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## Assembly of First Nations

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## Assemblée des Premières Nations

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**SPECIAL CHIEFS ASSEMBLY  
DECEMBER 4,5, AND 6, 2018, OTTAWA, ON**

**Resolution no. 53/2018**

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

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**SUBJECT:** Child Welfare

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**MOVED BY:** Chief Daryl Watson, Mistawasis Cree Nation Treaty Six, SK

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**SECONDED BY:** Chief Walter Spence, Fox Lake Cree Nation, MB

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**DECISION** 1 Opposition, Carried by Consensus

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**WHEREAS:**

- A. 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 urgent legislative policy and human rights action and compensation to address this crisis.
- B. The harmful legacies of residential schools, the disproportionate number of First Nations children in care, the consequences of involvement in child welfare systems, and the related loss of language and denial of culture and human rights has led to this humanitarian crisis.
- C. The *United Nations Declaration on the Rights of Indigenous Peoples (the UN Declaration)* is the framework for reconciliation and transformation of child welfare law. The UN Declaration must be an integral aspect of any legislation or policy to respond to the child welfare crisis in Canada for First Nations children and youth, and First Nations governments, including the clear recognition of the right to self-determination.
- D. The *United Nations Convention on the Rights of the Child* and all relevant international human rights instruments should inform federal child welfare legislation.
- E. 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 calls upon the federal government to enact child welfare legislation.

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- F. *The Assembly of First Nations and the First Nations Child and Family Caring Society of Canada v. Attorney General of Canada* decision of the Canadian Human Rights Tribunal's 2016 (CHRT 2), and subsequent compliance rulings, found systemic discrimination due to longstanding and proven inequities in the federally-funded on-reserve First Nations Child and Family Services Program. The shortfalls in funding and lack of substantive equality for First Nations children, youth and families, were acknowledged by Canada.
- G. A Legislative Working Group (LWG), composed of Chiefs and technicians, provides advice to the National Chief, the Executive Committee of the Assembly of First Nations (AFN), and Chiefs-in-Assembly. The LWG provided direction for the option presented on First Nations child welfare to Canada.
- H. First Nations governments have consistently put forward a position that they want to exercise authority in relation to child welfare so that children can be connected to their family, culture, language and territory.
- I. The AFN has passed five 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*; Resolution 40/2017, *Call on Canada to Comply with the 2016 Canadian Human Rights Tribunal Orders*; and Resolution 11/2018, *Federal Legislation on First Nations Child Welfare Jurisdiction*.
- J. In January 2018, the federal government convened a National Emergency Meeting to discuss Indigenous child welfare with representatives of First Nations, Métis and Inuit. The outcome was to proceed with a national engagement on legislative reform and that it should be undertaken by Canada in an open, transparent and collaborative manner.
- K. The Minister of Indigenous Services Canada, released a six-point action plan for children and families. This included new resources for children and the commitment for a national discussion process on legislation and policy reform to transform child and family services and child welfare. The engagement process took place between April 2018 and November 2018. Input was provided into the process. The consensus that emerged was for human rights-based child welfare legislation that would enable First Nations to pass their own laws, and to give these laws precedence over provincial and territorial laws, so that First Nations could re-establish their child and family systems and end the breakdown of families.
- L. During the engagement process, Chiefs in all regions placed a priority on inherent rights-affirming legislation with bold support for children, youth and families, as a critical element required to rebuild their Nations, address the application of provincial and territorial laws applied to them without their approval or consent, and the

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importance of proper funding and technical support to occupy the field of child welfare. The Chiefs consistently emphasized that the First Nations inherent rights and title holders, Treaty rights holders and beneficiaries, are the authoritative level where decisions must be made on children, youth and families and any legislative initiative must place decision-making with rights holders and rights representatives and not national or regional political organizations. The Chiefs called for legislation that can affirm and enable the passage of their own laws based on inherent jurisdiction and for these laws to take effect with full force and credit at their own creation, pace and with support to transform child welfare in Canada.

- M.** On November 30, 2018, Canada, the AFN, the Métis National Council and the Inuit Tapiriit Kanatami announced the official co-development of First Nations, Inuit and Métis Child, Youth and Family Wellness legislation, based on the recognition of self-determination, inherent rights and Treaties, and the rights of First Nations to operate systems for child welfare under their own laws, policies, and authorities.
- N.** The specific fund created inside Indigenous Services Canada for the "Community Wellbeing and Jurisdiction Initiative" was inadequate at \$80 million for all First Nations. A proper funding principle needs to develop for "predictable, stable, sustainable and needs-based funding to secure long-term positive outcomes for First Nations, children, families and communities."

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

1. Support the option for legislation prepared by the Assembly of First Nations (AFN) Child Welfare Legislative Working Group (LWG) based on inherent rights, Treaties, self-determination and international human rights standards, and confirm this is the best option Chiefs support for further co-development. The legislation must affirm inherent and Treaty rights and must also uphold the standards in the United Nations Declaration on the Rights of Indigenous Peoples and other international human rights instruments.
2. Call upon the Government of Canada to table the draft legislation before the House of Commons rises on or before December 14, 2018, and include First Nations throughout the legislative process.
3. Call upon all Members of Parliament and Senators to ensure the legislation receives royal assent in advance of October 2019.
4. Call upon Canada to ensure the legislation reflects the position that First Nations laws take precedence over the laws of a province or territory, or occupy other forms of jurisdiction, or reflects the choice of shared jurisdiction, based on the decision of that First Nation government exercising its self-determination authority.
5. Call upon Canada to ensure a funding principle is included in any co-developed legislation based on substantive equality for First Nation children, children with disabilities, youth and families and provides for predictable, stable, sustainable and needs-based funding to secure long-term positive outcomes for First Nations, children, families and communities.

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6. Demand, for greater clarity, adequate funding must be provided for the development, capacity-building, planning, operations, capital, transition and implementation of the co-developed legislation. Funding for actual costs of prevention, data management, legal costs and other areas covered as a result of the legal orders of the Canadian Human Rights Tribunal must be extended to all First Nations governments and peoples.
7. Request the AFN LWG develop materials for First Nations Chiefs and governments for a transition plan specific to First Nations based on clear distinctions between the First Nations, Métis and Inuit so that the distinct political and legal rights, cultures, languages, practices and laws of the First Nations peoples are reflected appropriately in the wording and implementation of legislation.
8. Support the development of political accords to guide transition and implementation of legislation co-developed with First Nations and Canada.
9. Reject any legislative proposal or drafting involving delegation models of authority from federal, provincial or territorial governments or any policy or approach based on denial or rights or requirements of extinguishment or limitation of the rights of the First Nations and Treaty First Nations or any other colonial imposed requirements inconsistent with self-determination.
10. Direct the AFN LWG ensure that co-developed legislation include a non-derogation clause to protect the inherent Aboriginal and Treaty rights of First Nations and the other rights and freedoms of First Nations from being abrogated diminished in any way.

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