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## Assembly of First Nations

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## Assemblée des Premières Nations

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**SPECIAL CHIEFS ASSEMBLY  
May 1 & 2, 2018, Gatineau, QC**

**Resolution no. 11/2018**

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**TITLE:** Federal Legislation on First Nations Child Welfare Jurisdiction

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**SUBJECT:** Child Welfare

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**MOVED BY:** Mary Teegee, Proxy, Takla Lake First Nation, BC

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**SECONDED BY:** Chief Cadmus Delorme, Cowessess First Nation, SK

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**DECISION:** Carried by Consensus

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### WHEREAS:

- A. The United Nations Declaration on the Rights of Indigenous Peoples (the UN Declaration) should be the framework for improvement to child welfare law and policy in order to address the harmful legacy of residential schools, such as the forceful removal of children, the disproportionate number of First Nations children in care, and the consequences of involvement in child welfare systems, and the related loss of language and denial of culture and human rights. The 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.
  - iv. Article 23: Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be

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**PERRY BELLEGARDE, NATIONAL CHIEF**

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actively involved in developing and determining health, housing and other economic and social development programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

- B. The Truth and Reconciliation Commission of Canada (TRC) Calls to Action #1 through #5 affirm the need to address First Nations child and family services. Call to Action #4 specifically calls upon the federal government to enact Aboriginal child welfare legislation that establishes national standards for Aboriginal child apprehension and custody cases.
- C. The Canadian Human Rights Tribunal's 2016 (CHRT 2) decision and subsequent rulings state that there are longstanding and proven inequities in the federally-funded on-reserve First Nations Child and Family Services Program. Children and families are sacred in First Nations, and the ongoing failure to address these inequities is depriving First Nations of holistic services to keep families together.
- D. *Touchstones of Hope*, a document resulting from a 2005 gathering of Indigenous and non-Indigenous child welfare leaders, provides principles for reconciliation in child welfare, including self-determination and non-discrimination, among others. According to *Touchstones of Hope*, reconciliation in child welfare is comprised of truth telling, acknowledging, restoring, and relating. *Touchstones of Hope* acknowledges that First Nations are best suited to make decisions for the wellbeing of their children.
- E. Section 35 of the *Constitution Act, 1982* affirms the protection of rights for First Nations and other Indigenous peoples in Canada.
- F. Currently, child welfare services are provided for within provincial legislation and jurisdiction, while the Indian Act does not include any provisions related to child and family services. Additionally, Section 88 of the Indian Act extends provincial/territorial laws of general application to apply to First Nations within the province/territory.
- G. First Nations have inherent and Treaty rights and authority, along with the cultural knowledge and understanding of historical trauma, to provide high quality child and family services for their citizens to reduce the number of First Nations children and families in contact with the child and family services system.
- H. The Assembly of First Nations (AFN) have passed four resolutions directly related to child welfare reform: Resolution 01/2015, *Support for the Full Implementation of the Truth and Reconciliation Commission of Canada's Calls to Action*; Resolution 62/2016, *Full and Proper Implementation of the Historic Canadian Human Rights Tribunal Decisions in the Provision of Child Welfare Service and Jordan's Principle*; Resolution 83/2016, *National Advisory Committee on INAC's Child Welfare Reform Engagement Strategy*; and Resolution 40/2017, *Call on Canada to Comply with the 2016 Canadian Human Rights Tribunal Orders*.

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- I. The National Advisory Committee (NAC) on First Nations Child and Family Services Program Reform has been re-established following the CHRT rulings. The NAC is comprised of the AFN, First Nations Child and Family Caring Society, regional First Nations representatives, the Canadian Human Rights Commission, the AFN Elders and Youth Councils, and Indigenous Services Canada (ISC).
- J. At the emergency meeting on Indigenous Child Welfare on January 25-26, 2018, the Minister of Indigenous Services Canada announced six points of action, including supporting communities to draw down jurisdiction and explore the potential for co-developed federal child welfare legislation. First Nations called for reform at the emergency meeting, including assertion of First Nations jurisdiction over child and family services and for legislative reform.

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

1. Support the establishment of federal enabling legislation for First Nations that incorporates the International Convention on the Rights of the Child and jurisdiction over child and family well-being that respect regional approaches that provide options for regional-based components.
2. Call on Canada to orient their approach to legislation, policy, and practice reform, and their conduct to child welfare activities, on the recognition of First Nations' peoples inherent right of self-determination, meaning that each First Nation, duly-appointed representative of the rights and title holders of First Nations or Treaty First Nations, must decide how and when it will take the jurisdiction that is inherent to it, and will be supported to make those free and informed decisions without any duress or predetermination of the conditions other than its own assessment of how best to care for and establish law, policies and practices to protect and support children, youth and families. Service agencies and other entities created by organizations and charitable services providers will be mandated to engage in child welfare reform on behalf of First Nations only when they are specifically authorized to do so by First Nations rights and title holders, or Treaty First Nations peoples.
3. Direct the Assembly of First Nations (AFN) to endorse a working group comprised of representation from nations, without question, and the National Advisory Committee (NAC) on First Nations Child and Family Services Program Reform.
4. Call on Canada to ensure legislation for First Nations jurisdiction over child and family well-being is passed within the current government's mandate.
5. Call on Canada to ensure full funding for First Nations and Treaty Nations for the exercise of their child welfare authority.

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