
Assembly of First Nations

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Assemblée des Premières Nations

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ANNUAL GENERAL ASSEMBLY
July 23, 24 & 25, 2019, FREDERICTON, NB

Resolution no. 16/2019

TITLE: *An Act respecting First Nations, Inuit and Metis children, youth and families-
Transition and Implementation Planning*

SUBJECT: Social Development, Child Welfare

MOVED BY: Chief Reginald Bellerose, Muskowekwan First Nation, SK

SECONDED BY: Chief Wayne Christian, Shuswap First Nation, BC

DECISION: Carried; 50 objections, 3 abstentions

WHEREAS:

- A.** The United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration) states:
- i. Article 2: Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity
 - ii. Article 4: Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.
 - iii. 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.
- B.** The Truth and Reconciliation Commission of Canada (TRC) Calls to Action #1 through #5 call on federal, provincial and territorial governments to take actions to improve child welfare. Call to Action #4 specifically calls upon the federal government to enact Aboriginal child welfare legislation.

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- C. The overrepresentation of First Nations children and youth in care and in the child welfare system is a humanitarian crisis. This crisis requires immediate and legislative, policy and human rights action, including compensation to the victims of discrimination, to respond to this crisis.
- D. The harmful legacies of residential schools, the cross-cutting inequalities in services for First Nations children and families, the disproportionate number of First Nations children in care, the consequences of involvement in provincial and territorial child welfare systems, and the related loss of language and denial of culture and human rights has led to this humanitarian crisis.
- E. The Canadian Human Rights Tribunal's 2016 (CHRT 2) decision and subsequent rulings ordered the Government of Canada to fund First Nations Child and Family Services based on the principles of substantive equality, respect for children's best interests, needs, culture and language and to respect distinct circumstances for First Nations children.
- F. On June 21, 2019 *An Act respecting First Nations, Inuit and Métis children, youth and families* (the Act) received Royal Assent.
- G. The Act includes provisions affirming the UN Declaration, specifically supporting self-determination and the rights of First Nations peoples to determine their own laws, policies and practices in relation to their children, youth and families.
- H. The Act affirms the inherent right of First Nations to enact laws in relation to child and family services and further affirms that such inherent rights are protected under Section 35 of the *Constitution Act, 1982*.
- I. *The Act* confirms the funding principle that First Nations children, youth and families, as well as First Nations governments, require long-term needs-based stable and sustainable funding in order to exercise jurisdiction and to effect better outcomes for children, youth and families. The Act also contains a pathway for funding to be negotiated between First Nations and provincial and/or federal government in coordination agreements at the discretion and choice of each First Nations according to their exercise of self-determination.
- J. A Legislative Working Group (LWG) was created by the Chiefs in Assembly to provide input into the development of legislation, policies and approaches to child welfare reform. The LWG has completed the first phase of the work on the development of child welfare legislation. There is also a Child Welfare Consultation (CCW) and the National Advisory Committee on Child Welfare (NAC) that arise from the CHRT to provide national advice on First Nations child and family services and the NAC is comprised of representatives of Delegated Aboriginal Agencies and Chiefs.

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K. Canada has committed to supporting a distinctions-based approach for implementation planning for the Act.

THEREFORE BE IT RESOLVED that the Chiefs-in-Assembly:

1. Call on Canada to adopt a human rights approach to the implementation of child welfare reform surrounding *An Act respecting First Nations, Inuit and Métis children, youth and families* (the Act), including full implementation of the Canadian Human Rights Tribunal's (CHRT) principles of: substantive equality, best interests of the child, needs based funding, respect for culture and language, and consideration of the distinct circumstances of First Nations children and services, as the foundation for any policies or coordination agreements entered into within the Act with Canada and the Provinces and Territories.
2. Call on Canada to fully implement the funding principle of predictable, stable, sustainable, needs-based funding consistent with the principle of substantive equality in order to secure long-term positive outcomes for First Nations children, families and Nations.
3. Call on the Governor in Council to issue an Order, without delay, to bring the Act into force by September 2019.
4. Call on Canada to immediately support and fund a First Nations led distinctions-based transition and implementation planning process for all stages of the comprehensive reform of child and family services, affirming the inherent rights and self-determination each First Nation has to decide what is most appropriate for their own peoples, without interference by Canada.
5. Call on Canada to ensure that as per section 32 (1) of the Act on regulations, Indigenous governing bodies are provided a meaningful opportunity to collaborate in the policy development leading to the establishment of both national and regional regulations.
6. Direct the Assembly of First Nations (AFN) to establish a Chiefs Committee on Child and Family Services and Self-Determination to provide input, oversight and guidance during the national transition and implementation process and to report to the National Chief and Executive of the AFN and the Chiefs-in-Assembly.
7. Direct the AFN to establish a Technical Sub-Committee of the Chiefs Committee on Child and Family Services and Self-Determination called the "First Nations National Transition Planning Committee," comprised of representation from First Nations and technical experts from each region, such as members of the National Advisory Committee on Child Welfare (NAC), as determined by regional processes. The Technical Sub-Committee may establish additional action tables with approval of the Chiefs Committee.

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8. Direct the AFN, including the Chiefs Committee and the Technical Sub-Committee, to support First Nations self-determination in all matters relating to the Act, including the choice to not work within the Act by those Nations who have determined that they do not wish to do so, and to further conduct their work in a manner that affirms the inherent Aboriginal and Treaty rights of First Nations rights and title holders as the decision-makers for their own peoples, without interference from any organization, Canada, or Provincial/Territorial governments.
9. Direct the AFN to ensure all implementation activities conducted within the Chiefs Committee and Technical Sub-Committee do not restrict or limit the pace of implementation of the Act where First Nations are prepared to exercise their own jurisdiction, and that any national committee be explicitly directed that they do not have the mandate to speak for or alter the self-determination rights of each First Nation to determine their own pace of progress, nor should they hold back the actions of any First Nation as their work is supportive and should not be used by Canada or any Province/Territory to limit or constrain the affirmation of inherent Aboriginal and Treaty rights.
10. Direct the AFN Chiefs Committee and Technical Sub-Committee to acknowledge and defer to regional or local committees that may be created to implement the Act where such committees have been established by the First Nations of the region and such First Nations have directed that such regional structures are the bodies they have freely determined should be the mechanism to support the implementation of the Act in relation to those peoples and territories, and further direct that the AFN Chiefs Committee and Technical Sub-Committee may collect and receive advice from any regional bodies or mechanisms but that the rights and title holders of the First Nations are the rightful decision-makers in relation to their children and families, including the First Nations governing bodies selected by such rights and title holders.

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