FIRST NATIONS LEADERSHIP COUNCIL

Indigenous Child and Family Services Directors
Our Children Our Way Society

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The Supreme Court of Canada Upholds

The Act Respecting First Nations, Inuit and Métis children, youth and families

(xʷməθkʷəy̓əm (Musqueam), Sḵwx̱wú7mesh (Squamish) and səlilwətaɬ (Tsleil-Waututh)/Vancouver, B.C.) – The First Nations Leadership Council and the Our Children Our Way Society welcome and applaud today's Supreme Court decision which represents a giant leap forward in the implementation of Indigenous jurisdiction over children and families.

"This decision ends the colonial era of Canada and the provinces controlling Indigenous child welfare. Our inherent right to protect our children and to hold them within their families and communities is reaffirmed," says Grand Chief Stewart Phillip of the Union of BC Indian Chiefs.

This morning, the Supreme Court of Canada issued a long-awaited decision upholding the *Act Respecting First Nations, Inuit and Métis children, youth and families*. This decision upholds the constitutionality of the entirety of the Act, including: the national minimum standards, Parliament's affirmation that the inherent right to self-government includes jurisdiction over Indigenous children and families, and the scheme Parliament designed to facilitate the ability of Indigenous communities to exercise that right.

The Act is intended to address the harmful impacts of the child welfare system on Indigenous families.

"This is one of the most important pieces of legislation for Indigenous peoples: it calls for strengthening and keeping families together rather than ripping our children away from their families and their cultures," says Cheryl Casimer, First Nations Summit Political Executive.

The Act, which came into effect on January 1, 2020, creates minimum national standards for the delivery of child and family services to Indigenous people, and establishes a clear pathway for Indigenous nations to enact their own child and family laws.

The Quebec government challenged the constitutionality of the Act and the Quebec Court of Appeal struck down two sections of the law: section 21 which provides that Indigenous laws have the force of federal law and section 22(3) which specifies that Indigenous laws prevail over provincial laws in the event of a conflict.

The Quebec Court of Appeal ruled that, in principle, Indigenous legislation prevails over incompatible provincial legislation, unless the provincial government can establish that the infringement is justified. In short, Indigenous laws can override provincial laws, but this must be established on a case-by-case basis and cannot be broadly established in law.

Both Canada and Quebec appealed that decision, and the Supreme Court of Canada heard their arguments in December of 2022. Several BC-based parties were granted intervener status and presented arguments in favour of upholding the Act.

The Carrier Sekani Family Services Society, along with four Carrier Sekani nations, argued that the case-by-case approach has created unreasonable barriers to self-government. In its decision, the Supreme Court relied on this argument, noting that: “Avoiding a whole cycle of litigation allows Indigenous groups and the Crown to use their time and resources to focus on the actual substance of the issue: caring for children.”

“We have always had our own laws and we have always had the right to care for our own families in our own ways. We never gave that up and Canadian laws can never change that. What the Act did was to provide space to focus on how we breathe life into those laws. Today’s decision from the Supreme Court holds that space open and we will carry on with our work,” says Mary Teegee-Gray, Chair of the Our Children Our Way Society.

In its intervention in the case, BC’s First Nations Leadership Council argued that the UN Declaration on the Rights of Indigenous Peoples affirms the Indigenous right to self-determination, and that the Declaration represents binding international law. As a result, section 35 of the Constitution should be interpreted broadly as including the right to self-determination.

“This decision reaffirms that Canada has an obligation to uphold international law and to act in ways that maintain the honour of the Crown. Under those obligations, Canada must fully recognize our inherent Indigenous right to self-determination,” says Terry Teegee, Regional Chief of the BC Assembly of First Nations.

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