

Assembly of First Nations

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SPECIAL CHIEFS ASSEMBLY
October 16, 17, 18, 2024, Calgary, AB

Resolution no. 60/2024

TITLE: Addressing Long-Term Reform of the First Nations Child and Family Services Program and Jordan's Principle

MOVED BY: Khelsilem, Council Chairperson, Squamish Nation, BC

SECONDED BY: Chief Ira McArthur, Pheasant Rump Nakota First Nation, SK

DECISION Carried; 7 opposition; 10 abstention

WHEREAS:

A. The *United Nations Declaration on the Rights of Indigenous Peoples* (UN Declaration) states:

- i. 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;
- ii. 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; and
- iii. Article 37: Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements, and other constructive arrangements.

B. Recognizing the sacredness of First Nations children, youth and families and Jordan's Principle, a child-first legal requirement ensuring substantively equal and culturally appropriate access to products, services and supports for First Nations children, and that the government entity of first contact pays for the support without delay.

C. The First Nations Child and Family Caring Society (Caring Society) and the Assembly of First Nations (AFN) filed a Canadian Human Rights Act complaint in 2007 alleging Canada's inequitable provision of First Nations Child and Family Services (FNCFS) and its choice not to implement Jordan's Principle were discriminatory resulting in serious and irreparable harms.

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- D. The parties (“CHRT Parties”) to the 2007 Canadian Human Rights Act complaint included:
- i. The AFN;
 - ii. The Chiefs of Ontario;
 - iii. The Nishnawbe-Aski Nation;
 - iv. Caring Society;
 - v. The Canadian Human Rights Commission; and
 - vi. Amnesty International;
- E. The Canadian Human Rights Tribunal (CHRT) substantiated the discrimination claim in 2016 CHRT 2 and ordered Canada to cease its discriminatory conduct immediately.
- F. Between 2016 and 2024, the CHRT Parties were required to hold Canada accountable and return to the Tribunal on multiple occasions, resulting in 24 non-compliance and procedural orders.
- G. On December 31, 2021, an Agreement in Principle (AIP) was signed as a framework for the negotiations of a Final Settlement Agreement (FSA) on First Nations child and family services, Jordan’s Principle, and the reform of Indigenous Services Canada.
- H. The Final Settlement Agreement will have a direct impact of unprecedented magnitude on the lives of First Nations children, youth, their families, and their communities for generations to come.
- I. The CHRT Parties have agreed to split the FSA negotiations with a child and family services agreement to come first and an agreement on Jordan’s Principle to follow.
- J. Canada has entered negotiations with some of the CHRT Parties (AFN, Chiefs of Ontario, Nishnawbe-Aski Nation) to complete an FSA on child and family services while other CHRT Parties are not included (Caring Society, the Canadian Human Rights Commission, and Amnesty International).
- K. In 2022 CHRT 8, the CHRT ordered the creation of the Expert Advisory Committee (EAC) composed of independent and multidisciplinary experts to develop and oversee the implementation of an evidence-informed workplan to prevent the recurrence of discrimination by ISC.
- L. The CHRT ordered the federal government to work with the Parties to completely overhaul the on-reserve child and family services program and fully implement Jordan’s Principle.
- M. As a result, an agreement was made to re-establish the National Advisory Committee on First Nations Child and Family Services Program Reform (the NAC) to address issues pertaining to child and family services reform, including funding, legislation, immediate relief, Jordan’s Principle and other reforms.
- N. The NAC was mandated by the First Nations-in-Assembly to provide expert advice on long-term reform of FNCFS.
- O. The NAC has not:
- i. completed its review of the proposed funding model for First Nations agencies;
 - ii. begun to review the proposed funding model for First Nations without agencies; or
 - iii. met since February 8, 2024.

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- P. The AFN has not set any further NAC meetings despite requests to do so.
- Q. The AFN and Caring Society requested that the Institute of Fiscal Studies and Democracy (IFSD) conduct community-based research to inform the reform of the FNCFS Program and Jordan's Principle.
- R. Recalling and reaffirming Resolution 40/2022, *To Ensure Quality of Life to the First Nations Child and Family Services Program and Jordan's Principle*, directing:
- i. the Parties to 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 to the First Nations-in-Assembly for review and approval;
 - ii. Canada to extend the timeframes for signing the FSA on long-term reform. The First Nations-in-Assembly must approve the FSA on long-term reform; and
 - iii. Canada to fund the AFN National Advisory Committee on First Nations Child and Family Services Program Reform and regional and other technical experts to inform the FSA.
- S. In light of these legal proceedings and their outcomes, it is critical to ensure that any long-term reforms of the FNCFS Program and Jordan's Principle are driven by community-led processes that reflect the needs of First Nations children and families, and that any agreements related to the FNCFS Program and Jordan's Principle (the LTR Agreements) shall meet the needs of First Nations children, youth and families.

THEREFORE BE IT RESOLVED that the First Nations-in-Assembly:

Final Settlement Agreement

1. Reject the draft Final Settlement Agreement on Long-Term Reform of the First Nations Child & Family Services Program dated July 11, 2024 and the "Proposed Amendments on the Draft Agreement on Long Term Reform" released on or about October 7, 2024, and call for a new negotiation process for agreements related to the First Nations Child and Family Services (FNCFS) Program and Jordan's Principle (the LTR Agreements) to be developed and approved by the First Nations-in-Assembly based on the spirit and intent of this resolution.

Governance and Transparency of the LTR Agreements for the FNCFS Program and Jordan's Principle

2. Direct the Assembly of First Nations (AFN) Executive Committee to adopt the following approach to the LTR Agreements negotiations:
 - a. establish a national Children's Chiefs Commission with representation appointed by every region (including regions not represented by the AFN) that will work openly and transparently to provide strategic direction and oversight of the LTR Agreements negotiations, reporting back to the First Nations-in-Assembly;
 - b. the Children's Chiefs Commission will establish a negotiation team, with regional representation and a new legal team, that will be responsible for carrying out the negotiations for the LTR Agreements under the direction of, and reporting to, the Children's Chiefs Commission;

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- c. the negotiation team's Terms of Reference for the FNCFS Program will be provided to the First Nations-in-Assembly for approval no later than December 2024 ; and
 - d. the Children's Chiefs Commission shall report to the First Nations-in-Assembly in December 2024 as to its anticipated timeframes for the completion of the negotiations in relation to the FNCFS Program and on the anticipated timeframes for the Terms of Reference for Jordan's Principle.
- 3. Direct the AFN Executive Committee and the Children's Chiefs Commission to ensure that governance structures set out in an LTR Agreement shall uphold the sacredness of children, youth, and families, be transparent, open, and accountable to First Nations, preserve First Nations decision-making, and include the guidance of youth, youth in care and formerly in care, and First Nations child and family service experts.
- 4. Direct the AFN Executive Committee and the Children's Chiefs Commission to develop an open and transparent amendment process for the First Nations-in-Assembly to suggest changes, allow for consideration of those changes, and make changes to the LTR Agreements before being put to a vote, such process to be approved by the First Nations-in-Assembly.
- 5. Direct the Children's Chiefs Commission to provide a detailed report to the First Nations-in-Assembly on all suggested amendments, the decisions made on each amendment, and the outcomes of negotiations, before the First Nation-in-Assembly proceed with any decision-making on the LTR Agreements.
- 6. Direct the AFN to refrain in the future from committing to support or otherwise make efforts to procure support from First Nations leadership on an agreement, arrangement, protocol or other similar instrument that has not been approved by First Nations-in-Assembly.

Inclusion and Representation

- 7. Direct the AFN Executive Committee and the Children's Chiefs Commission to take positive and effective measures throughout the respective LTR Agreement negotiations, review, and approval processes (including at the negotiation tables) to seek out and incorporate the expertise of:
 - a. First Nations;
 - b. First Nations child and family service providers;
 - c. Jordan's Principle experts;
 - d. Elders and Youth;
 - e. the National Advisory Committee ("NAC");
 - f. Jordan's Principle Operations Committee (JPOC), and;
 - g. Regional experts.
- 8. Direct the AFN Executive Committee and the Children's Chiefs Commission to review and approve the Terms of Reference for the NAC no later than December 2024.
- 9. Call upon Canada and direct the AFN Executive Committee to unconditionally include the Caring Society in negotiations of the LTR Agreements on the FNCFS Program and Jordan's Principle, and to conduct those negotiations pursuant to a negotiation protocol developed in collaboration with the Caring Society,

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including the requirement that those negotiations be conducted in a manner that is open, transparent, and accountable to First Nations.

10. Call upon Canada to obtain a new negotiation mandate to address the matters in this resolution.

Communication and Feedback

11. Call on Canada to fulfill its obligation to consult with First Nations on any long-term reform approaches of the FNCFS Program and Jordan's Principle in a manner consistent with honour of the Crown.
12. Direct the AFN Executive Committee to postpone any votes on the LTR Agreements or any other agreements until all First Nations have had at least 90 days to review the complete agreement with appendices, available in both official languages.
13. Call on Canada to ensure that First Nations who are not AFN members are given a formal opportunity to express their views on the LTR Agreements, and for Canada, the AFN Executive, and the Children's Chiefs Commission to fully consider and incorporate those perspectives into the LTR Agreements.

Voting

14. Direct the AFN to ensure that First Nations Chiefs and Proxies can vote on the LTR Agreements virtually, in-person, or by another means (via specific accommodation to a Chief or Proxy), to accommodate First Nations leadership who are unable to attend in person due to community circumstances or emergencies.
15. Direct the AFN Executive Committee to support the EAC to conduct its work freely as an independent expert body and invite the EAC Members and NAC Members to present to the First Nations-in-Assembly in December 2024 and prior to any vote on the LTR Agreements.

Support and Resources

16. Call on Canada to provide funding for First Nations to secure independent legal and technical advice, ensuring that all communities can review the LTR Agreements with a full understanding of its implications.

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