



## BC ASSEMBLY OF FIRST NATIONS

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**BCAFN SPECIAL CHIEFS ASSEMBLY**  
**March 9-10, 2023**  
**Hybrid - In person & online via Zoom**

**Resolution 08/2023**

**SUBJECT: CHRT ON FIRST NATIONS CHILD & FAMILY SERVICES, JORDAN'S PRINCIPLE, REFORM OF INDIGENOUS SERVICES CANADA, THE AGREEMENT IN PRINCIPLE, AND FINAL SETTLEMENT AGREEMENT**

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**Moved by: CHIEF HARVEY MCLEOD, UPPER NICOLA INDIAN BAND**

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**SECONDED BY: PROXY MEL AKSIDAN, GITSEGUKLA FIRST NATION**

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**DECISION: CARRIED**

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### **WHEREAS:**

A. The United Nations Declaration on the Rights of Indigenous Peoples states:

**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.

**Article 7 (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.

**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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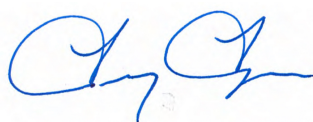
**Terry Teegee, BC Regional Chief**

**Article 22 (2):** States shall take measures in conjunction with Indigenous peoples, to ensure that Indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

**Article 40:** Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with states or other parties, as well as the effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems in the Indigenous peoples concerned and international human rights;

- B. International human rights bodies and councils have criticized Canada's gross negligence on the implementation of human rights norms and standards;
- C. In 2007, the First Nations Child and Family Caring Society (Caring Society) and the Assembly of First Nations (AFN) filed a human rights complaint (complaint), to the Canadian Human Rights Commission, against the Government of Canada (Canada), alleging Canada of inequitable funding of First Nations Child and Family Services (FNCFS) and failure to implement Jordan's Principle;
- D. This complaint was referred to the Canadian Human Rights Tribunal (CHRT) for a full hearing and the CHRT substantiated this complaint in 2016 CHRT 2 and ordered Canada to immediately cease its discriminatory conduct towards First Nations children and families;
- E. The CHRT ruling established that First Nations children and families are legally entitled to receive prevention services and least disruptive measures;
- F. Canada repeatedly refused to comply with this order, filing multiple judicial reviews, which resulted in 23 non-compliance and procedural orders, and three Federal Court orders against Canada since 2016;
- G. In fall 2021, Canada admitted to ongoing discrimination and entered negotiations with the complainants (the Caring Society and the AFN) and the interested parties (Chiefs of Ontario and Nishnawbe Aski Nation) to resolve outstanding discrimination and prevent its recurrence pursuant to the CHRT orders;
- H. On December 31, 2021, an Agreement in Principle (AIP) was signed as a framework for the negotiations of a Final Settlement Agreement (FSA) on FNCFS, Jordan's Principle, and the reform of Indigenous Services Canada (ISC) hereinafter called the long-term reform FSA;
- I. On March 24, 2022, the CHRT issued an order (2022 CHRT 8), by consent of the parties, requiring Canada to fund prevention services at \$2500 per person resident on reserve, and

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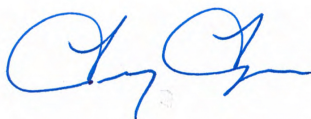
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the actual costs for post-majority services, and other immediate measures for youth transitioning and transitioned from government care up to and including the age of 25. When combined with previous CHRT orders, this amounts to over 75% of the \$19.807 billion over 5 years, announced as part of the AIP in addition to the resources needed for Jordan's Principle;

- J. In 2022, Canada, AFN and other class action parties signed an FSA of \$20 billion for compensation to be paid to victims of Canada's discrimination, and filed a joint motion to have the FSA approved by the CHRT;
- K. Through BCAFN Resolution 32/2022, BCAFN Chiefs-in-Assembly call on Canada to release the full amount of \$19.08 billion over five years in funding; ensures the FSA ends and prevent the recurrence of discrimination in FNCFS and Jordan's Principle; ensures the CHRT and associated orders are a minimum standard for the FSA; extend the timeframe to end the CHRT's jurisdiction and fully implement the reformed funding approach in the AIP; direct the BCAFN Regional Chief to advocate for: transparent FSA negotiations and meaningful consultation with First Nations, as well as FNCFS and Jordan's Principle experts; the AFN to ensure the meaningful participation of the National Advisory Committee on First Nations child welfare (NAC), Indigenous governing bodies, First Nation title and rights holders, and BC Indigenous Child and Family Services Directors (ICFSD) in any proposals affecting FNCFS and Jordan's Principle in BC; the AFN to only sign a FSA after receiving the FPIC of First Nations in BC; the AFN not sign any agreements that fetter its disclosure of information required by First Nation leadership; and, affirm that the AFN must seek the FPIC of First Nations in BC, prior to stating or implying a position on behalf of First Nations rights holders in BC regarding 2016 CHRT 2 or the AIP;
- L. On October 24, 2022, the CHRT issued a letter-decision confirming that the FSA on compensation, signed by Canada, the AFN, and other class action parties does not fully satisfy its orders, disentitling some victims, reducing compensation for others, and adding entitlement uncertainty for others;
- M. On November 23, 2022, the AFN and Canada filed application for judicial review of the CHRT decision on the proposed FSA on the payment of compensation to victims of Canada's discrimination under the FNCFS Program and Jordan's Principle; and
- N. On December 8<sup>th</sup> and 9<sup>th</sup>, 2022, First Nations-in-Assembly passed Resolution 28/2022 and 40/2022 which supports compensation for all victims; directs Canada to provide interim and long-term funding; directs the AFN to seek an extended opt in/out timeline for eligible FSA claimants; ensures the AFN provides updates and seeks direction from First Nations-in-Assembly; directs the development of evidence-and-policy based options for long-term

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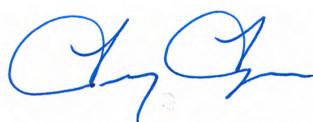
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reform of Jordan's principle; and, calls on Canada to provide funding, ensure FPIC on long-term reforms, develop legislative protections, and continue funding capital.

**THEREFORE BE IT RESOLVED THAT:**

1. The BCAFN Chiefs-in-Assembly reaffirm the BCAFN resolution 32/2022 on the *Canadian Human Rights Tribunal Case on First Nations Child & Family Services, Jordan's Principle, and Reform of Indigenous Services Canada, and the Related Agreement in Principle Dated December 31, 2021*;
2. The BCAFN Chiefs-in-Assembly call on Canada to:
  - i. Fund post-majority supports tailored to the specific needs of each child and young adult victim, including those affected by Canada's discriminatory approach to Jordan's Principle. up to the age of 26 who are eligible for compensation until such time that community-based supports funded by Canada can adequately support all victims for the duration of the compensation period;
  - ii. Immediately place the minimum of \$20 billion earmarked for compensation in an interest-bearing account, held by an independent and reputable major financial institution, and immediately pay compensation to all victims of Canada's discrimination, including those eligible under the class action and under the CHRT orders;
  - iii. Ensure that funding and other mechanisms related to long-term reform measures regarding child and family services enable FNCFS Agencies and First Nation child and family service providers to deliver services based on substantive equality, best interests of the child, that is culturally appropriate and takes into full account the distinct circumstances of their communities;
  - iv. Ensure that any interim and long-term reform measures, including the Reformed CFS Funding Approach, does not reduce or disrupt current funding levels and are sufficiently flexible to respect First Nations authorized service providers to deliver child and family services at a level that protects and promotes the best interests of their children in keeping with the principles of sovereignty, inherent jurisdiction, and nation-to-nation building;
  - v. Extend the timeframes for signing the FSA on long-term reform to ensure that community informed research via the IFSD studies is completed and the results thereof have been duly reviewed by First Nations technicians in BC and integrated into the final text of the FSA (or a phased FSA) that will be presented to the First Nations in Assembly for approval. If the IFSD research is ready at different times, work with the parties on a phased approach for the completion of long-term reform
  - vi. Increase funding commitments, above the currently allocated \$19.807 billion over 5 years and beyond, that is needs-based to ensure substantive equality, the best

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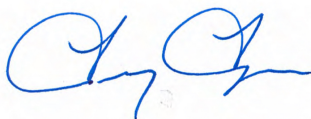


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- interests of the child, and services that are culturally appropriate and reflective of the distinct needs and circumstances of individual First Nation communities;
- vii. Fund the AFN National Advisory Committee on First Nations Child and Family Services Program reform, as well as regional and other technical experts to inform the FSA.
  - viii. Ensure BC Chiefs are provided with all available options and related supporting financial resources and materials so that First Nations in BC can exercise Free, Prior, and Informed Consent on long-term reforms;
  - ix. Develop legislative protections to ensure that First Nations in BC have sufficient liability coverage over the services they provide; and
  - x. Continue funding capital at actual costs for First Nations, FNCFS Agencies and First Nation Service Providers, in BC, pursuant to 2021 CHRT 41, until otherwise ordered by the Tribunal;
3. The BCAFN Chiefs-in-Assembly call on the Assembly of First Nations to:
- i. Support compensation for victims covered by the proposed FSA and for those already legally entitled to \$40,000, plus interest, under the CHRT compensation orders;
  - ii. Support the principles on which the long term reform FSA is built, including taking a trauma-informed approach, employing objective and non-invasive criteria, and ensuring a First Nations-driven and culturally-informed approach to compensating individuals;
  - iii. Continue to support the Representative Plaintiffs and all victims of Canada's discrimination by ensuring that compensation is paid as quickly as possible to all who can be immediately identified and to continue to work efficiently to compensate those who may need more time;
  - iv. Disclose to the BCAFN Chiefs-in-Assembly, any fees or benefits paid to any person or organizations (including legal counsel) within the AFN or acting on behalf of the AFN arising from the compensation to children, youth and victims;
  - v. Advocate that the Parties, of the long-term reform FSA, develop evidence-and policy-based options for the long-term reform of Jordan's principle that will include mechanisms to enable and support self-determination and to return the First Nations-in-Assembly for review and approval.
  - vi. Ensure that the solutions for the long-term reform of child and family services and Jordan's Principle are not finalized in an FSA until the community informed research via the IFSD studies is completed. Solutions for a long-term approach for child and family services and Jordan's Principle can be dealt with separately and a phased approach must be considered in line with the timing of the community-based research.

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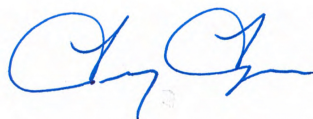


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4. The BCAFN Chiefs-in-Assembly call on the Assembly of First Nations to:
- i. Return to the First Nations-in-Assembly to provide regular progress reports and seek direction on any outstanding implementation issues;
  - ii. Return to the First Nations-in-Assembly to seek approval of the FSA on long-term reform and compensation;
  - iii. Ensure that the FSA does not detract from the right of the Parties to the current complaint before the CHRT from seeking orders from the Tribunal to ensure that all First Nations children, youth, and families will be free from discrimination and its recurrence for all generations to come; and
  - iv. Immediately seek an opt-out period for a minimum of 12 months, following the announcement of a revised compensation FSA, for claimants to determine whether they will participate in the class action.

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