



## BC ASSEMBLY OF FIRST NATIONS

1004 Landooz Road  
Prince George, BC V2K 5S3  
Website: www.bcafn.ca

**BCAFN ANNUAL GENERAL MEETING**  
**September 21, 22, & 23, 2022**  
**Hybrid - In person & online via Zoom**

**Resolution 33/2022**

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**SUBJECT:                   COMPENSATION FOR CHILDREN AND FAMILIES WHO SUFFERED  
DISCRIMINATION IN THE DELIVERY OF FIRST NATIONS CHILD & FAMILY  
SERVICES AND JORDAN'S PRINCIPLE SERVICES**

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**MOVED BY:               CHIEF CAMERON STEVENS, KISPIOX BAND**

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**SECONDED BY:         CHIEF LEE SPAHAN, COLDWATER INDIAN BAND**

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**DECISION:               CARRIED**

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### **WHEREAS:**

- A. The United Nations Declaration on the Rights of Indigenous Peoples states:
- i. Article 2: Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.
  - ii. Article 7: 1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person. 2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.
  - iii. Article 19: States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

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**Certified copy of a resolution adopted on the 23<sup>rd</sup> day of September 2022**

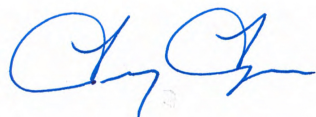
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**Terry Teegee, BC Regional Chief**

- B. The First Nations Child & Family Caring Society (Caring Society) and the Assembly of First Nations (AFN) filed a discrimination complaint in 2007 alleging Canada's inequitable provision of First Nations child and family services and its choice to not implement Jordan's Principle were discriminatory.
- C. The Canadian Human Rights Tribunal substantiated the discrimination in 2016 CHRT 2 and ordered Canada to immediately cease its discriminatory conduct towards First Nations children and families, including those who are members of First Nations in British Columbia.
- D. The AFN passed Resolution 85/2018 calling for the maximum allowable compensation (\$40,000) for victims of discrimination under the FNCFS Program;
- E. The Canadian Human Rights Tribunal ordered Canada to pay \$40,000 per eligible victim for Canada's "willful and reckless" discrimination of the "worst order";
- F. Compensation orders in 2019 CHRT 30 and 2021 CHRT 7 were upheld by the Federal Court (T-1621-19 in 2021 FC 969);
- G. The Government of Canada appealed the Federal Court Decision (2021 FC 969) and subsequently announced its wishes to address the human rights damages in combination with two larger class actions: Moushoun et al. v. Attorney General of Canada and the Assembly of First Nations class action;
- H. Canada and counsel for both class actions announced an Agreement in Principle on the compensation on December 31, 2021, with an intent to develop a Final Settlement Agreement to resolve the compensation issue for both the human rights damages and the class actions;
- I. The AFN Chiefs did not pass any resolutions supporting the Agreement in Principle on compensation or authorizing negotiators to deviate from the CHRT orders on compensation or from the AFN's resolution calling for the maximum allowable amount for every victim of discrimination under the FNCFS program;
- J. The First Nations Summit passed a resolution on June 16, 2022 (FNS Resolution #0622.23) affirming that the AFN and Canada are not authorized to modify the CHRT's compensation entitlement order without the free, prior and informed consent of First Nations in British Columbia;
- K. On June 30, the AFN, class action parties and the Government of Canada reached a Final Settlement Agreement on compensation and immediately (without seeking the free, prior and informed consent of First Nations or their chiefs) filed a motion with the Canadian Human Rights Tribunal seeking an expedited hearing regarding the Tribunal's compensation orders;

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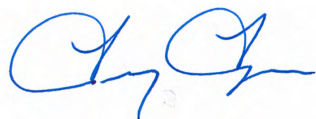
- L. Article 10 of the Final Settlement Agreement on compensation requires the AFN, among other things, “to take all reasonable steps to publicly promote and defend the Agreement”;
- M. At the Tribunal hearing, which took place on September 15 and 16, 2022, the Caring Society argued that the Final Settlement Agreement negatively impacts the rights of a number of children and families by reducing or eliminating their right to CHRT compensation and by waiving their rights to litigate against Canada for the harms they experienced flowing from Canada’s discrimination—even if they receive no financial compensation under the Final Settlement Agreement;
- N. During the Tribunal hearing on September 16, 2022, AFN legal counsel was asked by the Tribunal if there were any objections to the Final Settlement Agreement by First Nations or others, and though they were in possession of the FNS resolution the AFN counsel did not disclose the FNS’s objections in answer to the question.
- O. Chiefs in British Columbia have not been consulted on the Final Settlement Agreement and are therefore unable to exercise free, prior, and informed consent on any changes to the CHRT compensation orders.

**THEREFORE BE IT RESOLVED THAT:**

1. The BCAFN Chiefs-in-Assembly call upon Canada to immediately pay the CHRT-ordered compensation in the amount of \$40,000 plus interest owed to eligible victims and provide necessary supports pursuant to the CHRT orders;
2. The BCAFN Chiefs-in-Assembly affirm that AFN negotiators are not authorized to seek a reduction in the compensation amounts for eligible victims who are members of BC First Nations and must respect the compensation framework agreement and compensation entitlement order as set out in 2019 CHRT 39 and 2021 CHRT 7;
3. The BCAFN Chiefs-in-Assembly express concern regarding the AFN’s agreement to Article 10 in the Final Settlement Agreement as it abrogates the AFN’s duty to represent the interests of First Nations as authorized by the AFN Chiefs in Assembly and direct that the AFN:
  - a. withdraw its consent to this section of the agreement or in the alternative
  - b. fully disclose this obligation to First Nations governments, First Nations experts, the Courts and Tribunal, and the public and that an independent panel of experts and lawyers be appointed by the BCAFN to examine the Final Settlement Agreement and inform positions arising from it;

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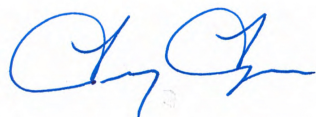
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4. The BCAFN Chiefs-in-Assembly affirm that the AFN is not authorized to sign provisions such as Article 10 of the Final Settlement Agreement on behalf of BCAFN Chiefs-in-Assembly without their free, prior, and informed consent;
5. The BCAFN Chiefs-in-Assembly direct the AFN negotiators to seek the free, prior and informed consent of BC First Nations Chiefs before making any legal representations on any Final Agreement on Compensation that may have an impact on First Nations children, youth and families in British Columbia; and
6. The BCAFN Chiefs-in-Assembly direct that any negotiations with Canada or class action counsel on any matters arising from 2016 CHRT 2 and subsequent orders or legal proceedings affecting BC First Nations children, youth, and families must be conducted in an open and transparent manner consistent with free, prior and informed consent of First Nations.

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A handwritten signature in blue ink, appearing to read "Terry Teegee", is written over a horizontal line.

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**Terry Teegee, BC Regional Chief**