

SPEAKING NOTES FOR

GRAND CHIEF DR. MATTHEW COON COME, BELLA M. PETAWABANO AND JAMES BOBBISH

***BILL 113 (2016), AN ACT TO AMEND THE CIVIL CODE AND OTHER LEGISLATIVE
PROVISIONS AS REGARDS ADOPTION AND THE DISCLOSURE OF INFORMATION***

COMMITTEE ON INSTITUTIONS

QUÉBEC CITY

NOVEMBER 22, 2016

INTRODUCTION [*GRAND CHIEF*]

1. [*In Cree - acknowledgement of the Huron-Wendat Nation.*]
2. I want to **acknowledge our presence** here today in the **traditional territory of the Huron-Wendat Nation**, and to thank them for receiving us.
3. I am accompanied by **Bella Petawabano**, the current Chairperson of the Cree Health Board, and by **James Bobbish**, its former Chairperson. Mr. Bobbish was also the **Cree representative** on the “*Working Group on Customary Adoption in Aboriginal Communities*”. One of our legal advisors, **Matthew Sherrard**, is also here with us today.
4. I **thank** the Committee for inviting us to share our views on Bill 113.

GCC(EI)/CNG AND CBHSSJB – [*GRAND CHIEF*]

5. The **Grand Council of the Crees (Eeyou Istchee)** is the political body that represents the approximately 18,000 Cree of Eeyou Istchee, our traditional homeland.
6. The **Cree Nation Government** exercises governmental functions on behalf of the Cree.
7. The **Cree Health Board** provides health and social services in **Region 18** to “persons ordinarily resident or temporarily present” in the region, the vast majority of whom are Cree. This region is made up of the **Category I and II lands** of Eeyou Istchee, and includes **nine Cree communities**.
8. Our presentation focuses on the aspects of Bill 113 regarding customary adoption.
9. I want to clearly **express the support** of the Cree Nation for Bill 113, and our support for the **collaborative process** between Québec and Indigenous stakeholders, including the Cree, that led to its development.
10. We welcome such **collaborative approaches** to the legislative process, and it has undoubtedly **contributed to our support** of Bill 113 today.

THE CREE AND CUSTOMARY ADOPTION [*GRAND CHIEF*]

11. Customary adoption has been **practiced by the Cree for generations**. Despite the dark period of the **residential schools** and the so-called “**Sixties Scoop**”, customary adoption is still practiced today. It remains an **integral part** of our Cree culture and identity.
12. Customary adoption allows parents to **share or transfer their parental responsibilities to family and community members**, if parents cannot assume them. Some customary adoptions are **temporary arrangements**, while **others** result in the child **becoming part** of their adoptive families **permanently**.
13. Cree customary adoption is an **Aboriginal right** confirmed by the *James Bay and Northern Québec Agreement*, a **constitutionally-protected** modern treaty. The **Cree** have the right to benefit from customary adoption over an adoption process under Québec legislation, if they choose.
14. As stated in our brief, legal effects of Cree customary adoption are already recognized in provincial and federal legislation.
15. In sum, Cree customary adoption is **valid** under Cree customs and domestic law, has **legal effects** and is **constitutionally protected**.
16. However, these legal effects are **not always recognized by non-Cree third parties**. Bill 113 would help to address this problem.
17. This bill **begins to harmonize** provincial laws with Cree Aboriginal and treaty rights regarding adoption. It also reflects the right of Indigenous Nations to govern affairs regarding their children.
18. However, the administrative and legal regime proposed by Bill 113 **does not affect the Aboriginal and treaty rights of the Cree** regarding customary adoption.

19. In other words, this regime in **no way replaces or changes** the constitutionally protected, **“traditional” Cree customary adoption regime and its effects.**
20. These **two regimes would exist in parallel.** Cree families could choose whether or not to have a customary adoption attested to by the Cree “competent authority” under Bill 113. Even if not attested, Cree customary adoptions, **in all their forms**, continue to have **legal effect.**
21. Meegwetch! Thank you for your attention. I will now pass the microphone to James Bobbish.

PAST EFFORTS AND WORKING GROUP [*JAMES*]

22. [*In Cree: Thank you*]. Thank you.
23. While the Cree have the **required jurisdiction and rights** to deal with adoption matters, we have **always supported** the idea of **clarifying the Civil Code** to facilitate the recognition of the **effects of customary adoption.**
24. Cree families have had **problems where third parties**, such as non-Cree authorities and officials, did not recognize our customary adoptions. In some cases, it even resulted in children being **taken away from the Cree.** This is a chilling reminder of the days of the residential schools and the so-called “Sixties Scoop”.
25. In **2008**, the Working Group on Customary Adoption was formed to make **recommendations** on the legislative clarification of effects of customary adoption, among other things.
26. This Working Group was made up of **representatives** from **Québec**, the **Inuit** and **First Nations organizations**, including myself designated to represent the Cree Nation.

27. Our Working Group helped to **facilitate** important discussions regarding customary adoption, including **collaborative efforts** to consider how its legal effects could be reflected in the *Civil Code*.
28. The report of the Working Group makes **important findings and recommendations**, including legislative proposals to clarify legal effects of certain customary adoptions, many of which are now **reflected in Bill 113**.
29. As recommended by the Working Group, Bill 113 provides that it is **up to an Indigenous Nation** to determine if an adoption has been carried out according to custom. This is done through the **competent authority** that it designates.
30. This approach is consistent with Working Group's finding, and the **Cree position**, that customary adoption is not subject to a Court decision, or to an **assessment** by a Director of Youth Protection, **to have effect**.
31. Cree customary adoption takes place in the **interest of the child**, while taking into account that, for the Cree, the notion of interest **includes the interest** of the **family**, of the **community** and of the **Cree Nation**.
32. Under Bill 113, where the adopter and child are of different Nations, **only** the competent authority of the **child** can attest to the adoption. This is consistent with our position that **only** the Cree can confirm that the adoption of a **Cree child** is carried out according to our **customs**.
33. Meegwetch! Thank you. I will now pass the microphone to Bella Petawabano.

BILL 113 [*BELLA*]

34. Meegwetch. Thank you.
35. As mentioned by the Grand Chief, we **support Bill 113** and the **collaborative process** that led to its development.
36. Its approach regarding **consent** and the **interest of the child** is consistent with Cree customary adoption. This has always been a consensual process between Cree families, with the support of the community, and in certain cases its entities. As a reflection of our oral culture, it is usually a **verbal agreement with no written documentation**.
37. **Traditionally**, the Cree ensured that our children were duly taken care of and that their interests were protected. The Cree Nation will take appropriate measures to help to ensure that this **continues to be the case**.
38. Under Bill 113, an Aboriginal customary adoption that recognizes a “**pre-existing bond of filiation**” may also, according to custom, allow **rights and obligations to subsist** between the child and the biological family. This will provide clarity to third parties regarding legal effects.
39. However, Bill 113 needs to be clarified so that there is **no ambiguity** regarding these pre-existing bonds and any subsisting rights and obligations between the child and biological parents. As detailed in our brief, this comment applies specifically to the new proposed **sections 577 and 577.1** of the Civil Code.

[CONCLUSION– *BELLA*]

40. Bill 113 is a **positive first step** in creating a **bridge** between Indigenous customary adoptions and the provincial adoption regime. It clarifies legal effects of customary adoptions resulting in a **change of filiation** in a way that will be easily recognized by third parties.

41. Ultimately, this bill will help **facilitate** the exercise of parental authorities and responsibilities in a manner this is clearly **recognized** by third parties.
42. We will need to continue **working together** to give clear legal effects **to all forms** of customary adoptions, including those that are **temporary in nature** and **do not result in a change of filiation**.
43. **Adequate resources** will also be needed to implement Bill 113, including to support interactions between the Indigenous “mechanisms” and provincial authorities, and to raise awareness of this regime in Indigenous communities.
44. We expect that Bill 113 will proceed through the legislative process in a way that respects the results of the **collaborative processes** implemented through the Working Group, and in the development of this bill to date.
45. We thank the Committee for its attention and we **welcome any questions** that its members may have.

Meegwetch. Merci. Thank you.