

Government of
Northwest Territories**THIS INFORMATION CAN BE SHARED PUBLICLY**

June 01, 2023

CAITLIN CLEVELAND
CHAIRPERSON
STANDING COMMITTEE ON SOCIAL DEVELOPMENT

**GNWT Intervening in
Supreme Court of Canada Case – Report on the Child and Family Services Act**

I am writing in response to your letter of May 09, 2023 to the concerns raised on behalf of the Standing Committee on Social Development with respect to the decision to intervene in *Attorney General of Quebec, et al. v. Attorney General of Canada, et al.*

Position taken at SCC by the Attorney General:

The Attorney General spoke in support of the inherent right to govern child and family services. The very first sentence of its oral submissions was, “*Let me begin by saying that the Northwest Territories is supportive of the inherent right to self-government and we also support enabling Indigenous groups to create and operate child and family services.*”

Canada has recognized this support and explicitly stated in its written argument that, “Moreover, all of these Attorneys General, except Alberta, recognize the validity of s. 18 of the Act, which affirms the inherent right of self-government recognized and affirmed by s. 35 of the Constitution Act, 1982.”

What drove the Attorney General’s Intervention:

The NWT intervened because it wanted the Court to understand the federal government’s failure to take into account the fundamental differences in jurisdiction and power between the territories and the provinces.

The Federal Act also does not connect the passing of laws with taking over the responsibility for program delivery and enforcement pursuant to the laws (i.e. administering the program delivery). This created a lot of ambiguity on what may be considered within the sphere of an Indigenous child

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and family services law and its potential impact on territorial laws other than the NWT *Child and Family Services Act*.

Indigenous laws are given “the force of law as federal law” by s. 21 of the Federal Act. The potential result is that Indigenous laws don’t just prevail over conflicting aspects of NWT laws, ***they could actually be treated as federal laws that can displace the NWT’s laws***. Neither the federal government nor the NWT can amend these laws.

The Attorney General sought clarity on the application of these federal enactments and questioned the potential for amendments of NWT laws outside the legislature that would direct the NWT in many respects, including the control of the public purse.

What does the GNWT hope to achieve:

The Attorney General worked to achieve a number of objectives:

1. To preserve the concurrency of laws approach, which is the current system of laws in place between the GNWT and Indigenous governments.
2. The Attorney General supported the continuation of the Federal Act and expressly argued to the SCC that the Federal Act can and should continue and could do so without the sections that Canada did not have the constitutional authority to enact. This support was necessary considering both Canada and Quebec took the position that the Federal Act must fail if those provisions were held to be unconstitutional.
3. It is important that decisions of the SCC take into consideration all relevant circumstances, including those that make the NWT unique. In this case, the NWT does not have the same constitutional protections as the provinces do and it was critical for the SCC to be aware of the potential impacts of the Federal Act.
4. The decision to intervene was in part driven by the need to obtain judicial clarity now in order to avoid a separate court process in the future when disagreements arise regarding the ambiguities of the Federal Act.
5. The Attorney General is hopeful the submissions made to the SCC will prove helpful and will provide judicial guidance on the interaction between Indigenous laws and territorial laws.

Relationship

There is acknowledgement that this intervention has created tension in interactions with the Inuvialuit Regional Corporation (IRC). However, it has been reinforced that the need to intervene is prompted by federal decision-making and to ensure that the GNWT can continue to govern in areas where it remains accountable and responsible for the services it provides.

Throughout the Supreme Court intervention process, the GNWT's level of commitment has not been impacted or deterred by the Attorney General's intervention and the GNWT has continued to actively work with the IRC and the Government of Canada on finalizing the NWT's first Coordination Agreement.

A handwritten signature in black ink, appearing to read 'R.J. Simpson', with a long horizontal stroke extending to the right.

R.J. Simpson
Minister, Justice

- c. Premier
- Members of the Legislative Assembly
- Principal Secretary
- Secretary to Cabinet/Deputy Minister, Executive and Indigenous Affairs
- Deputy Minister, Justice
- Clerk, Standing Committee on Social Development
- Advisor, Standing Committee on Social Development
- Committee Members, Standing Committee on Social Development