



BC ASSEMBLY OF FIRST NATIONS

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

BCAFN SPECIAL CHIEFS ASSEMBLY
March 7 & 8, 2024
Online via Zoom

Resolution 07/2024

SUBJECT: ENSURING FREE, PRIOR AND INFORMED CONSENT FOR FNCFS LONG-TERM REFORM AND COMPENSATION DISTRIBUTION

Moved BY: JUDY WILSON, PROXY, SKAWAHLOOK FIRST NATION

SECONDED BY: CHIEF JAMES HOBART, SPUZZUM FIRST NATION

DECISION: CARRIED

WHEREAS:

- A. the First Nations Child and Family Caring Society (Caring Society) and the Assembly of First Nations (AFN) filed a discrimination at the Canadian Human Rights Tribunal 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;
- B. 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 (B.C.);
- C. consistent with the direction of the AFN Chiefs-in-Assembly (AFN resolution no. 85/2018) pursuant to the Canadian Human Rights Act, Canada has been ordered to pay \$40,000.00 per eligible victim for Canada's "willful and reckless" discrimination of the "worst order." In 2019 CHRT 30 and 2021 CHRT 7 as upheld by the Federal Court (T-1621-19 in 2021 FC 969);
- D. 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 Reform

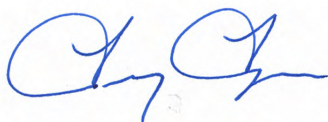
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Terry Teegee, BC Regional Chief

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

- E. on April 3, 2023, the parties announced a revised FSA on compensation totaling \$23.34 billion, which was endorsed by the AFN Chiefs-in-Assembly (Resolution 04/2023); and approved by the Federal Court in a Settlement Approval Hearing on October 24, 2023;
- F. AFN resolution 40/2022 'Final Settlement Agreement on Compensation for First Nations Children and Families' calls on Canada to ensure Chiefs shall be provided 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.
- G. the *United Nations Declaration on the Rights of Indigenous Peoples*, which the government of Canada has adopted without qualification, and has, alongside the government of B.C., 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.
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;
- H. at the direction of the First Nations-in-Assembly, the AFN Social Development Sector has been mandated to advance First Nations control and jurisdiction over social development programs and services as the foundation for the wellbeing of First Nations children, families and communities;
- I. AFN Resolution 40/2022 directed Canada to fund the Assembly of First Nations National Advisory Committee (NAC) on First Nations Child and Family Services Reform and regional and other technical experts to inform the FSA;

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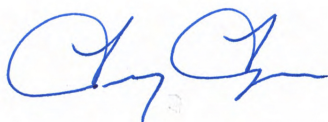
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- J. the Federal Court of Canada, with the approval of the AFN, appointed Stuart Wuttke, Derek Nepinak, Duke Peltier, David Sterns and Robert Kugler to serve on the Settlement Implementation Committee to oversee the implementation of the FSA on Compensation in November 2023;
- K. First Nations have been requested to provide input on the compensation distribution by the end of February 2024 without yet receiving a draft distribution protocol to review, inhibiting the ability to provide free, prior, and informed consent;
- L. AFN Resolution 28/2022 directed for the AFN to return to the AFN First Nations-in-Assembly to provide regular progress reports and seek direction on any outstanding implementation issues;
- M. after signing two Agreements-in-Principle and a Final Settlement Agreement on Compensation, Canada continues a pattern of non-compliance with CHRT orders; and
- N. the First Nations Child and Family Caring Society filed a non-compliance motion against Canada in December of 2023 in response to Canada's repeated failures to fully and completely implement Jordan's Principle.

THEREFORE BE IT RESOLVED THAT:

1. the BCAFN Chiefs-in-Assembly calls on the Assembly of First Nations to ensure that First Nations unceded Title, Rights and sovereignty are acknowledged and upheld in any negotiations related to children and families;
2. the BCAFN Chiefs in Assembly calls on the (AFN) Settlement Implementation Committee to provide the draft compensation distribution protocol prior to consultation, and to extend engagement timelines to allow for thorough consultation with Nations in B.C. and ensure free, prior, and informed consent;
3. the BCAFN Chiefs in Assembly calls on the AFN to immediately share copies of the draft Final Settlement Agreement and the Distribution Protocol and any rolling drafts with the First Nations Child and Family Caring Society, the National Advisory Committee and Regional Experts on a confidential basis for review and for AFN to meaningfully incorporate their recommendations for change;
4. the BCAFN Chiefs-in-Assembly calls on the federal government to provide funding for regional engagement on the draft compensation distribution protocol to ensure free, prior, and informed consent;

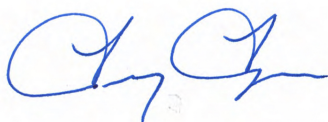
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5. the BCAFN Chiefs-in-Assembly calls on the AFN to ensure direction and approval is sought from the AFN Chiefs-in-Assembly and the AFN Social Development Sector, and that such direction is adhered to in decision-making regarding long-term reform and compensation distribution; and
6. the BCAFN Chiefs in Assembly fully support the First Nations Child and Family Caring Society's December 2023 Jordan's Principle non-compliance motion, and direct the AFN to fully support the non-compliance motion including in its oral and written submissions.

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

Terry Teegee, BC Regional Chief