body, her breast milk also decreased and this was just as hard on the natural child.

This is one of the reasons why custom adoption was not practiced as much as today. It was impractical to custom adopt outside of necessity and custom adoption based purely on desire was largely unknown. Where adoption was not necessary, a couple would keep all of their children and convenience was rarely a factor.

#### *2. ORIGINAL CUSTOMS, PRACTICES AND PURPOSES*

Custom and practice also played a major role in custom adoption.

A child was immensely prized. A couple, unable to bear their own children, would be given a child. There was great sympathy for couples unable to have children or those without either a son or daughter. A child brought great joy and happiness and was

believed to complete a marriage. A couple with no boy would be given a boy, and similarly a couple without a girl would be given a girl. Both were treasured as gender roles were respected equally.

Orphans would also be adopted. Before Social Services and a formalized territorial government structure, Inuit had their own system of dealing with orphaned children.

It was also believed that custom adoption brought life to people. A couple without children who adopted sometimes found they were suddenly able to bear a child naturally. A child would also be given to someone who lost a loved one and needed uplifting from grieving. A child would be life long company to a lonely person and was seen to bring strength and vitality to an older person. Children were also seen as bringing families closer together and resulting in a closer union between couples.

### *3. REGIONAL DIFFERENCES*

There were regional differences in custom adoption.

In the North Baffin Region, a first child of a natural mother was rarely adopted out. It was believed the first child formed the mother physically and emotionally so that the subsequent children would benefit from this formation. It was believed that breasts that were breast-feeding for the first time would develop the best.

It was also believed that a first time mother would learn to love and cherish her child and that would carry over to the next one. If she adopted her first child out, there would be a gap that lingered to the next child and it seemed that she would be less inclined to take care of it properly.

In the South Baffin, a first child would be adopted out if deemed necessary. For example, if a mother was still young and capable and her older parents were less capable, the young couple might be needed to hunt and provide for the whole camp on a daily basis. In these circumstances a child might be adopted by the older parents to enable the young couple to fulfill other obligations to the group.

In the Kitikmeot, there was a common practice of grandmothers and grandfathers adopting their grandchildren, usually the child of the mother.

In all regions, the most evident practice was adoption between families, especially between parents and their adult children but also between brothers and sisters and between aunts and uncles. Different communities were far apart. It was most often impracticable to custom adopt from far away, before the advent of the airplane.

#### 4. KINSHIP - ORIGINAL CUSTOMS, PRACTISES AND PURPOSES

Kinship was encouraged. The main reason was to develop a relationship between the natural parents and adopted child out of love. Inuit also looked to the future. Should something happen to the adopting parents, the adopted child would have people to go to that which he or she was accustomed to and familiar with.

However, as a participant noted, it was not possible to keep an adoption a secret as persons who adopted from another were often relatives and lived in the same camp or area. Secrecy occurred only in very few cases.

Many participants commented that other cultures, in particular the Canadian legal private adoption system, was quite different from Inuit practice. The normal practice under the legal system is for both the natural parent and child to sever any form of contact or relationship at the time of the adoption (usually shortly after birth). The result under this system is virtually no natural kinship relationship at all between the child and birth parent.

Most commented that this 'secrecy' left devastating results. It was thought a child who didn't know where he or she came from, would, when they became an adult, wonder who their parents and siblings were and would also wonder why they were adopted. Because children were highly regarded, depriving an adopted child of such knowledge was considered to be causing a hardship.

Secrecy of adoptions did occur. An elder man explained that his daughter, who was adopted by his mother (the daughter's natural grandmother), did not know she was adopted until she was an adult. Once she did know, she was resentful against her natural father and also against her adoptive mother. Realizing this, the elder man ensured kinship between adopted children and their parents with subsequent children. (*The elder man did not explain why the daughter was never told she was adopted*).

There were other reasons for maintaining kinship ties. Adopting parents were so grateful to the natural parents that they would develop a kinship between the natural parents and child in appreciation of the adoption. Some parents would give gifts to the natural parents. Kinship between siblings was also encouraged, as well as maintaining these relationships.

In cases where it was not practical to maintain kinship relationships, the adopted child would be told that he or she was adopted and who the birth parents were.

#### 5. WHO WAS ALLOWED TO ADOPT

There were no strict rules about who should or should not adopt with respect to age. Adoption practices grew in response to need and to address the needs of the individual and the community. It was rarely done out of simple desire. A couple able to bear their own children were not normally considered candidates for custom adoption. Nor was

custom adoption used as a form to avoid responsibilities. Parents were expected to take care of their children to the best of their abilities. If a couple were able to have children and capable of providing for them, then all children were kept. Furthermore, if they *could* have children, they could not adopt, unless special circumstances applied.

#### *6. WHO MADE THE DECISIONS*

Most decisions regarding adoption were made by the elders of the community or the parents of a couple. A couple rarely acted without the guidance, advice or the direction of an elder or parent, even if they were adults. A young couple was not allowed to make their own decisions and had to wait for guidance before engaging in custom adoption. In cases where a young couple wanted to adopt themselves or give up a child for adoption, they had to consult the elders or their parents first and ask for assistance.

#### *7. VERBAL AGREEMENTS*

Custom adoption was always carried through once agreed upon. A child was not a plaything that its life could be merely juggled between parents. It was strongly believed that fighting over a child could bring sickness and bad luck and engendered poor relations between parents. A child that brought great joy should not bring bad feelings.

A natural mother and father gave their baby up for adoption once they agreed to it during pregnancy. A mother had no choice in keeping the child once it was born. The agreement made during pregnancy was respected and honoured.

A natural parent and adopting parent would also prepare for the adoption before the child was born, physically, emotionally and mentally. It was easier to accept the handing over of the baby if prepared to do so before its birth. An initial discussion of the decision was critical, as it would clear up any potential misunderstandings.

#### *8. LOW POPULATION IN EARLIER TIMES*

Breast-feeding was also a natural form of birth control. A mother who breast-fed her child for more than two years, for example, would not become pregnant as easily as if she were not breast feeding. There were other factors, such as hardship, that kept the population low, such as times of famine and starvation. There was low life expectancy and thus also low rates. There were so few babies born that some deceased person's names didn't have a child to pass on to, according to the Inuit naming system.

#### *9. ABUSE OF SYSTEM*

Nevertheless, custom adoption was not always smooth. Sometimes there was abuse of the system and sometimes parents did not act according to traditional expectations. There were incidents where adopted children were abused, treated like slaves, or like orphans. There were adoptive parents who did not respect the bonds of kinship or never told their

adoptive child who their natural parents were. Some natural mothers understandably longed for their natural child and wished to have them back.

On the whole, an adopted child was a cherished, loved, appreciated and brought joy to a family.

#### *10. ORIGINAL CUSTOMS, PRACTISES AND PURPOSES APPLIED TODAY*

Many of these practices, beliefs and customs are very much alive and vibrant today. Although there have been significant changes, the customs have survived and have continued to be practiced. There is still adoption out of need and out of love. There also remains the practice of giving a child to a childless couple or to a couple without either a boy or a girl. A child still brings miracles to a grieving or lonely person and strength and vitality to older people. It is still seen to make a barren couple suddenly able to bear natural children. Custom adoption still involves consultation including the advice of a couple's parents or elders and proper discussion in advance before a final decision is made. Custom adoption remains between families and between parents and adult children. Retaining kinship ties is strongly encouraged. Appreciation and acknowledgement is still expressed. In the North Baffin region, some parents still discourage the first child to be adopted out, even if the mother is very young. In the Kitikmeot, adoption is still very much between grandmothers and daughters. Also, once agreed upon, adoption is still carried through in many cases.

#### *11. CHANGES IN LIFESTYLE*

Over the past 50 years, the life of Inuit has changed dramatically and it also has changed many custom adoption practices and needs. Many factors have played a role in the reshaping of custom adoption, for example the advent of baby formula and government assistance programs.

- **BABY FORMULA AND GOVERNMENT CHEQUES**

The introduction of baby formula and government cheques has made it so much easier for people to adopt. Baby formula simplified access to nourishment; eliminating the need to find seals for broth and using its dried bladder lining to feed the baby. It has also replaced sucking water through the mouth. A person could simply go to the store and buy formula, without having to hunt.

Baby formula could be bought from regular family allowances and social assistance cheques that have become readily available. Families became less and less dependent on hunting. These new developments have made it much easier and convenient for single parents or widows and widowers to custom adopt.

Baby formula has also become more readily available to a nursing natural mother. Once a baby is bottle-fed and is no longer feeding from a mother's breast, the mother loses what



is often a natural form of birth control and may become pregnant more easily, unless other forms of contraception are used.

### *13. REASONS FOR MORE ADOPTIONS*

It is important to stress that the increase in custom adoption is not the natural mother's fault. There are many factors that account for the increase, including Inuit moving together into settlements has brought the phenomena of sudden population growth.

Today, Inuit are also no longer facing periods of extreme starvation. It is much easier to hunt by snowmobiles, four-wheelers and high-powered boats. Country food is no longer the only source of food - there are now "southern-style" store bought foods available. There are now better, easier and consistent medical services and treatments that weren't accessible to Inuit before. There are no longer epidemics of illnesses and untreatable sicknesses. Today, Inuit have lower mortality rates and in particular much lower infant mortality rates.

Full time employment has dramatically changed the lifestyles of Inuit. Parents who are employed can no longer take care of a child full time as much as was traditionally possible. In earlier times, the child remained with the parent while the parent was doing chores within a camp, sewing, hunting or playing within the camp. There are now issues of child-care that have emerged. Also, quite often, parents of their son or daughter adopt their natural grandchildren to ensure their child remains in school or college.

The shift to dependency on the wage economy has also played a role in these changes. Sole dependency on country food to dependency on store bought food has transformed the hardship of availability of animals to the hardship of high food prices. It has become financially difficult to keep children.

The breakdown of families has also changed custom adoption. Elders and parents are taking less of a role in the decision-making process. The younger generation is more apt to make decisions for themselves, including the decision to give up their child for adoption. The younger generation has forgotten (or did not learn) some traditional beliefs and practices and do not value their practicalities. Sometimes advice is virtually non-existent. In other cases, the younger generation defies the advice of their elders.

These irreversible changes have created complex and difficult issues. No single cause can be pinpointed to be the result of differences of custom adoption from yesterday to today.

## PART TWO

### *1. NEW CHALLENGES*

#### a) Cross-cultural marriage

Interrelations and marriage between non-Inuit and Inuit has created an obscure and somewhat gray area in custom adoption. Adoption in these cases sometimes results in confusion as to whether or not they fall under the Canadian private adoption system or a custom adoption process outside of standard legislation.

In recent years these questions have come up repeatedly. Quite often, there are differences in how each case is dealt with. This causes concern that there have been discrepancies in how custom adoption is practiced in cases of cross-cultural marriage.

In some cases, adoption of a child is completed according to the Inuk partner's custom without government interference, even though the other parent is a non-Inuk. In other cases, it is done according to the Canadian private adoption system, even though the other parent is an Inuk.

In these private adoption instances, the government (in most cases, Social Services) has more control over various aspects of the adoption.

Participants expressed concern regarding custom adoption and breakdown of a marriage between an Inuk and non-Inuk, in the event that the non-Inuk parent moves elsewhere with the child.

#### b) Cross-cultural children

The other area of obscurity that has resulted from cross-cultural relationships is a child born to a non-Inuk and Inuk couple.

Questions come up whether either parent can enforce their rights and obligations or their customs and beliefs over the child when the child has been adopted to someone else or whether the adopted child can enforce his/her rights vis-à-vis the parent.

Such examples of questions are whether a non-Inuk parent can apply for custody of the child when the child has already been custom adopted by an Inuit family. Another example is whether a child that has been custom adopted can apply for child support from the natural non-Inuk parent.

However, what the Commission heard most often is whether the child can enforce his/her customs and beliefs, namely kinship, with respect to the non-Inuk parent. Many children of both Inuit and non-Inuit descent wanted to know who their parents were and enter into a relationship with the natural non-Inuk parent. They would tell stories of trying to contact the natural parent, sometimes for years, but the natural parent either assumed the

child was trying to get money or did not want any relationship with the child. Others did not find their natural parent at all and in these cases, wished for an organized assistance program to help them locate their parent.

### c) Private adoptions

There are also cases where non-Inuit couples adopted an Inuk child through the appropriate Canadian private adoption system.

In 1996, all of the family law related legislation was completely overhauled. New changes occurred in all types of adoption, including custom, departmental or private adoptions. A review by a Designated Inuit Organization, upon the request of the natural parent, could be done if an Inuk child was to be adopted by a non-Inuit couple. This ensured land claim beneficiary status for the Inuk child. Another change that was introduced was the legal right of access to information about the child's birth records to find about his or her natural Inuit parents when the child becomes of majority age. This in part reflects the Inuit practice of kinship.

However, a few Inuit participants asked whether they could have visitation rights to the child once adopted by non-Inuit families. They also asked whether the child could be brought up north for a visit if the family lived down south. Many simply asked that the child be told who his/her natural parents, grandparents and siblings were. Others wished to have an occasional picture or an update letter about the child sent to them.

Currently, all rights are severed once the Canadian private adoption is completed. In such cases it becomes totally at the discretion of the non-Inuit parents to honour Inuit customs and beliefs or not. (However, a natural parent can apply for access and the courts can determine if it would be in the best interests of the child to grant the access. The court with the jurisdiction where the child lives would have to consider many factors, including whether it would be in the best interest of the child to disturb the adoptive parents wish not to allow contact).

Another concern that participants had with private adoptions was that many Inuit do not know any other form of adoption other than custom adoption. Because of this, some Inuit are handing over their infant at birth to non-Inuit parents as they would to Inuit adoptive parents. The non-Inuit parent then starts the formal private adoption after the fact. The natural parent does not know the different legalities of private adoptions and are not properly informed of what would happen with the adoption. Several grandparents or other relatives noted that their young teenage children would give up their child to a non-Inuit parent without advice from grandparents or other relatives. They would then lose all contact with the non-Inuit parent once they moved away from their community.

Some non-Inuit parents also do not know what to do and would like to know how to clear up any potential misunderstandings for their well being and for the well being of the Inuk child and the Inuit natural parents.

#### d) Increase in adoptions

A few commented that once some non-Inuit peoples find out that there is a prevalent practice of unregulated custom adoption in Nunavut, that these peoples will take advantage of the custom by ‘advertising’ Inuit newborns outside of Nunavut. Elders and women particularly want to ensure this does not happen. Because of the high population growth in Nunavut and more and more newborns not being able to be custom adopted by other community members, there is an increase in Inuit children being adopted by non-Inuit people living down south.

#### e) Other aboriginals

Initially, Maligarnit Qimirrujiit Commissioners discussed the idea of changing the title of the *Aboriginal Adoption Recognition Act* to the *Inuit Custom Adoption Act* or a similar title. The Act was duplicated from the Northwest Territories when Nunavut became its own Territory on April 1, 1999. The original Act recognized custom adoption of the various aboriginal peoples living in the Northwest Territories at the time, including the Cree, Metis and Inuit. It therefore seemed obvious that when Nunavut became a territory, that the Act should reflect only Inuit’s customs as the population comprises mainly of Inuit. But Ms. Omik, Commissioner for the North Baffin, was told of some other Aboriginal living in Nunavut whom adopted according to his customs. If the Act was changed to apply only to Inuit, other Aboriginals would not be covered and have undue hardships with such an exclusion. Therefore, the idea to change the title was dropped.

#### f) Medical information

Currently, under the custom adoption process, once a natural mother gives birth, she gives the child to the expecting adoptive parent without any state interference. The mother gives birth at the hospital or the nursing station and stays with the infant until she has strength to physically deliver the infant to the adoptive parent or the adoptive parent pick up the infant. In many cases, the infant is taken by an airline passenger who delivers the baby to a different community where the expecting adoptive parents live.

Because adoptions are occurring more often outside of families or friends, natural and adoptive parents often do not know their medical histories. There is no uniform and consistent way of obtaining information about the infant’s genetic background .

This information is crucial in that it could be used to help prevent contraction of genetic diseases or to use the information for an early diagnosis and immediate treatment. A few participants noted that an early diagnosis would have been or was very helpful to treat for instance, asthma or heart disease.

However, other participants noted that this information could result in adverse effects. An adoptive parent who finds out the infant may have fetal alcohol syndrome or HIV

may no longer want to take on the infant. Some said that there should be unconditional love and such information should not be used to suddenly displace an innocent infant.

#### g) Health during pregnancy

Some participants also told of instances where the natural mother, once she knew she was not going to take care of the child upon birth, abused alcohol and substances while pregnant. These participants would like to see a system in place to prevent such practice.

In some cases, the natural father or spouse, once knowing the child was to be adopted, was not particularly supportive of restraining alcohol and substances abuses.

#### h) Resource agencies

Because of changes as previously noted, there are natural parents who do not know where to go to seek help as to how to adopt a child and there are potential adoptive parents who do not know from whom to adopt.

Before, adoptions occurred mainly between families and camp members where everyone knew each other. Today, these families are no longer able to provide support to each other to the degree they could in the past. Other family members are now unable to adopt due to employment, school, finances and their own family obligations. Other community members are also afraid to ask to adopt as arrangements are usually made before he/she can ask.

Some participants noted that when this occurs, the adoption is done in an unorganized or unorthodox manner. Some resort to desperate measures. The one thing that elders particularly did not like was the ‘advertising’ of babies through local radio announcements because they compared this with selling puppies or material goods such as used furniture.

In another case, a young teenager was looking for prospective adoptive parents within her community when Maligarnit Qimirrujiit Commissioner Pirjuaq met her. The young teenager asked him how the Commission could help her, thinking it was an adoption agency.

Adoption agency resources should be implemented to handle such instances where a natural parent cannot find prospective parents or a prospective adoptive parent cannot find someone to adopt from.

However, participants wanted to see a resource agency where they could get assistance but at the same time were still able to make the final decisions themselves without fear of interference or control. Most were wary of the proposed agency becoming another ‘Social Services’ agency.

## 2. OTHER ASPECTS OF ADOPTION NOT COVERED BY THE CONSULTATIONS

### a) Legal parentage

Maligarnit Qimirrujiit has not touched upon all aspects of custom adoption. There are issues where the Commission has not received enough comments to confidently set forth recommendations. This includes the issue of the Canadian concept of legal parentage. This is the issue of determining which parent has more legal rights and obligations with respect to the adopted child; the natural parent or the adoptive parent. Upon completion of a private adoption, the adoptive parent obtains all rights and obligations over the child. In essence, the child becomes the child of the adoptive parent and the natural parent loses all rights over the child.

With the strong presence of kinship between natural parent and adopted child, this is more difficult to pinpoint whether the adoptive parent assumes 'legal parentage' over the child upon birth. A child is often given unlimited leeway in visiting parents. For instance, a child often sleeps over at the natural parents' house or goes camping with the natural parents for weeks at a time. A child is not restricted to being with natural parents. The common practice is that the child has 'two' sets of parents and 'two' sets of families.

The closest the concept of legal parentage comes to, are initial verbal agreements. Many elders commented that once a concrete decision was made, the agreement was always carried through. The adoptive parent became the parent of the child, regardless of whether the natural parent changed his/her mind or not and assumed all aspects of parenting.

However, a few participants noted that in today's society, the younger generation is more apt to break agreements and keep a child. An elder from the North Baffin reported that she literally had her three-year old adopted daughter taken from her by the natural mother, her own daughter. The grandmother was raising the child as her own and expected to raise her as her own into adulthood. This left the grandmother devastated. In another case, a grandmother adopted a child from her daughter who was impregnated by a non-Inuk. The daughter told her mother that she was going to take her two-year old daughter to visit her natural father down south, but ended up keeping her in another community. In earlier times, this would not have been allowed. It hurts both the adoptive parent and the adopted child. This partially reveals that there is some form of assumed parentage.

Another clue for assumed parentage is the fact that some natural parents commented that they sometimes wished to have their child back when, several years later, they saw that the child was being neglected as the child was growing up. They said it becomes difficult to return the child if it had already become accustomed to the adopting family. Some said it was not in their place to interfere with the adopting family's decisions about raising the child when they have raised them as their own.

## b) Guardianship

Sometimes, when an adoptive parent dies, the child is returned to the natural parent. This was one of the original reasons for maintaining kinship ties - the safety net of love of the natural parent upon death of an adoptive parent.

However, some participants noted that was not the only way to deal with guardianship. In many other cases, the adopted child would become taken care of by relatives of the adoptive parents, not the natural parents, as the child has become accustomed to the adoptive relatives. The child has known the relatives as “real” brothers or sisters, as uncles or aunts or as grandparents.

Some elders and other participants on the other hand also noted how, upon death of the adoptive parents, they would be returned to their natural parents. Because they did not really grow up with their natural parents, they felt like being placed in the hands of “strangers”.

Thus, Maligarnit Qimirrujiit received various suggestions of ways of dealing with guardianship and cannot recommend a unique and uniform approach to guardianship specifically for custom adopted children. Because, custom adopted children become the ‘real’ children of the adoptive parents, legislation under the Children’s Law Act generally covers guardianship if the need arises.

## c) Distant deliveries

Another issue about which Maligarnit Qimirrujiit hardly received any concerns is the delivery of babies destined for adoption who are born some distance from the community where the prospective adoptive parents are living. Most births take place at the Baffin Regional Hospital in Iqaluit for Baffin residents, the Birthing Centre in Rankin Inlet for Kivalliq residents or the Stanton Hospital in Yellowknife for Kitikmeot residents. In some serious cases, expectant mothers are sent down south. It is against government policy to deliver babies in the small communities for safety reasons, as there is a lack of delivery facilities and equipment in those communities.

The common practice is that the natural mother is sent to the regional hospital or center and gives birth to the baby that is to be adopted out. The adopting parents either live in the home community of the natural mother or another community or is living in the regional center and all they can do is wait in their community. Because of extremely high airline ticket prices, adopting parents quite often cannot travel along with the natural mother to a regional hospital, although from time to time this does happen. The natural mother delivers the baby at the hospital, recuperates for a few days at the hospital and then waits again for a few days until the next flight has available seats. Once she goes back to her community, the baby is then picked up at the airport or at her home or is delivered to the adopting parents. In cases where the child is to be adopted by parents

who live in a different community, the natural mother or the adopting parents have to find passengers who would be willing to carry the baby to that community (babies under two years old are not charged airline fares by the airline company). This may take extra days. It appears that this is a sufficient and acceptable practice for now. It also appears there have been no serious mishaps to date (This was not raised as an issue nor was it talked of often). The practice is unregulated and is done as a customary practice. There have been a few comments received about how this takes a toll on the natural and adopting parents. The longer the wait for the flight home, the more bonding builds up between the baby and the natural mother. The longer the wait, the more anxious the adopting parents are. In some cases, the natural mother may no longer wish to give her child up for adoption. When that happens, the prospective adoptive parents are hurt.

It also becomes difficult for parents to find passengers that would be willing to take on a child where the adopting parents are living in another community. This can take up to a month. Some elders said in times like these, it is frustrating and stressful for both the natural and adoptive parent. It may become necessary in times like these for government agencies to provide assistance in facilitating contact and transportation.

The air transportation of custom adopted children destined for adopting parents is an important service and will continue to be required for years to come. Nevertheless, it may become necessary to review the issue in the future because of the potential for serious mishaps (for instance, the baby getting stuck at a re-connecting community during a blizzard while in the hands of an unknown passenger).

#### d) Different jurisdictions

Maligarnit Qimirrujiit has also not really consulted on the issue of custom adoption occurring outside of Nunavut. Nunavut Inuit living down south also practice adoption according to their origins customs. But they must go through the formal private adoption according to the jurisdiction's legislation in which they live in.

The issue is complex and requires more in-depth consultations than what the Maligarnit Qimirrujiit Commission can cover. However, the issue needs to be examined.



## **PART THREE**

### **Consultation Results**

#### **1. CURBING POPULATION GROWTH**

Quite often, young women were considered the main source of increased adoptions. However, in context, women are only one factor of many other sources of adoptions. Women are under a social pressure to marry and have children. But if their spouse or boyfriend leaves them, they are expected to take care of their child on their own without their assistance. Women are also expected to go to school and get an education or hold down a job. This becomes difficult because of lack of adequate childcare or lack of support. Women are considered uneducated if they do not exercise birth control. But if they do, the medication is considered contrary to religion and/or dangerous to health. Abortion is generally abhorred and discouraged socially from being used. Young teenagers are expected to give up their child so that they can remain in school. But they are not adequately counseled regarding the enormous emotional upheaval of giving up a firstborn and thus often get pregnant again soon afterwards. Women are thought to be the sole source of an unprecedented number of pregnancies that result in more custom adoptions but it must be taken into account that they are not the lone parties. In larger context, Inuit being forced into settlements and communities in the 50's and 60's inevitably led to population booms that are still continuing today.

Suggestions to 'curb' population growth to prevent any more haphazard adoptions would be given but it is not possible to legally enforce such impositions in a democratic and free society.

#### **2. ORIGINAL CUSTOM ADOPTION VERSUS EVOLUTION**

There were many participants who said strict rules and regulations should be enforced to keep original custom adoption in tact, for examples such as keeping verbal agreements, not allowing mentally challenged people to adopt or not allowing elders to adopt.

But custom adoption has evolved along with changing times. Other participants say practices should still be done according to need and practicality and according to love.

#### **3. WHO WOULD HAVE DECISION-MAKING AUTHORITY**

Some of those consulted said that custom adoption decision-making authority should not be interpreted under the family law system where a child's best interest is determined by the court following pre-determined guidelines. The court does currently have discretion to determine best interests including the flow of love between child and parent under Nunavut's *Children's Law Act*. But the courts or the government itself does not have authority to make the initial custom adoption decisions.

Some non-Inuit may have difficulty understanding that a child would be given to, say, an older couple whose wife dies a few years later. The older man keeps the child and needs him to keep him company. It could be interpreted as the child being “used” for his own benefit and that the best interests of the child are not being looked after. What an Inuk would perceive is that the older man has enough love to give to a child, that this child would not get from anyone else and from that, practical things such as childcare needs would come together as a result. The young natural mother in this case was apprehensive about giving the child up for adoption to these older couple, but once she saw him growing up as a happy boy and even upon the death of the adoptive mother that the child was still loved and cared for, she said she never really had anything to worry about in the first place.

#### 4. AGE LIMITS

It should not be ignored that many participants gave their reason for suggesting age limits and imposing restrictions for less capable candidates. The child would become parentless if the elder dies, while the child is still very young. Many of those who suggested age limits experienced themselves the loss of a loved adoptive parent at an early age. They became orphaned more often than non-adopted children. For the sake of the child’s best interests in order to avoid orphanage at a young age, some people commented that exact age limits for adoptive parents should be imposed, for instance, between the ages of 49 - 55 or 60 - 65.

Many also commented that once the child became a teenager and went through that phase, some would become abusive towards their elderly adoptive parent and the parent was less inclined to discipline the teenager because of a lack of physical strength or from a fear of retribution. For the sake of the elderly parent’s best interests, participants would also suggest age limits.

However, some elders who adopted at an elderly age commented that they really had no choice but to adopt an infant. Their own adult children would give them their child because the adult child was either incapable of taking care of the child, was employed, was going to school, was a single parent or there was a break up within the family and so on. In other cases, the elder would adopt from the community where the infant had no other prospective adopting parents.

In such instances, the elders knew they were too old to adopt and said they would not have otherwise adopted because they knew the potential of creating an orphan or knew they were physically less capable of rearing a child. Elders are vulnerable and the younger generation is taking advantage this vulnerability.

These participants commented that they would like to see legislation to protect them from forced adoptions. This concern was also raised by elders during a Nunavut Tunngavik Annual General Meeting in Pangnirtung in the fall of 2001.

Not all child adoptions by elders are forced adoptions. Elders adopt to relieve the loss of a longtime spouse and to keep them company. Elders adopt to have helpers when they no longer have the strength. Some elders live a long time and will die when the adopted child becomes an adult. Some elders and other participants noted that life is unpredictable and that orphans and the issue of guardianship will always be present because natural parents also can die at any time and leave behind young children themselves. Some elders commented they knew the state of their own health and could determine on their own whether they could or could not adopt.

Thus, these two contradictory issues about age limits are competing and must be balanced. Age limits should not be stringent and neither should the issue of being orphaned be ignored.

## 5. MENTALLY CHALLENGED PARENTS

Participants had similar concerns about mentally disabled parents adopting infants. These participants were concerned that the best interest of the child are more jeopardized by less capable parents. Several years ago, an Inuk woman who was mentally challenged adopted an infant. The baby died in its' bed and the news was sensationalized, calling for more action with unregulated custom adoptions. However, many participants noted that there are quite a few people mentally disabled and who have reared custom adopted children without any mishaps. It would cause hardship to prevent certain adoptions especially for a single group of Inuit. Participants also noted that mentally disabled persons know their capabilities and limits and would not adopt because they knew they could not take care of an infant.

## 6. TEENAGERS ADOPTING

Other participants also commented that there should also be a minimum age limit for people to adopt. There are very few exceptional cases where 16 - 18 year old teenagers custom adopt. Traditionally, custom adoption was practiced by those who could not conceive naturally except where the need arose. Therefore, teenagers who can conceive would not be considered candidates for adoption. However, teenagers sometimes were given a child to adopt as taking care of a newborn was believed to help them to conceive their own child.

Participants were also concerned that their schooling was affected. They were also concerned that they are not old enough to take care of a child and might end up leaving their adopted child to their own parents.

Some participants noted however, that teenagers become pregnant and keep their natural children and that it should not be different for teenagers who wish to adopt. Many elders commented that at age 16, they had children and kept them.

Most provinces in Canada have a minimum age limit of 18 - 19 in legal private adoptions and departmental adoptions.

Other counterarguments for limiting custom adoption with respect to the three main groups of people mentioned above was that if such limits were to be imposed or enforced, some babies and children would no longer be able to be placed in loving and caring homes that would not be available anywhere else. More and more babies and children would have no other prospective parents to go to.

## 7. GENDER PREFERENCING

Some elders dislike the practice of gender preference. This is the practice of a potential adoptive parent adopting a child from the natural parent if the unborn baby turns out to be a specific gender: boy or girl. If the baby is born of a different gender, then the adoptive parent does not adopt and the baby is either kept by the natural parent or is adopted to someone who is willing to take the baby. The agreement is made during pregnancy and is thus not determined until the baby is born. Elders say this preferential treatment displaces a baby upon birth and puts the natural parents in a delicate predicament. They say adoption is based on unconditional love and this practice is contradictory to that belief.

However, other elders say this was a common and practical practice and shouldn't be legally barred from occurring in the future. For instance, long ago, a couple who had six boys made arrangements to adopt a daughter. Gender preference was a balance and a key to survival. Both sexes were needed to help with the family.

Gender preference or the lack of it was not based on regional differences. Thus, it is not clear where the two different bases come from.

Because of these two contradictory themes, Maligarnit Qimirrujiit cannot set recommendations on this issue that would set either in stone. What can be suggested is to provide counseling or services for both set of parents by a proposed custom adoption agency, a Custom Adoption Commissioner or a Custom Adoption Community Committee if the need arises.

## 8. PARENTAL CONSENT FOR MINORS

One of the main concerns about adoption has been the agreement issue. In some cases, where the natural parents are quite young, their parents will undertake to "make arrangements" on their behalf. In other cases, the parents (or grandparents of the child in question) are not properly consulted and the biological mother who is under 19 years of age makes her own decision. It was generally felt that there must be an understanding that the parents of underage mothers and fathers are part of a custom adoption agreement so that the young couple would make informed and guided choices after careful consideration of all issues. Parents noted that a young mother was more likely to carry through an adoption if she had the ongoing advice of her parent. It should be noted that such a suggestion to impose mandatory parental consent of all custom adoptions for children under 19 is for the sake of best interests and the protection of those interests of

all parties, including the child itself and is not meant to ‘control’ the young natural parents.

## 9. VERBAL AGREEMENTS

Participants at times had two extreme views about agreement arrangements. Some said paper consent documents should now be processed before the placing of the adoption occurs. Some Inuit said enforcing of agreements by the courts should ‘sting’ so hard that it hurts like ‘acid’. This is because today it seems there are more and more examples of broken agreements and unkept promises. Most often, agreements are done verbally while the natural mother is still pregnant. The arrangement is then carried through upon the birth of the child. It is expected then that things will go as planned and that there is to be no turning back. In earlier times, verbal agreements were as binding as court enforced documents and were irrevocable. Nowadays, elders and participants say, too often verbal agreements are not carried through and the natural parents keep the newborn baby. The expectations of the adoptive parents then become unfulfilled.

A North Baffin woman explained that in the late 1960’s, she and her husband had to attend court for her uncle’s family to formally adopt her newborn girl. Although it was a southern system, she said it reflected how Inuit had ensured proper understandings and agreements. The Judge at the time was asking how the arrangements were made and if it was with her consent; basically if it was alright with her to give up her child. She thought going through a formal court to ensure an adoption was done according to customs was a good way to finalize agreements.

## 10. SUGGESTIONS OTHER THAN WRITTEN AGREEMENTS

However, more participants wanted to keep the system the way it is; flexible and within the control of Inuit themselves. Some participants now realize that in certain cases natural parents understandably do want to keep their child and that there should be other forms of ensuring the carrying out of agreements other than paper documents and courts. For instance, counseling services for both parents during the pregnancy. This would in part reflect Inuit ways of handling emotional, physical and mental upheavals of custom adoption that had worked quite well in times past. Some suggested interval meetings, for instance during the first six month stage. It would also ensure proper understanding of expectations and preparedness of the baby’s arrival. Some participants also noted that sometimes other parties become involved in the decision-making without really asking about the natural mother’s choice. It then becomes hard for her in such an instance to uphold the decision that others had made for her and that she may also have difficulty asserting her views against older people. Circumstances may also change before and after pregnancy that might alter the original understanding, for instance, a job offer or a loss of one.

## 11. RETURNING CHILDREN

Another aspect of agreements are the expectations of the adoptive parents raising and keeping the child they adopted up to adulthood and onwards. In earlier times, it was expected that once a child was adopted, the adoptive parents raised the child to the best of their abilities and kept the child as much as they could. Returning children to the natural parents while the adoptive parents were alive was never really an option, unless very exceptional circumstances applied.

In today's society, this has been altered somewhat. Participants mentioned that more and more often, adoptive parents are returning their grown child back to the natural parents or to other family members 'out of convenience'. For instance, a couple upon breakup of a marriage or a common-law relationship returned a six-year old to his natural parents. The elders noted that the child had grown up thinking his adoptive parents were his 'real' parents and that he must have suddenly felt displaced and unloved for being returned to the natural parents. The natural parents did what they could but could not interact with the child in the same way as they might have if the child had grown up with them. In this case, the elderly parents of both the adoptive and natural parents intervened and had the adoptive mother take back the child she had tried to return.

## 12. PRACTICALITIES AND NEEDS

At the same time, it is possible to return children in exceptional cases. Maligarnit Qimirrujiit Commissioner, Ms. Pedersen, was told of an instance where a 20-year old was asked to return to their natural mother because the elderly adoptive mother was getting sick and knew she would not be living long soon. The arrangement was based on need and accepted without question.

## 13. CONCERNS OF NEGLECT

Alternatively, some natural parents do want to be able to take back children if they feel their natural child is being neglected or abused by the adoptive parents. Some of them were concerned that their grown child were underfed or neglected because the adoptive parents were gambling addicts, drug or alcohol addicts or being neglected due to the adoptive parents having too many other responsibilities. Participants suggested that an initial agreement should ensure that adoptive parents understand fully the responsibility that they are to undertake and are ready to take on such responsibility.

However, it should not become so stringent that returning children becomes hard to do when exceptional circumstances or special needs arise. It may also have to be considered that adoptive parents be able to have access to assistance where they are having difficulties in meeting obligations.

#### 14. NATURAL FATHER'S CONSENT AND INFORMATION

One of the strong and conflicting disagreements participants had was the issue of a natural father's consent and information. A South Baffin Inuk went on a Maligarnit Qimirrujiit television consultation and explained how it was really difficult for him to know he had a daughter in his community and that he could not have a relationship with her because the child was never told of who her father was. He merely wanted it to be acknowledged that he was the father and to have a 'kinship' relationship that is often encouraged between adopted children and natural parents.

An elder stated that a child will always have a father and is essential then that they at least they know who they are - they must know their father and vice versa. Otherwise the child will wonder who its' parents are and it is considered better to deal with the issue right away than to deprive a child of this important aspect of its' life.

#### 15. SIBLINGS OR HALF-SIBLINGS

Quite a few elders and participants also realize that there are now more adoptions occurring and that it is difficult to keep track of who their natural parents are, especially when there are more fleeting relationships or relationships with unknown outsiders or with multiple relationships. This could potentially result in unsuspecting interfamilial romantic relationships between siblings or half-siblings who do not know their natural fathers. Traditionally, custom adoption occurred between families and amongst other camp members. There were also fewer non-Inuit than today. Inuit knew amongst themselves from whose family an adopted child came. With the strong presence of kinship, a child was told who he/she was and with whom it had relations. Now, with a continued high rate of a population boom, it is difficult to keep track of a child's origin and whether or not the child has other siblings. An Iqaluit resident recalled an instance where a brother and a sister who were both adopted by different families, entered into a relationship. They planned to marry but the Church minister remembered who these two people were and told them that he could not marry them. Today, the practice of kinship is still strong. Most Inuit still tell an adopted child whom it has relations with. However, custom adoption is prevalent in Nunavut, more so than any other province in Canada and there is growing potential of cases where siblings enter into relationships.

There were no other helpful suggestions how this could be dealt with effectively without the use of mandatory recording of information.

#### 16. POTENTIAL MISUSE OF INFORMATION AND CONSENT

However, some participants are wary of mandatory father's consents and recording of information because of the potential of harm that might occur through misuse of this information. It may be difficult and costly to identify a natural father. Fathers may interfere with the decision making of the natural mother or may use violence against the natural mother. It may also cause shame in some cases.

## 17. ADOPTIVE FATHER'S CONSENT

Participants also suggest consents be invoked by the potential adoptive father before an adoption occurred. However, a few adoptive mothers noted that they adopted a child even though the adoptive father was against the adoption. Nevertheless, the adoptive father ended up loving the child more than any other once the child began to grow up or when the father started handling the baby. It was also observed that that the father ended up 'spoiling' the child even though he did not want anything to do with the child initially.

The consent of an adoptive father may become necessary to clear up any potential misunderstandings in the future, especially upon breakup of a family. A young mother adopted a child on her initiative, without consulting her boyfriend. The relationship did not last long. But many years later, the adoptive mother applied for child support. The case became a difficult issue; should the boyfriend be expected to pay child support for a child whom he was not really involved with in the beginning or should such concerns be put aside in place of the child's best interests.

## 18. FEAR OF STATE INTERFERENCE

The Commissioners were told many times that people were worried about the system becoming too rigid if new legislation was ever enacted. Inuit do not want this area of law taken lightly. Inuit do not want interference from the state in how they make their custom adoption decisions.

It seems that there need to be clear policy statements to assist Social Services and Health staff in the administration of the act as Commissioners were also told of cases where adopting parents were subject to an unusual level of "supervision" from social workers or health care workers. An example of inconsistency in how each case is dealt with is when one Inuk woman was told to hire a lawyer because her spouse was a non-Inuk and was told to go through a private adoption process before she could adopt. They did not have any money to hire a lawyer and thus did not adopt the child. Yet in another case a couple was told that it was okay not to go through a private adoption because the adoption was done according to the one Inuk parents' custom. Another participant commented that it was very difficult for him to watch his elderly parents being visited by health staff very late at night to "check" upon whether the parents were feeding the baby properly and giving the right amounts of medicine to the baby.

## 19. ADOPTION COMMITTEES

The Commissioners came to believe that conflicts about custom adoption might be better resolved if guidance and assistance was provided by trained Community and Justice Committees comprised of Inuit elders and community members. Such assistance could be initiated by a Custom Adoption Commissioner. Many elders are very interested in being a part of these boards and committees. Justice Committees, particularly, often wish they could have the authority to take on family disputes, conflicts and issues so that they could provide a service that could be beneficial to the community as a whole. However, the



proposed Committee should be balanced because the younger generation might not be able to accept some guidance. The younger generation expressed concern that there could be conflict of interest issues in small communities, some confidentiality issues and some generation-gap issues. For these reasons, they considered that Committees should be trained with basic objectivity standards. Participants also mentioned that the proposed Committee should not become stagnant or dormant over time (Municipalities already have authority to set up Custom Adoption Committees in their community but this authority is rarely exercised, either because it is not known or the community is uncertain about how to set one up. People also do not know much about what the Designated Inuit Organizations can do with Inuit children being placed with Private Adoptions).

It was even suggested that each and every custom adoption be reviewed by Committees instead of only after conflicts arise and when one of the parents seek resolution.

## 20. LACK OF LEGISLATION

There is a strong consensus that something does have to be done before custom adoption is continued in the current haphazard way. Participants also understand that where there is little legislation or guidance, it becomes difficult to determine if it should be handled through the various existing family legislation, but feel there needs to be consistency and fairness with each case.

## PART FOUR

### Considerations

#### 1. EXISTING LEGISLATION

There is existing legislation that already deals with issues of custom adoption as they arise. Once a child is adopted, it is up to the adopting parents to start the formal process of obtaining the adoptive name. This process can be initiated from birth onwards. Adoptive parents are subject to the *Child and Family Services Act*.

After a child is adopted, parents are also able to obtain Child Tax Benefits, Income Support, Leave of Absence etc. without any formal paperwork of the adoption required.

However, new legislation should be enacted that is solely intended for custom adoption. The same provisions under the *Children's Law Act* and the *Child and Family Services Act* or any other related Act could apply - it just would be made easier in having those provisions under one Act.

#### 2. THE COURT SYSTEM

Many participants strongly held that the court system should not be used to address custom adoption disputes and issues, although a few commented that the system would ensure proper understanding of an initial custom adoption arrangement similar to those made by Inuit in earlier times. Participants suggested that Inuit themselves should handle custom adoption affairs when need be (through Committees). However, other family law legislation already deals with children where required. For example, custody disputes go through the family law court system. Where the need arises and where a case cannot be resolved by the suggested Custom Adoption Committees, the court system should still be able to handle such cases.

#### 3. VERBAL AGREEMENTS

Currently, there are consent forms that need to be signed by both parents once a custom adoption takes place. But, this form is only applied for when the adoptive parent wishes to change the name of the child from its' natural parents' name to the adoptive name and is filled out by a Custom Adoption Commissioner. The process ensures there is consent between all parties and that the adoption is done according to Inuit custom. But, this process is not truly reflective of the traditional system of agreements and consents.

Agreements and consents should come in stages, before and after the birth of a newborn. This would ensure a proper understanding takes place before any decision is made final. Such inquiries could be initiated by a Custom Adoption Commissioner or a Health Official during a mother's pregnancy. At the same time, the process should not cause undue interference.

#### 4. FATHER'S INFORMATION AND CONSENT

Currently, according to the *Vital Statistics Act of Nunavut*, a natural father's information can be recorded on a newborn's birth record. This is discretionary, usually upon the request of the natural mother but can also be initiated by the natural father. The natural father must sign a legal form stating he is the natural father. In some cases, there is no cause for concern or issue of including the father's information. In others, there is a real concern or fear of disclosing such information. In most cases however, people do not know that they can record the father's information if they wish to and that they must request in order for the information to be included in the record. Some commented that they thought it was 'automatic' if they were living with a common-law spouse and were sometimes surprised years later that the spouse's name was never registered. It is 'automatic' if the natural parents are married before the birth of their child. The process for including the father's information solely because the parents are married is not always accurate. A woman whose husband had died many years before had twins from a subsequent marriage - the twins were registered and named after the long deceased spouse, even though he was not the natural father. The mother went through an unnecessary and cumbersome process in order to correct the information.

The birth record is usually filled in by a health official at the health center or the hospital upon the birth of newborn, although legally it is the natural mother's responsibility to do so. The record is then sent to the Department of Vital Statistics, a government registration department. The natural father's information could be filled in any time after the birth of a newborn, upon an application and a prescribed fee (again, most people do not know this).

A suggestion to recognize the practice of Inuit kinship while at the same time recognizing the sensitivity of recording a natural father's information is for the health officials to outright ask the natural mother if she would like to include such information. If the natural mother does not want to, the information should not be recorded.

It would also become less cumbersome for Inuit if it would become mandatory that health officials ask whether they wish to include the father's information. A newborn was given his father's surname at birth and grew up using the name. But because his parents were not married, the newborn was registered under the mother's surname. Later on, the young adult then had difficulties obtaining the birth certificate he was known as. It would have taken a few minutes for the mother to request the newborn be named under the father's surname. But because she did not know, she did not ask, especially since most government forms were only available in English.

#### 5. SIBLINGS ADOPTED TO OTHER FAMILIES

Along with the concern of natural fathers' information, came the concern of a potential for romantic relationships between siblings who do not know that they are blood relatives.

This issue is difficult to provide an appropriate solution for. People's privacy must be protected. Inuit children may not want their identity disclosed. Some parents may be too ashamed or too fearful to disclose a child's relations.

Legally, information on a birth registration includes only the child's name, it's mother and/ or father name, the place and date of birth. Where known, the number of children born to the mother is also recorded; their names are not written.

What can be suggested is for the child to have access to its' birth records upon reaching majority age but only if the natural parents have no dispute with it. The mother can release a consent form stating she can allow such access and for convenience, be done at time of the child's birth (the mother may change her mind when the child is older and this must be noted).

## 6. MEDICAL INFORMATION

As the Commission recommends the release of medical information about potential genetic diseases, existing systems can be used to establish this system. Currently, a check procedure of overall health and genetic background is done on natural children. The same genetic history checklist could be done at the hospital after the birth and before the newborn is to be given over to the adoptive parents. This should be placed in the child's medical file. Balancing confidentiality, protection of privacy and against potential misuse must be ensured. Education and public information will need to be put out if this recommendation is going to be implemented; that this system is for the prevention, easier detection of and early treatment of genetic diseases only.

## 7. ULTRASOUNDS

Currently, expectant mothers undergo ultrasound scans at the fourth month of their pregnancy for an overall health checkup of their unborn baby. These scans can determine the sex of an unborn baby. Inuit today often practice gender preferencing for practicality and need, although traditionally gender preferencing was not practiced as much as is today. The government should implement a policy about gender detection with ultrasound scans in a uniform and consistent manner.

## 8. OVERALL HEALTH

Generally, expectant mothers undergo a health check for their self and their unborn baby during various stages of their pregnancy. It should become a requirement that health officials ask the expectant mother whether the child is to be adopted at the earliest stages of pregnancy. The expectant mother should have all the assistance available to ensure alcohol, drugs or any other substances are avoided during the pregnancy. At the same time, this requirement should not be held in any way against the expectant mother.

## 9. EXISTING RESOURCES

a) The Commission recommends setting up resource agencies and community committees. The office of the Custom Adoption Commissioner can be expanded upon to take on more roles and duties for the establishment of a resource agency upon adequate training and better remuneration to provide contacts, facilitation, advocacy, assistance and guidance.

b) Community committees can be expanded upon to take on more roles and duties for the establishment of dispute resolution services, counseling, guidance, etc. Justice committees, such as the experienced and trusted Ikkurrait Justice Committee in Pond Inlet and the Inummariit Society in Arctic Bay have taken a keen interest in participating in such roles and duties. They believe a healthier family circle brings about a healthier community as a whole. They also believe they have the knowledge and experience to deal effectively with issues arising from adoption conflicts, especially according to Inuit Qaujimajatuqangit guidance and teaching. These committees are consistent, reliable and a trusted resource. However, it should be up to each community whether they would like their current Justice Committees to deal with custom adoption issues or set up a different one than suggested.

## 10. DESIGNATED INUIT ORGANIZATIONS

The regional designated Inuit organizations already have policies specifically dealing with private adoption and Inuit children being adopted by non-Inuit parents. However, it is strongly suggested that the government of Nunavut work more closely with the organizations to ensure Inuit understand their legal rights and obligations and the differences between private and custom adoption.

## **PART FIVE**

### **Conclusion**

Custom adoption is not a tangible issue. It is not about clear-cut rules and customs. Love, practicality and necessity still sifts through the practice, even though unimaginable changes have reshaped it. It is a strong and a unique characteristic of Nunavut and will continue to be for years to come. Maligarnit Qimirrujiit received comments from all regions of Nunavut, from all walks of life and from Inuit where the issue most touched upon their hearts. It is realized where legislation is introduced, it will not address all issues surrounding custom adoption. But, it is hoped that the set of recommendations in this report will introduce legislation as a base that attempts to accommodate its' needs and preserves the original concepts of custom adoption while recognizing the adaptation of today's Inuit society.

**MALIGARNIT QIMIRRUJIIT**  
**NUNAVUT LAW REVIEW COMMISSION**

**RECOMMENDATION -- Aboriginal Custom Adoption Recognition Act**

*Custom Adoptions Recommendations*

1. The Commissioners recommend that custom adoption be recognized as an Aboriginal right of the Inuit of Nunavut that will not be extinguished by any legislation, including the proposed recommendations to the Aboriginal Custom Adoption Recognition Act. Arrangements, agreements and the practice of custom adoption will remain in the private sphere of Inuit and will not be interfered with by any government agency.
2. Notwithstanding the first recommendation, it must be acknowledged that standard legislation is necessary to provide a sound basis for the facilitation of custom adoption practices and customs and to provide government services, assistance, conflict resolution and various other remedies.
3. It is recommended that it become illegal to advertise newborns and babies through any form of communication medium, either to Inuit or to non-Inuit. Such arrangements should be provided only through a Custom Adoption Commissioner, a Community Committee Member or a Child Protection Worker where the natural parent or a prospective parent is having difficulties in making a suitable arrangement.
4. It is recommended that the Aboriginal Custom Adoption Recognition Act should remain in force to include other Aboriginal Peoples living in Nunavut other than Inuit.
5. It is recommended that an initial official document be provided within 30 days of a birth with a clear statement to the effect that the child is intended to be custom adopted. This statement should include the names of the prospective adoptive parents. Such official documentation would be for an interim period, until the parents apply for formal custom adoption through the Custom Adoption Commissioners. The interim document should not abrogate the rights of final decision-making by either parents at this early stage after birth. It is hoped this document will provide interim identification proof to health officials and government civil servants that recognizes the child is or will be adopted.
6. It is recommended that the Custom Adoption process recognize verbal agreements. Verbal agreements often take place before the birth of the child. It

- should become standard that the agreement is fully and thoroughly understood and that all parties understand the expectations they are undertaking, most preferably through stages and between the second and third trimester of the natural mother's pregnancy term and after the birth of a child.
7. It is recommended that it become standard practice for natural fathers to be notified of the expectant birth of a child where identity is not a question or a concern for conflict. However, this notification should not be used against the final decision of the natural mother.
  8. It should also become standard that the natural father's information and identity is recorded upon the birth of a child where it is not a question or a concern for conflict. This information should be asked for and obtained by the health staff official who records the child's birth and should be included if the natural mother does not object to such a record.
  9. It is recommended that it become standard practice that all parties - including the natural mother, father, adopting mother and father – to sign consent forms. The Custom Adoption Commissioner should make any necessary inquiries according to a traditional custom that reflects an Inuk adoption. In other words, the process should not become merely administrative. At the same time it should not be difficult to dispense with a consent form where it would make a parent unable or unwilling to obtain another person's consent.
  10. It is recommended that it become standard procedure for minors under the age of 19 to require parental consultation and consent if they are to enter into a custom adoption agreement in one form or the other; either if giving up a child for adoption or adopting a child themselves. The Custom Adoption Commissioners should facilitate such consultations and consent: by initiating dialogue between parties before the birth of a child, by ensuring all parties involved understand the arrangement through information and education, and by providing office space, telephone and administrative services.
  11. It is recommended that it become standard for health officials to undertake a medical history exam upon the birth of the child. Such record should be put on file on the child's medical records. Information will be on genetic history, early detection and treatment of genetic diseases only. Such medical history should not be any different than what is normally taken for natural children.
  12. It is recommended that a child (and/or the guardians and adoptive parents) should have unrestricted access to their birth records at all material times. The adopting parent should have access to such information if the child is a minor. This process is to reflect the custom of kinship unique to Inuit custom adoption.
  13. It is recommended that names of natural siblings be recorded and placed with a



child's birth record where there are no questions of any concerns or conflicts and where this information is known.

14. It is recommended that special resource personnel should be introduced or trained in each community to provide various Government services, including: assistance, counseling, facilitation and advocacy for custom adoption issues. It is recommended that the personnel consist of Custom Adoption Commissioners to take on these tasks and duties.
15. It is recommended that resource personnel should be able to provide the following services where requested or the need arises:
  - finding a suitable parent(s) on behalf of a natural parent, who cannot find a prospective adoptive parent(s), or finding a child for a prospective adopting parent if assistance is required;
  - acting as liaison to a Child Protection Worker for either a natural parent and an adopting parent where there may be concerns of neglect or abuse of a child;
  - providing counseling services for pregnant minor persons when they are making arrangements to have their child custom adopted;
  - providing services for natural parents who are making initial arrangements to have their elderly parents, or other elderly persons custom adopt their natural child, by finding other options before an arrangement is finalized;
  - providing services for natural parents who are making initial arrangements to have a mentally challenged person adopt their child or where a mentally challenged person is giving up a child in order to ensure all parties are in agreement;
  - facilitating and providing assistance or contacts for adopting parents who are experiencing difficulty meeting obligations and providing care for their custom adopted child and where the returning of a child to its' natural parents is being considered as an option;
  - acting as liaison between either a natural parent or an adopting parent and a Child Protection Worker or other personnel for children where there may be issues of guardianship or where a child has become orphaned;
  - acting as liaison between a natural or an adopting parent and the Community Adoption Committee for all of the above and for any other issue related to custom adoption;
16. It is recommended that a Custom Adoption Committee comprised of respected elders should be introduced into each community to provide counseling, conflict

resolution and mediation. Justice committees or similar boards are recommended to take on these tasks and duties following basic confidentiality and objectivity training.

17. It is recommended that a Custom Adoption Committee should be able to do the following when requested or when the need arises:
  - assist the natural mother, the natural father, or the adopting mother and father to deal with the custom adoption both mentally and emotionally;
  - assist both the natural parent(s) and adoptive parent(s) if there are subsequent concerns of an initial adoption arrangement, for instance, if both parents are in a dispute over the custody of a child;
  - assist the natural parent(s) and the adoptive parent(s) by providing dialogue if there are concerns about neglect or abuse;
  - inquire whether it would be safe for an elderly prospective parent to adopt—both for the elder himself/herself as well as for the unborn child;
  - inquire whether there are concerns of a prospective adopting parent who is a mentally challenged person;
  - inquire whether there are concerns of a prospective adopting parent who is a minor;
  - assist the natural parent and the adoptive parent by providing dialogue if there are concerns about kinship, secrecy and access to family lineage;
  - assist the natural parent and the prospective or adopting parent(s) if there are concerns about allowing gender preference to influence the adoption process and whether or not this is accepted by all involved parties;
  - assist the natural parent and the adopting parent if either of them have concerns or conflicts about returning older children to their natural parent(s);
  - assist the natural parent and the adoptive parent by ensuring there is dialogue about guardianship and any issues associated with an orphaned child.
  - assist the natural parent and the adoptive parent on any other custom adoption issue;
  
18. The decisions made by a Custom Adoption Commissioner should have an appeal process, to a Supervisor, the Community Committee or to the Court System.

19. The decisions made by a Community Committee should be binding upon a parent as it would have been binding in earlier times when the elders and the older parents were the main authorities on issues of children and custom adoption; it is trusted that their decisions will be based on reasonable, informed and thorough choices. Most elders talked of need, necessity and practicality, not collateral and linear rules. However, if a natural parent, an adopting parent, or any other involved person, do not agree with a decision or advice, he or she should be able to appeal such a decision to the Court System.
20. Notwithstanding recommendations number 11 and 13, concerned natural parents and adoptive parents as well as Custom Adoption Commissioners, and Community Committees members should not hesitate to contact a Child Protection Worker, an RCMP member or a Health Staff Official where there are safety concerns of a child related to either the natural or adoptive parent(s).
21. It is recommended that both the Custom Adoption Commissioners and Community Committees take on an educational and information role concerning the original or existing customs and practices of Inuit adoption. This should be undertaken on a regular basis, through community radio stations, television, newspapers, printed pamphlets and more generally through the education system.
22. It is recommended that the Government of Nunavut provide sex education to teenagers in high school. Such educational measures should include a focus on the connection between the consequences of sexual activity and to the need, necessity and the prevalence of the use of custom adoption. It should be educational only.
24. It is recommended that the Government of Nunavut provide education about health during pregnancy, including alcohol abuse during pregnancy and the connection and consequences to the need, necessity and the prevalence of the use of custom adoption.
25. It is recommended that appropriate education and related important information be readily available regarding the different legal implications of custom adoption and private adoption. Resource personnel should be able to explain to Inuit the legal aspects of both custom adoption and private adoption when they are in the process of arranging for their baby to be adopted to non-Inuit parents. Private adoption and custom adoption outside of Nunavut's jurisdiction should also be included in this public legal education scheme. Legal service lawyers should also have some training in this area so that they may be able to assist in providing adequate and thorough information.
26. It is recommended that a uniform, even and consistent Government policy regarding custom adoption be established. Such a policy should be applicable to all Child Protection Workers, Social Services, Health Staff and Government Administrators. This policy should include how it will be applied in a situation

where the parents have a cross cultural background; in terms of child support, custody and visitation, different cultural customs such as kinship between an Inuk child and a non-Inuk parent.

27. Where the government chooses a policy to have all custom adoption cases be completed according to private adoption procedures if one of the parent is a non-Inuk, then Private Adoption legislation should be amended to recognize that the other parent is an Inuk and he/she has an inherent right to the custom adoption process without government interference.

Where the government chooses a policy that would have all custom adoption cases completed according to custom adoption procedures, even if one of the parents is non-Inuk, then appropriate legislation should be enacted to recognize the possibility of Inuit children being taken from their traditional homes in the event of a cross-cultural family breakup.

28. It is recommended that government legislation regarding other aspects of child law remain the same for custom adopted children. For example; custody, visitation, child support, abuse, neglect, guardianship, orphaned children or other legal issues should not be treated any differently than they are for natural children. However, for convenience, these provisions should be included under the proposed Aboriginal Custom Adoption Recognition Act.