



BC ASSEMBLY OF FIRST NATIONS

1004 Landooz Road
Prince George, BC V2K 5S3
Website: www.bcafn.ca

BCAFN ANNUAL GENERAL MEETING
September 21, 22, & 23, 2022
Hybrid - In person & online via Zoom

Resolution 24/2022

SUBJECT: INTERVENTION SCC CASE ON FEDERAL LEGISLATION FOR FIRST NATION
CHILDREN AND YOUTH

MOVED BY: CHIEF DOUG THOMAS, SPLASTIN

SECONDED BY: CHERYL CASIMER, PROXY, ?AQ'AM

DECISION: CARRIED

WHEREAS:

- A. First Nations across British Columbia are advancing and implementing their full jurisdiction to care for their children and families based on First Nations cultures, traditions, governance, and laws;
- B. First Nations are working directly and collectively with British Columbia and Canada through a range of processes to effect recognition of their jurisdiction over children and families based on the standards of the *United Nations Declaration on the Rights of Indigenous Peoples* (UN Declaration) that have been affirmed in law through the provincial *Declaration on the Rights of Indigenous Peoples Act* and the federal *United Nations Declaration on the Rights of Indigenous Peoples Act*;
- C. the UN Declaration, which the government of Canada has adopted without qualification, and has, alongside the government of BC, passed legislation committing to implement, affirms: **Article 22(1)**: Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children, and persons with disabilities in the implementation of this Declaration;

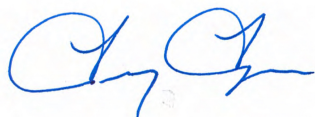
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Terry Teegee, BC Regional Chief

Article 22(2): States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination;

- D. in 2019, the Attorney General of Quebec challenged the constitutional validity of the federal *Act respecting First Nations, Inuit and Métis Children, youth and families*, SC 2019, c 24, also known as Bill C-92, arguing that the Act impermissibly encroached on provincial jurisdiction over children and families and objecting to the general declaration and recognition of Indigenous peoples' inherent right to self-government with respect to children and families outside of what is afforded under section 35 of the *Constitution Act, 1982*;
- E. in 2022, the Quebec Court of Appeal upheld the constitutional validity of the legislation, with a few exceptions, and released its decision in *Reference to the Court of Appeal of Quebec in relation with the Act respecting First Nations, Inuit and Métis children, youth and families*, 2022 QCCA 185. The Court found that the federal government has jurisdiction to set national standards on Indigenous child and family services and that Indigenous peoples have an inherent right to govern in this area;
- F. the Quebec Court of Appeal held that two provisions of the Act were unconstitutional because they would have given Indigenous laws absolute paramountcy over conflicting provincial laws. The Court found that only enactments of federal law can hold paramountcy over provincial laws in case of a conflict, and this paramountcy cannot extend to laws created by Indigenous communities. As such, the Court's decision states that, similar to other Aboriginal rights, provincial laws can infringe on an Indigenous law if the province can justify the infringement under the section 35 infringement and justification test under Canadian legal jurisprudence;
- G. in April 2022, the Supreme Court of Canada granted leave to appeal the Quebec Court of Appeal's decision in this matter. Quebec appealed all parts of the decision, and Canada has appealed the finding that two provisions of the Act are unconstitutional, arguing that Indigenous laws can prevail over provincial laws, and that having the full force and effect as laws is important for self-government, especially in the area of child and family services;
- H. there are a number of First Nations in BC upholding their jurisdiction, or reclaiming their inherent jurisdiction, over children and families, and these Nations have done substantial work to develop their laws, policies and plans to bring their children back in connection with their families, community, identity, and values;
- I. the Supreme Court of Canada's decision in this case will potentially shape the national approach to self-determination and self-government for years to come, and have direct impacts on First Nations in BC; and

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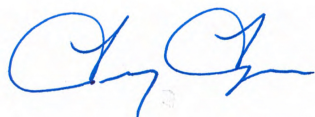
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- J. On September 9, 2022 the BCAFN Board of Directors met to discuss BCAFN's involvement in the intervention and moved to approve BCAFN's involvement in the FNLC intervention and support a cost-sharing approach with the First Nations Summit and the Union of BC Indian Chiefs.

THEREFORE BE IT RESOLVED THAT:

1. the BCAFN Chiefs-in-Assembly affirms the BCAFN Board of Directors motion to seek standing in the appeal at the Supreme Court of Canada on federal legislation for First Nations children and youth, to advance the self-determination rights of First Nations, in particular, that First Nations laws prevail over provincial laws, especially in relation to children and families;
2. the BCAFN Chiefs-in-Assembly directs the Regional Chief, if granted standing in the Supreme Court of Canada, to advance an argument that explains how child and family services have been used to break up families, disrupt the transmission of culture, identity, and language, and are a continuation of genocidal and colonial policies such as the residential school system, also based on the *Indian Act*, and other arguments that are relevant to BC;
3. the BCAFN Chiefs-in-Assembly directs the Regional Chief to ensure that the Supreme Court of Canada is informed about the international and national legal dimensions of self-determination and the need for the consent of First Nations to be the bedrock of the application of any provincial law or policy, and that the *Indian Act*, that permitted provincial laws to apply to First Nations, was unilaterally imposed, colonial, and needs to be rejected as contrary to inherent and pre-existing rights; and
4. the BCAFN Chiefs-in-Assembly directs the Regional Chief and staff to seek resources to support the intervention in the Supreme Court of Canada, and further support collaboration with the First Nations Leadership Council in a joint intervention, if that is more efficient in terms of cost and strategic advancement of a common position.

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