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LOVING JUSTICE FOR FIRST NATIONS, MÉTIS AND INUIT CHILDREN

First Nations Child and Family Caring Society (Caring Society) News Release on the Supreme Court of Canada Decision upholding the constitutionality of *An Act Respecting First Nations, Métis, and Inuit children, youth, and families*.

The late Elder Elmer Courchene said that when it comes to children and youth-- justice is not enough. We must achieve loving justice. Today's unanimous decision by the Supreme Court of Canada is loving justice. It acknowledges the long and cruel trail of harms that Canadian laws and lawmakers have created for Indigenous children, youth, families, and Nations and sent clear directions to governments about their duty to treat Indigenous children in a way that ensures substantive equality, honours their cultures and accounts for the generations of colonial harms.

In a unanimous decision, the Supreme Court of Canada echoed a truth that has persisted for far too long in Canada, that there is a crisis of overrepresentation of First Nations, Inuit and Métis children in the child and family services system, and that crisis must end. The Court unanimously holds that the protection of the wellbeing of First Nations, Inuit and Métis children, youth and families is a valid federal purpose, and that legislative reconciliation, including recognizing the authority of First Nations, Inuit, and Métis communities over their own children, youth, and families, is a tool to achieve this goal.

As the Caring Society has noted since the Act was passed, the framework established by the federal government contains important gaps, including securing a funding structure that will eliminate discrimination and prevent its recurrence. While this ruling is an important step forward for First Nations children, youth, and families, it does not address this vital topic. This unanimous decision does, however, provide a framework for resolving the uncertainties that remain in this incomplete framework. Specifically, the decision references UNDRIP, which Canada has incorporated into law, and the honour of the Crown, which Parliament recognizes is engaged. This requires the Crown to take a broad approach to implement the self-government rights over child and family services and must act diligently in doing so.

Cindy Blackstock, Executive Director of the Caring Society, says, "Children are sacred. They call on all of us to love more than we ever thought possible and to be more courageous than we ever were. Today, the ancestors, the children and youth who went to residential schools and those who did not make it home, the 60's scoop Survivors, the children and youth in and from care today, and the Indigenous adults who love them, inspired the Supreme Court to ask more of itself and it delivered. Now it is up to the provincial, territorial and federal governments to make sure they provide the resources and supports needed for First Nations, Métis and Inuit children and youth to grow up safely at home, get a good education, be healthy and proud of who they are."

The Caring Society continues, along with First Nations parties, to litigate before the Canadian Human Rights Tribunal to ensure Canada ceases its discriminatory conduct in First Nations child and family services and Jordan's Principle and makes sure it does not happen again. The case was filed in 2007, the Tribunal substantiated the decision in 2016 and has issued over 20 decisions since, resulting in more services and supports for First Nations children. However, Canada's discrimination continues to harm children, youth, and families. The Tribunal will hear a non-compliance order brought by the Caring Society regarding Jordan's Principle in June of 2024. Today's Supreme Court decision will be prominent in those hearings.

The Caring Society honours all those who argued in favour of justice for Indigenous children in this important case and recognizes, with deep gratitude, the contributions of Naiomi Metallic, David Taylor and Alyssa Holland, who represented the Caring Society with such loving justice.

BACKGROUND

The Supreme Court of Canada (SCC) released its decision this morning on the federal *An Act Respecting First Nations, Inuit, and Métis Children, Youth, and Families* (the Act).

Today's ruling follows a decision by the Quebec Court of Appeal (QCA) in 2022, finding sections 21 and 22(3) of the Act unconstitutional. These sections stipulate that Indigenous child and family services laws have the force of federal law and will prevail over conflicting provincial laws. Quebec and Canada both appealed the QCA's decision. Briefly put, Quebec argued that the Act is wholly unconstitutional, while Canada argued that the Act is constitutionally valid in its entirety.

The Caring Society was an intervenor in the appeal. The Caring Society's position as an intervenor was that, despite its shortcomings, the Act is constitutional. The Act needs to be significantly improved in certain respects, especially by setting out the funding responsibilities of different levels of government. However, it is a first effort at "legislative reconciliation."[1]

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[1] The Supreme Court of Canada, Factum of the Respondent First Nations Child & Family Caring Society of Canada (9 September 2022) online.