SUPREME COURT OF CANADA

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Case in Brief: *Reference re An Act respecting First Nations, Inuit and Métis children, youth and families*

Judgment of February 9, 2024 | On appeal from the Court of Appeal for Quebec
Neutral citation: 2024 SCC 5

The Supreme Court upholds the constitutionality of a federal statute affirming Indigenous peoples' right of self-government with respect to child and family services.

In 2019, Parliament passed the *Act respecting First Nations, Inuit and Métis children, youth and families* (Act), which establishes national standards and provides Indigenous peoples with effective control over their children's welfare.

First of all, the Act sets out national standards and principles that establish a normative framework, which applies across the country, for the provision of culturally appropriate child and family services. For example, the principle of the best interests of the child must be a paramount consideration in decisions or actions in relation to an Indigenous child. The Act also sets out the principle of ensuring cultural continuity, which is considered essential to the well-being of children, families and Indigenous groups, communities or peoples.

In addition, the Act affirms the inherent right of self-government of Indigenous peoples that is recognized and affirmed by section 35 of the *Constitution Act, 1982*. The Act states that this right includes jurisdiction to make laws in relation to child and family services. For this purpose, the Act establishes a framework within which Indigenous groups, communities or peoples can exercise this jurisdiction.

Furthermore, the Act specifies how its provisions and Indigenous peoples' jurisdiction to make laws in this area will interact with other laws. Section 21 gives the laws made by Indigenous groups, communities or peoples the same force as federal laws. Lastly, section 22(3) states for greater certainty that Indigenous laws prevail over provincial laws to the extent of any conflict or inconsistency.

After the Act was passed, the Attorney General of Quebec asked the Quebec Court of Appeal to determine whether the Act was "*ultra vires*" Parliament's jurisdiction under the Constitution of Canada. In other words, the Attorney General asked whether, in light of the division of federal and provincial powers under sections 91 and 92 of the *Constitution Act, 1867*, Parliament had exceeded the limits of its jurisdiction by passing the Act. In the opinion it provided in answer to that question, the Court of Appeal concluded that the Act was constitutionally valid except for sections 21 and 22(3), the provisions giving the laws of Indigenous peoples priority over provincial laws.

The Attorney General of Quebec and the Attorney General of Canada both appealed to the Supreme Court of Canada from that opinion. The former argued, among other things, that the entire Act impermissibly intruded on certain areas of exclusive provincial jurisdiction. The latter countered that the Act was a valid exercise of Parliament's legislative jurisdiction over "Indians, and Lands reserved for the Indians" under section 91(24) of the *Constitution Act, 1867*.

The Supreme Court has dismissed the appeal of the Attorney General of Quebec and allowed the appeal of the Attorney General of Canada.

The Act is not *ultra vires* Parliament's jurisdiction under the Constitution of Canada.

In a unanimous judgment, the Supreme Court ruled that the Act as a whole is constitutionally valid. The essential matter addressed by the Act involves protecting the well-being of Indigenous children, youth and families by promoting the delivery of culturally appropriate child and family services and, in so doing, advancing the process of reconciliation with Indigenous peoples. The Act falls squarely within Parliament's legislative jurisdiction under section 91(24) of the *Constitution Act, 1867*.

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The Court characterized section 21 of the Act as simply an incorporation by reference provision. Through section 21, Parliament has validly incorporated by reference the laws, as amended from time to time, of Indigenous groups, communities or peoples in relation to child and family services. As for section 22(3), the Court affirmed that it is simply a legislative restatement of the doctrine of federal paramountcy, under which the provisions of a federal law prevail over conflicting or inconsistent provisions of a provincial law.

As the Court noted, "[u]nder this framework created by the Act, Indigenous governing bodies and the Government of Canada will work together to remedy the harms of the past and create a solid foundation for a renewed nation-to-nation relationship in the area of child and family services".

Breakdown of the decision: ***Unanimous*****:** The Court dismissed the appeal of the Attorney General of Quebec and allowed the appeal of the Attorney General of Canada (Chief Justice Wagner and Justices Karakatsanis, Côté, Rowe, Martin, Kasirer, Jamal and O'Bonsawin)

More information: Decision | Case information | Webcast of hearing

Lower court rulings: Opinion (Court of Appeal for Quebec – unofficial translation)
