

**UNION OF B.C. INDIAN CHIEFS
33RD ANNUAL GENERAL ASSEMBLY
VANCOUVER, B.C.**

Resolution # 2001- 08

Re: Child and Family Services

WHEREAS Our children and our families are the cornerstone of our futures, and the Union of B.C. Indian Chiefs recognizes that Our Children are Our Future;

WHEREAS Indigenous Peoples jurisdiction in the area of children and families is not recognized and the current system is one in which the province asserts jurisdiction and control in this area;

WHEREAS the provincial assertion of jurisdiction in the area of child and family services, and the delegated models which the province is urging upon our communities has resulted in a situation where our children are not being properly cared for;

WHEREAS the Child and Family Services Technical Working Group of the Union of B.C. Indian Chiefs has entered into a contract with the province to provide a paper on Alternatives to Delegation, and the draft discussion paper prepared by the contractor hired was not acceptable to the Technical Working Group because it did not reflect the Union of B.C. Indian Chiefs historic and continued position on this issue;

WHEREAS the Union of B.C. Indian Chiefs recognizes that our inherent right of Self Determination will only be achieved through the recognition of our inherent jurisdiction for our children and families, and has a strong and lasting commitment to ensuring that this right is recognized and fully implemented;

WHEREAS the Union of B.C. Indian Chiefs has added child and family services as an item for discussion on the Joint Policy Council, and recognizes that the federal government has the overarching fiduciary duty to protect and support our jurisdiction in this area, and must be pressured to take up these responsibilities by fully funding and supporting our assertion of jurisdiction in the area of child and family services;

THEREFORE BE IT RESOLVED that the Chiefs in Assembly have the Alternatives to Delegation paper revised according to the draft outline which is attached to this resolution, and that this paper reflect the position of the Union of B.C. Indian Chiefs regarding Self Determination, and be completed in time to allow the Union of B.C. Indian Chiefs to meet its contract commitments to the province;

BE IT FURTHER RESOLVED when the Alternatives to Delegation paper is complete, the Union of B.C. Indian Chiefs hold a Special Assembly to discuss this very important topic and to plan ways in which Indigenous Nations, as a unified force, can work towards asserting our inherent jurisdiction in the area of child and family services.

Moved: Chief Willie Moon, Tsawataineuk

Seconded: Councilor David Terry, Bridge River (Stl'atl'imx)

Disposition: Carried

Date: November 1, 2001

PROPOSED OUTLINE

**UBCIC DISCUSSION PAPER:
OPTIONS TO DELEGATED AUTHORITY IN CHILD AND FAMILY SERVICES**

1. Union of B.C. Indian Chiefs' Position

A. Self Determination

- Overview of the UBCIC's position: "Our Children are Our Future"
- Control over the future of our children and families is fundamental to Self Determination because it is the only way in which we can shape our own destiny.

B. History of the UBCIC's activism in this field

- Include a discussion of the passage of the Spallumcheen Bylaw
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2. National and International Perspectives

- Assembly of First Nations position
- International instruments which talk about Self Determination and Rights of Children

3. Current Jurisdictional and Legislative Framework

What are the federal and provincial laws which currently impact on Child and Family Services, and how do these impact upon our vision of Self Determination?

A. Federal :

- Sources and implications of the federal fiduciary
- *Indian Act*
- Possibilities for passing bylaws under the *Indian Act*;
- Impact of Section 88 (which referentially incorporates provincial legislation of general application to our children and families)
- How is the federal government currently addressing this issue (i.e., by making funding agreements with provinces and not dealing directly with Indigenous Nations/communities)

B. Provincial:

- Review and summary of existing Child and Family Services Legislation (including the Adoption Act & other legislation which is used to put children into care)
- Brief discussion/critique of the operation of current delegated models, include fact that in urban areas these services are being delivered by non-nation based organizations
- Analysis of the theory which underlies the legislation (i.e., how does the “best interests of the child” test operate against Indigenous peoples)
- Ways in which the legislation explicitly mentions Indigenous children (Delegation enabling agreements, reference to maintenance of cultural ties, etc.)

C. Section 35

- Impact of the Constitutional protection of Aboriginal Title, Rights and Treaty Rights in this area
- Options for the recognition Indigenous Peoples jurisdiction in this area outside of current legislation

D. Case law and Legal History:

- Review of various court cases which have addressed child and family issues (including in the areas of child protection and child adoption)
- Did these cases rely upon Aboriginal Rights, or did they solely focus on a judicial review of the decisions made under the various pieces of legislation?

3. Case Histories

This section would present an examination of the alternatives which are available to delegation enabling agreements, and provide a brief summary of how other Indigenous Peoples have proceeded, and whether their models have worked.

A. Canada

- Spallumcheen: How was this bylaw originally passed? How does it operate in practice?
- Others. There are some examples flowing from agreements specific to the various regions or nations. The paper would examine whether, and to what extent, these models remain a delegation of provincial jurisdiction. For example: Manitoba, Nisga’a

B. United States

- Exploration of different federal system (Indian laws are more protected from State interference)

- Federal Indian Child welfare legislation (how has this worked, how does it interact with state laws)
- Examples of how the Tribal Courts have been used to mediate Child and Family disputes
- Specific examples

C. Australia and New Zealand

- Examinations of where Indigenous Peoples in these countries have been able to establish a recognition of their jurisdiction for Children and Families.
- Specific examples.

4. Review of Literature

Edit and incorporate some of the materials produced for in the original discussion paper

- Liberating Our Children, Liberating our Nations
- Royal Commission on Aboriginal Peoples
- Others (Academic literature)

5. Recommendations

- Recommendations for the options available to recognize Indigenous Peoples right of Self Determination within the field of Children and Family Services.
- Ways in which BC can work with the UBCIC to promote federal fiduciary responsibilities.