



BC ASSEMBLY OF FIRST NATIONS

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

BCAFN ANNUAL GENERAL MEETING

October 8, 9 & 10, 2024

Hybrid - In person & online via Zoom

Resolution 23/2024

SUBJECT: ADDRESSING THE SHORTCOMINGS RELATED TO THE DRAFT FINAL AGREEMENT
ON LONG-TERM REFORM OF FIRST NATIONS CHILD & FAMILY SERVICES

MOVED BY: KUKPI7 HELEN HENDERSON, TSQÉSCEN' FIRST NATION

SECONDED BY: DEBRA FOXCROFT, PROXY, TSESHAHT

DECISION: CARRIED

OPPOSITION: 7

ABSTENTIONS: 2

WHEREAS:

- A. Children are the most sacred gift from the Creator, and their care and well-being is our highest responsibility and our communities have long maintained systems of governance that ensured the safety and well-being of our children;

Canada has discriminated against First Nations children and families for decades through its design, management, control and chronic underfunding of the First Nations Child & Family Services (FNCFS) Program;

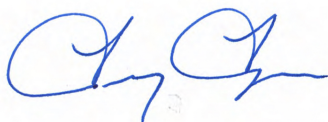
- B. Colonial policies, including the Indian Residential School system and other off-reserve targeted interventions, were designed to assimilate First Nations peoples and have caused profound harm by targeting our children both on- and off-reserve;

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- C. First Nations title and rights holders have the inherent right to self-determination, which includes jurisdiction over our children and families. These rights are constitutionally protected under section 35 of the *Constitution Act, 1982*, and are upheld and affirmed in the *United Nations Declaration on the Rights of Indigenous Peoples* (UN Declaration), and *An Act respecting First Nations, Inuit and Métis children, youth and families*, the constitutional validity of which was confirmed by the Supreme Court of Canada in *Reference re An Act respecting First Nations, Inuit and Métis children, youth and families*, 2024 SCC 5;
- D. The child welfare system continues to perpetuate the intergenerational trauma caused by these policies, resulting in the ongoing removal of our children from our families, communities, and cultures, with many First Nations children in urban areas unsupported due to inadequate transfer agreements between federal and provincial governments;
- E. on February 23, 2007, the Assembly of First Nations (AFN) and the First Nations Child and Family Caring Society (Caring Society) filed a complaint with the Canadian Human Rights Commission alleging that Canada was discriminating against First Nations in the provision of child and family services on reserve by providing insufficient and inequitable funding for those services;
- F. in *First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, 2016 CHRT 2 (the Merit Decision), the Canadian Human Rights Tribunal (the Tribunal) found Canada was discriminating against First Nations children and their families by denying First Nations children the equal provision of child and family services, and ordered Canada to stop its discriminatory policies and practices;
- G. since the 2016 Merit Decision, the Tribunal has issued numerous procedural and non-compliance orders against Canada. The case is ongoing, and the Tribunal retains jurisdiction over these orders;
- H. Canada has not implemented the necessary reforms to provide adequate funding and services that would allow families to safely care for their children and the voices and participation of thousands of children were instrumental throughout the Canadian Human Rights Tribunal process, reflecting their vested interest in their own future care and well-being;

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- I. the AFN, Canada and interested parties (the Chiefs of Ontario and Nishnawbe Aski Nation) completed a draft Final Settlement Agreement (FSA) on long-term reform of the FNCFS program and presented it to Chiefs on July 11th, 2024 at the 2024 AFN Annual General Assembly in Montreal;
- J. the AFN has conducted regional engagements on the July 11th Draft FSA since its release and is recommending to advocate for changes to the July 11th Draft FSA related to regional representation on the reform implementation committee, the president of the dispute resolution tribunal, and the reconsideration of the population data to include off-reserve members and move away from the Indian Registration System;
- K. the AFN intends to seek endorsement of an updated draft FSA (“Updated Draft FSA”) from First Nations leadership at the October 16-18, 2024 Special Chiefs Assembly;
- L. the UN Declaration, which the government of Canada has adopted without qualification, and has, alongside the government of B.C., passed legislation committing to implement, affirms:

Article 18: Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own Indigenous decision-making institutions.

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.

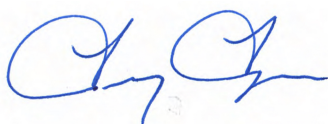
Article 21(2): States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of [indigenous peoples’] economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

Article 22(1): Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.

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 24(2): Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right;

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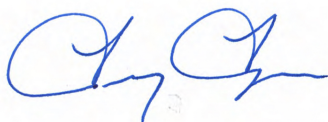
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- M. the Updated Draft FSA would replace the existing Tribunal orders regarding the FNCFS and end the Tribunal's jurisdiction with respect to the implementation of FNCFS;
- N. by BCAFN Resolution 2024-07, Resolution 2023-19, and Resolution 2023-08, the BCAFN Chiefs-in-Assembly called on Canada to uphold the CHRT orders, and to ensure that the FSA includes provisions to cease Canada's operational and administrative discrimination in the FNCFS Program and also called to ensure direction and approval is sought from the AFN Chiefs-in-Assembly on the Final Settlement Agreement;
- O. by AFN Resolution no. 40/2022, the First Nations-in-Assembly have called for specific parameters in the negotiation of an FSA, including (1) ensuring that the Reformed CFS Funding Approach do not reduce or disrupt current funding levels; (2) funding the Assembly of First Nations National Advisory Committee and other regional and technical experts to inform the FSA; (3) providing Chiefs with all available options and related supporting financial resources and materials to ensure First Nations can exercise their Free, Prior and Informed Consent on long-term reforms; and (4) ensuring the FSA does not detract from the right of the Parties to the complaint before the Tribunal to seek additional Tribunal orders;
- P. some Chiefs, technical experts, service providers, and legal experts identified numerous shortcomings in the July 11th Draft FSA, including relating the lack of respect for the inherent right of self-government held by First Nations; the lack of transparency and accountability in the governance processes; the numerous funding issues; the short-term nature of the agreement, the weaknesses in the Dispute Resolution Tribunal; and the duty to seek the free, prior and informed consent of First Nations before concluding an agreement that will carry profound consequences for First Nations children and families; and
- Q. the Regional Chief working with the First Nations Summit and the Union of BC Indian Chiefs as the First Nations Leadership Council have, on September 19th, 2024, sent a letter to the AFN and Canada outlining their main concerns with the July 11th Draft FSA and making recommendations for the Updated Draft FSA.

THEREFORE BE IT RESOLVED THAT:

1. The BCAFN Chiefs-in-Assembly express significant concerns regarding the current draft Final Agreement on Long-Term Reform of the First Nations Child & Family Services Program, as it

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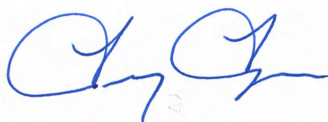


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is discriminatory and does not adequately ensure the protection of the well-being of our children now and for future generations;

2. The BCAFN Chiefs-in-Assembly call on the Assembly of First Nations (AFN) and Canada to pause the current process and immediately enter into a transparent and accountable negotiation process in full consultation with First Nations leadership, families, and communities, to develop a revised agreement that:
 - Guarantees adequate, long-term funding for prevention services, child and family services, and community-based supports that meet the actual needs of children and families;
 - Establishes a permanent oversight mechanism led by First Nations in all regions to ensure Canada complies with its obligations, including regular reporting and enforceable penalties for non-compliance;
 - Creates a co-governance model where First Nations have equal decision-making authority with Canada in determining funding levels, service delivery, and future reforms;
 - Ensures protections beyond 10 years, creating a framework that will safeguard the rights and well-being of children for generations to come;
3. the BCAFN Chiefs-in-Assembly direct the Regional Chief to work with the Union of BC Indian Chiefs and the First Nations Summit as the First Nations Leadership Council to advocate for rewriting the July 11th Draft FSA to address shortcomings relating to the lack of respect for the inherent right held by First Nations; the lack of transparency and accountability in the governance processes; the numerous funding issues; the short-term nature of the agreement; the weaknesses in the Dispute Resolution Tribunal; and the lack of inclusiveness of Modern Treaty Nations including non-Treaty Nations;
4. the BCAFN Chiefs-in-Assembly urge immediate action to address the current gaps in funding and services, to prevent further harm to our children while long-term reforms are negotiated and implemented.
5. the BCAFN Chiefs-in-Assembly reject any efforts by Canada now or at any time in the future, to abandon or delegate its legal duty to consult, to the Assembly of First Nations (AFN) or to any other entity; and
6. the BCAFN Chiefs-in-Assembly urge the AFN to respect the negotiation mandates articulated in AFN resolutions when negotiating on behalf of First Nations regarding FNCFS and/or Jordan's Principle;

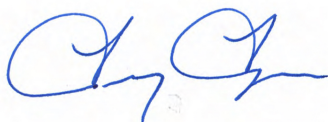
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7. the BCAFN Chiefs-in-Assembly direct the Regional Chief to work with the Union of BC Indian Chiefs and the First Nations Summit as the First Nations Leadership Council to seek Interested Party Status in collaboration with the Indigenous Child & Family Services Directors Our Children Our Way Society with the intention to bring forward First Nations in BC perspective/position in the Canadian Human Rights case known as *First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*.

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