

THE HONOURABLE CAROLINE COCHRANE
PREMIER

Government of the Northwest Territories' Intervention Challenging Federal Law C-92

Mr. Speaker, I have a Return to Written Question asked by the Member for Great Slave on June 1, 2023, regarding the Government of the Northwest Territories', or GNWT, intervention of Federal Bill C-92. I appreciate the opportunity to provide further context and clarification on this important matter.

The Member inquired about the legal basis and rationale for the Government of the Northwest Territories intervening in this case before the Supreme Court of Canada.

It is important to note that while the Quebec Court of Appeal has deemed the majority of the federal act constitutional, it has identified Sections 21 and 22(3) as being ultra vires of the Constitution of Canada. It is precisely this limited legal question that prompted the Northwest Territories' intervention.

Sections 21 and 22(3) of the federal act grant Indigenous law the same authority as federal law and establish paramountcy of Indigenous law over provincial and territorial laws in cases of conflict. Our intervention seeks to bring to the Supreme Court's attention the federal government's failure to consider the fundamental differences in jurisdiction and power between territories and provinces.

The GNWT believes it is important for the Supreme Court to fully understand the potential unintended consequences stemming from the federal act. These concerns include the inadvertent alteration of the NWT's legislative authority, ambiguity surrounding the scope and application of Indigenous laws, and the creation of a power imbalance between various Indigenous laws enacted by Indigenous governments in the NWT. Such impacts could lead to a situation where Indigenous laws not only supersede conflicting aspects of NWT laws, but also potentially replace them as federal laws, even in the absence of any conflict.

The Member also inquired how the GNWT justifies its intervention in this matter considering our support of the Inuvialuit Regional Corporation's child welfare law.

While it may appear that our intervention and support for the Inuvialuit Regional Corporation's child welfare law are contradictory, the Attorney General intervened in the Supreme Court of Canada case, not to argue against the inherent right of self-government over child and family services, but to provide the court necessary context as to how the federal act impacts the territories differently than the provinces.

Our intervention in the Supreme Court case is driven by our responsibility to uphold the jurisdictional and legislative autonomy for the Northwest Territories. While the GNWT supports the recognition of Indigenous rights, concerns were raised with the mechanics of the federal act. The concerns stem from the lack of clarity on how Indigenous laws are meant to interact with laws made under the jurisdictions provided through another federal act, the *Northwest Territories Act*. This is where the NWT's concerns and perspectives were different from the interventions made by Attorneys General from the provinces.

Regardless of the decision to come from the Supreme Court of Canada, the GNWT has continued to work with the Inuvialuit Regional Corporation on the implementation of their law to the greatest extent possible. The Inuvialuit Regional Corporation's child welfare law reflects the unique needs and aspirations of their community, and our support is grounded in the principles of self-determination and recognition of Indigenous jurisdiction within the NWT.

The Member has also asked what direct engagement and consultations the GNWT undertook with the Inuvialuit Regional Corporation, or other Indigenous governments, prior to making the decision to intervene.

The GNWT recognizes the importance of engaging and consulting with Indigenous governments and organizations in matters that affect their jurisdictions and interests. In the

case the Attorney General has sole responsibility that is independent from the rest of the GNWT in regard to legal matters and the decision to intervene.

Additionally, the Member noted the frustration and disappointment by both the Inuvialuit Regional Corporation and federal government with the GNWT's intervention. The Member asked about the steps taken to engage with the Inuvialuit Regional Corporation and Canada on the position taken by the government.

The Government of Canada specifically recognized the NWT's position in support of the inherent right to self-government in its written submissions when it referenced that the NWT recognized the validity of section 18 of the federal act.

Lastly, the Member questioned how the GNWT reconciles its intervention in this case with the commitment to implementing the United Nations Declaration on the Rights of Indigenous Peoples, specifically Articles 21 and 22.

The GNWT fully acknowledges and embraces the principles enshrined in the UN Declaration, including the rights of Indigenous peoples to self-determination, autonomy, and the preservation of their distinct legal systems. We are committed to upholding these principles and implementing them in a manner that respects and protects the rights and interests of Indigenous peoples in the NWT.

Regarding our intervention in this specific case, the GNWT spoke in support of the inherent right to self-government and that it includes child and family services. Our focus, however, is on the constitutional implications of sections 21 and 22(3) of the Act, which undermine the jurisdictional and legislative authority of the GNWT.

Our intervention is driven by the necessity to safeguard the autonomy and jurisdictional rights of the NWT, while ensuring that the rights of Indigenous peoples are respected and upheld within the framework of Canadian law. It is essential to recognize that our intervention does not contradict or undermine our commitment to implementing the UN Declaration.

We are actively working in partnership with Indigenous governments, organizations, and stakeholders in implementing the UN Declaration in the Territory, which includes advancing Bill 85: *United Nations Declaration on the Rights of Indigenous Peoples Implementation Act*, currently before the Legislative Assembly. Our approach centers around open dialogue, engagement, and consensus-building to ensure that the implementation approach aligns with the diverse needs and aspirations of Indigenous communities.

Articles 21 and 22 of the UN Declaration, which emphasize the importance of Indigenous peoples' self-determination, governance, and legal systems, are integral to our commitment to implementing the UN Declaration. We recognize the significance of these articles and their alignment with our broader objectives of recognizing and respecting the jurisdictional authority and self-determination of Indigenous peoples in the NWT.

Thank you, Mr. Speaker.