



BC ASSEMBLY OF FIRST NATIONS

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

BCAFN ANNUAL GENERAL MEETING
September 19-21, 2023
Hybrid - In person & online via Zoom

Resolution 17/2023

SUBJECT: **CIVIL ACTION TO END DISCRIMINATIVE FUNDING OF INDIGENOUS CHILD AND FAMILY SERVICES PROVIDED OFF-RESERVE**

MOVED BY: **CHIEF JAMES HOBART, SPUZZUM FIRST NATION**

SECONDED BY: **KHELSILEM, CHAIRPERSON, SQUAMISH NATION**

DECISION: **CARRIED**

WHEREAS:

- A. the Government of Canada and the Government of British Columbia have knowingly underfunded child and family services for off-reserve Indigenous children in BC for decades, despite being cognizant of systemic discrimination and ongoing harms caused;
- B. the *United Nations Declaration on the Rights of Indigenous Peoples* (UN Declaration), which Canada has adopted without qualification, and has, alongside BC, passed legislation committing to implement, affirms:

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.

Certified copy of a resolution adopted on the 20th day of September 2023

Terry Teegee, BC Regional Chief

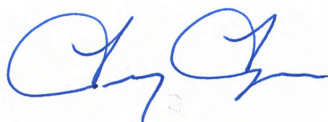
Article 19: States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

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 to 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 of the indigenous peoples concerned and international human rights;

- 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 to the Canadian Human Rights Commission, against 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 (Caring Society and 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, two Agreements-in-Principle (AIP) were signed, providing the frameworks for negotiations of the Final Settlement Agreements (FSA) on (1) Long-Term

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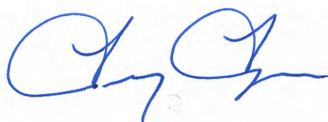
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Reform of the FNCFS Program, Jordan's Principle, and Indigenous Services Canada (ISC) and (2) Compensation for victims of Canada's discrimination;

- I. on April 3, 2023, the parties announced a revised FSA on compensation, which was endorsed by the AFN Chiefs-in-Assembly;
- J. the CHRT rulings and related agreements among the parties only apply to FNCFS on-reserve, while similar off-reserve services are funded by BC, and fall beyond the CHRT's jurisdiction in this matter;
- K. provincial funding for Indigenous child and family services reflects the same discrimination determined by the CHRT in federal funding;
- L. since 2016, on-reserve First Nation children and families have had access to necessary prevention services from Canada, while MCFD has provided minimal funding for prevention services and no funding for Jordan's Principle services due to use and application of a dated, formulaic funding approach;
- M. since 2016, the Indigenous Child & Family Services Directors (ICFSD) have repeatedly urged BC to implement the CHRT rulings to ensure substantive equality for Indigenous children and families both on- and off-reserve;
- N. in January 2022, the ICFSD and MCFD agreed to strike a Fiscal Working Group (FWG) to remedy the inequities between on-reserve and off-reserve services for Indigenous children and families;
- O. in March 2022, MCFD stated that they could not sign off on the Terms of Reference for the FWG because they did not have the mandate to achieve substantive equality for Indigenous children and families; and
- P. on May 19, 2022, ICFSD assisted lawyers in filing a Notice of Civil Claim against BC and Canada, alleging discrimination in the funding of off-reserve Indigenous child and family services.

THEREFORE BE IT RESOLVED THAT:

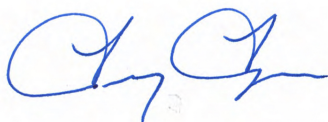
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1. that the BCAFN Chiefs-in-Assembly supports the children, youth, and families who have and continue to suffer discrimination in the funding of off-reserve Indigenous child and family services;
2. that the BCAFN Chiefs-in-Assembly calls on the Government of Canada and the Government of British Columbia to:
 1. Immediately cease discriminating against Indigenous children and families receiving provincially-funded child and family services;
 2. Ensure that discrimination never occurs again;
 3. Compensate the children and families who have endured discrimination;
3. the BCAFN Chiefs-in-Assembly calls on Canada and BC to eschew the delay and defer tactics, which allowed the Canadian Human Rights Tribunal (CHRT) process to drag on for nearly two decades, and to resolve the alleged discrimination in the May 19, 2022 Notice of Civil Claim through a fair and just negotiation process, centred on the best interests of the child;
4. the BCAFN Chiefs-in-Assembly calls on Canada and BC to ensure that the systemic underfunding of off-reserve child and family services for Indigenous children and families in BC be resolved in alignment with the CHRT rulings, the Final Settlement Agreement on Compensation, and the eventual Final Settlement Agreements on Long-Term Reform and Jordan's Principle;
5. the BCAFN Chiefs-in-Assembly calls on Canada and BC to support the full participation of the Indigenous Child & Family Services Directors as well as non-delegated First Nations in any legal action or settlement process related to off-reserve services for Indigenous children and families;
6. that the proper Title and Rights holders make the final determination or decision with respect to any legal action or settlement process related to services for Indigenous children and families; and
7. the BCAFN Chiefs-in-Assembly calls on Canada and BC to ensure that discriminative funding and delivery of Indigenous child and family services be resolved through an evidence-informed, distinctions-based, needs-based and child-centred approach, which meets the best interests, needs, and approval of Indigenous children and families.

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