Docket: T1340/7008

CANADIAN HUMAN RIGHTS TRIBUNAL

B E T W E E N:

FIRST NATIONS CHILD AND FAMILY CARING SOCIETY OF CANADA and ASSEMBLY OF FIRST NATIONS

Complainants

- and -

CANADIAN HUMAN RIGHTS COMMISSION

Commission

- and -

ATTORNEY GENERAL OF CANADA
(representing the Minister of Indigenous Services Canada)

Respondent

- and -

CHIEFS OF ONTARIO,
AMNESTY INTERNATIONAL and
NISHNAWBE ASKI NATION

Interested Parties

AFFIDAVIT #7 OF DOREEN NAVARRO

I, Doreen Navarro, of the City of Ottawa, in the Province of Ontario, **SOLEMNLY AFFIRM THAT:**

1. I am employed as a legal assistant at Conway Baxter Wilson LLP/s.r.l., counsel for the complainant First Nations Child and Family Caring Society of Canada ("**Caring Society**") in this matter. Part of my responsibilities involve assisting David Taylor with the Caring Society file. I

have knowledge of the facts hereinafter deposed to except for those matters which are stated to be based upon information provided by others, all of which information I believe to be true.

2. A copy of Assembly of First Nations Resolution No. 37/2007: *Support and Endorsement of the United Nations Declaration on the Rights of Indigenous Peoples* is attached to my affidavit as **Exhibit "A"**. This resolution can be accessed online at https://www.afn.ca/wp-content/uploads/2020/10/2007-AFN-37-Support-Endorsement-of-the-United-Nations-Declaration-on-the-Rights-of-Indigenous-Peoples.pdf.

3. A copy of the Assembly of First Nations Report *Assessing First Nations Needs under the Canadian Human Rights Act* is attached to my affidavit as **Exhibit "B"**. This report can be found at pages 37 to 58 of the PDF version of the Department of Indian Affairs and Northern Development's June 2011 report to Parliament titled *A Report to Parliament: On The Readiness of First Nations Communities And Organizations To Comply With The* Canadian Human Rights Act, which can be accessed online at https://www.rcaanc-cirnac.gc.ca/DAM/DAM-CIRNAC-RCAANC/DAM-CORP/STAGING/texte-text/br_arp_1314924920403_eng.pdf.

4. A copy of BC Assembly of First Nations Resolution No. 33/2022: *Compensation for Children and Families Who Suffered Discrimination in the Delivery of First Nations Child & Family Services and Jordan's Principle Services* is attached to my affidavit as **Exhibit "C"**. This resolution can be accessed online at https://www.bcafn.ca/sites/default/files/uploads/resolutions/2022_33_AGM_Resolution_COMPENSATION%20FOR%20CHILDREN%20AND%20FAMILIES%20WHO%20SUFFERED%20DISCRIMINATION%20IN%20THE%20DELIVERY%20OF%20FIRST%20NATIONS%20CHILD%20%26%20FAMILY%20SERVICES%20AND%20JORDAN%E2%80%99S%20PRINCIPLE%20SERVICES.pdf.

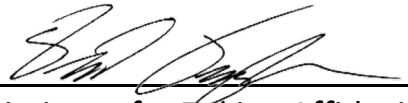
5. A copy of the Union of B.C. Indian Chiefs' Resolution No. 2022-67: *Canadian Human Rights Tribunal Case on First Nations Child & Family Services, Jordan's Principle, and Reform of Indigenous Services Canada, and the Related Agreement in Principled Dated December 31, 2021* is attached to my affidavit as **Exhibit "D"**. This resolution can be found at pages 81 to 84 of the PDF version of the Final Resolutions of UBCIC 54th Annual General Assembly September 27th-29th, 2022, which can be accessed online at

https://assets.nationbuilder.com/ubcic/pages/132/attachments/original/1665089987/2022Sept_AGA_FinalResolutions_Combined.pdf?1665089987.

AFFIRMED BEFORE ME via Microsoft Teams this 11th day of October pursuant to O. Reg. 431/20: *Administering Oath or Declaration Remotely*. The affiant was in Ottawa, Ontario and the Commissioner was in Surrey, British Columbia	)
Commissioner for taking affidavits	**DOREEN NAVARRO**

David P. Taylor
LSO# 63508Q

This is **Exhibit "A"**
to the affidavit of
Doreen Navarro
affirmed before me via Microsoft Teams
this 11th day of October, 2022



A Commissioner for Taking Affidavits

David P. Taylor
LSO# 63508Q

Assembly of First Nations

473 Albert Street, 8th Floor
Ottawa, Ontario K1R 5B4
Telephone: (613) 241-6789 Fax: (613) 241-5808
http://www.afn.ca

Assemblée des Premières Nations

473, rue Albert, 8e Étage
Ottawa (Ontario) K1R 5B4
Téléphone: (613) 241-6789 Télécopieur: (613) 241-5808
http://www.afn.ca

SPECIAL CHIEFS ASSEMBLY
December 11, 12 & 13, 2007, Ottawa, ON

Resolution no. 37 /2007

SUBJECT:	**Support and Endorsement of the United Nations Declaration on the Rights of Indigenous Peoples**
MOVED BY:	Edward John, Proxy, Nak'azdli Indian Band, BC
SECONDED BY:	Chief Leah George-Wilson, Tsleil Waututh Nation, BC
DECISION:	Adopted by consensus.

WHEREAS:

A. First Nations leadership and the Nations that they represent have fully supported the United Nations Declaration on the Rights of Indigenous Peoples since its inception with past resolutions;

B. On September 13, 2007 the United Nations General Assembly approved and ratified by a historic vote of 144 in favor, 4 opposed and 11 abstentions, the Declaration on the Rights of Indigenous Peoples ('Declaration');

C. The Declaration recognizes that Indigenous peoples have a right of self-determination under international law, which includes rights to autonomy in relation to internal affairs, and rights to freely determine their political status and pursue economic, social and cultural development;

D. The Declaration also affirms Indigenous rights to own, use, develop and control lands and resources, and requires states to give legal recognition and protection to these rights, through, *inter alia*, obtaining their free, prior and informed consent before adopting legislative or administrative measures affecting Indigenous peoples and before approving any project affecting their lands and resources;

E. The Government of Canada expressed its opposition to the Declaration and intention to vote against the adoption of the Declaration, although all other federal political parties and the majority of Canadians confirmed support for the Declaration;

Certified copy of a resolution adopted on the 11th day of December, 2007 in Ottawa, ON

Phil Fontaine, National Chief

Head Office/Siège Social
Territory of Akwesasne, RR#3, Cornwall Island, Ontario K6H 5R7 Telephone: (613) 932-0410 Fax: (613) 932-0415
Territoire de Akwesasne, RR#3, Ile de Cornwall (Ontario) K6H 5R7 Téléphone: (613) 932-0410 Télécopieur: (613) 932-0415

F. Canada was one of only four member States of the UN General Assembly, and the only member State of the Human Rights Council, to vote against the adoption of the Declaration;

G. Canada has continued its opposition to the Declaration and the rights of Indigenous Peoples, by waging an aggressive media campaign against the Declaration.

THEREFORE BE IT RESOLVED that:

1. The Chiefs-in-Assembly hereby ratify the United Nations Declaration on the Rights of Indigenous Peoples as passed by the United Nations General Assembly on September 13, 2007;

2. The Chiefs-in-Assembly commit to the full implementation of the United Nations Declaration on the Rights of Indigenous Peoples within their own agreements, arrangements, laws and Nations;

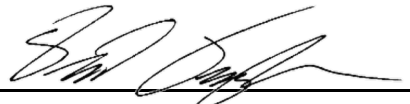
3. The Chiefs-in-Assembly welcome the support of the Liberal Party of Canada, the New Democratic Party of Canada and the Bloc Quebecois for the adoption of the United Nations Declaration on the Rights of Indigenous Peoples;

4. The Chiefs-in-Assembly demand that the Government of Canada commit to implement the United Nations Declaration on the Rights of Indigenous Peoples, in full cooperation with the Indigenous Peoples in Canada.

Certified copy of a resolution adopted on the 11th day of December, 2007 in Ottawa, ON

Phil Fontaine, National Chief

This is **Exhibit "B"**
to the affidavit of
Doreen Navarro
affirmed before me via Microsoft Teams
this 11th day of October, 2022



A Commissioner for Taking Affidavits

David P. Taylor
LSO# 63508Q

Report of the Assembly of First Nations

Assessing First Nations Needs under the Canadian Human Rights Act

Introduction

The repeal of the section 67 exemption in the *Canadian Human Rights Act* (CHRA) as it applies to First Nations governments becomes effective June 19, 2011. During the three year transitional period mandated by the 2008 statute that amended the CHRA, the Government of Canada was required to undertake a study "with the appropriate organizations representing the First Nations peoples of Canada" to identify "the extent of the preparation, capacity and fiscal and human resources that will be required in order for First Nations communities and organizations to comply with the *Canadian Human Rights Act*" (under section 4).

The Assembly of First Nations (AFN) has worked hard to encourage Canada to work directly with First Nations and to take the necessary steps to ensure equality rights are protected on reserve lands in a manner consistent with the international human rights system.

In fiscal years 2009-2010 and 2010-2011, funding was provided by INAC to the AFN to carry out activities and studies relating to needs assessment issues. However, funding proposals from the AFN to begin capacity building and training activities, policy reviews and infrastructure modification directly with First Nations during the three-year transition period were not accepted. AFN is not aware of any funding being provided to First Nations directly to prepare for the application of the amended CHRA (apart from pilot project funding for one First Nation community).

Over the past two years, the AFN has worked with as many First Nations as could be reached within the resources, policy parameters and time frames determined by the federal government, to make AFN's contribution towards the section 4 needs assessment exercise. This chapter will provide an overview of AFN's assessment of the capacity, fiscal and human resources issues that need to be met if the CHRA is to be implemented in a way that respects (as much as is possible within the imposed legal framework of colonialism) all of the human rights of First Nations – both individual and collective. The *United Nations Declaration on the Rights of Indigenous Peoples*[19] now

[19] *United Nations Declaration on the Rights of Indigenous Peoples*, adopted by the UN General Assembly by Resolution A/61/295, 61st period of sessions (September 13, 2007).

forms part of the international human rights system that must be used to inform the interpretation and application of the CHRA.

The CHRA must be interpreted and applied in a manner consistent with international human rights norms. First Nations, as indigenous peoples, are peoples equal to all other peoples and like other peoples, each holds the right to self-determination. The *UN Declaration on the Rights of Indigenous Peoples* did not create or grant this pre-existing right. The Declaration confirms that First Nations already hold, and always have held, this inherent collective human right. Canada is legally bound to respect First Nations' right to self-determination by virtue of the principle of the equality of peoples *and* by virtue of the legally binding nature of the *International Covenant on Economic, Social and Cultural Rights*[20] and the *International Covenant on Civil and Political Rights*.[21]

During the past two years, the AFN undertook three main activities as part of its contribution to assessing readiness issues:

1. assessing the new scope and implications of CHRA application through a jurisprudential review;
2. holding a series of regional engagement sessions where First Nations leaders and staff discussed the implications of the changed application of the CHRA to First Nations communities and the overall needs of First Nations respecting capacity, fiscal and human resources to ensure compliance with the amended CHRA;
3. designing and administering a survey of First Nations leaders and staff on their views of existing levels of awareness of the repeal and of the CHRA in general, communication mechanisms, training options, legal support, alternate dispute resolution processes and infrastructure modification needs.

The details and conclusions of this work, and what remains to be done to ensure preparedness, are summarized in this chapter. The outstanding work to ensure preparedness is substantial and consists of several components:

1. raising community awareness about the CHRA, carrying out much needed capacity building and training for First Nations leadership and staff;

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[20] *International Covenant on Economic, Social and Cultural Rights*, G.A. Res. 2200, 21 U.N. GOAR, Supp. (No. 16), 49, U.N. Doc. A/6319 (1966); Can. T.S. 1976 No. 46. Adopted by the General Assembly on December 16, 1966 and entered into force on January 3, 1976. In force for Canada on May 19, 1976.

[21] *International Covenant on Civil and Political Rights*, G.A. Res.2200 (XX!), 21 GOAR, Supp. (No. 16), 49 U.N. Doc. A/6316, Can. T.S. 1976 No. 47 (1966). Adopted by the General Assembly on December 16, 1966 and entered into force March 23, 1976. In force in Canada on August 19, 1976.

2. developing First Nations human rights policies, mechanisms and institutions;
3. bringing public buildings and housing owned by First Nations governments into compliance with the CHRA in order to meet the needs of persons living with physical disabilities.

This work needs to be carried out by First Nations governments but much of it is at risk of not taking place because of a lack of funding support. Ultimately, the work that needs to be done on Canada's part is rather obvious – to provide the funding needed to support First Nations governments in their community-based work. Expecting existing fund levels provided to First Nations governments to accomplish these tasks will not lead to preparedness.

Supporting First Nations in asserting their fundamental human right to self-determination is part of Canada's obligations under the *UN Declaration on the Rights of Indigenous Peoples* and these obligations include fiscal supports.

The ongoing implementation of the CHRA as it applies to First Nations must be undertaken in consultation directly with, and in cooperation with First Nations. This is required in order for Canada to comply with, and effectively implement, all of its obligations under international human rights instruments as they apply to indigenous peoples.

Purpose & Scope of the Section 4 Report to Parliament

It should be clear that the purpose of the study required by section 4 of the 2008 amendments is not study for the sake of study.

Implicit in section 4 is the intent that action actually be taken to ensure that First Nations can properly prepare for an expanded, and different, application of the *Canadian Human Rights Act* and to have the necessary "capacity and fiscal and human resources" to comply with the Act in a manner that is consistent with the fundamental human rights of First Nations, as peoples and individuals. It is important to note that the description of the study activities, and the report required by section 4 of the 2008 amending statute, refer to compliance with the amended CHRA as a whole. Section 4 does not restrict itself to the question of the impacts of the repeal of section 67 in its concern to ensure First Nations have the capacity and resources to ensure CHRA compliance.

The 2008 amendments changed the manner in which the CHRA is to be interpreted and applied in dealing with complaints made against First Nations governments (sections 1.1. and 1.2). The task of preparing for the application of the amended CHRA must take into account the work that will be required at the First Nation level to identify how First Nations customary laws and legal traditions apply to protect equality rights within First

Nations communities. The message from the regional engagement sessions was clear in this regard, that work must be undertaken to assist in the development and support of First Nations human rights institutions and dispute resolution processes.

Similarly, the United Nations Committee on the Elimination of Racial Discrimination has noted that the repeal of section 67 alone would not be enough to guarantee the equality rights of First Nations people in the application of the *Canadian Human Rights Act*.[22] Parliament responded by enacting sections 1.1 and 1.2 to accompany the repeal of section 67. The task of ensuring preparedness therefore includes preparing for the new application of the CHRA flowing from the totality of the CHRA in its current form which requires recognition of First Nations legal traditions and customary laws.

Every First Nation has its own legal and knowledge traditions and ways of expressing fundamental principles about how human beings should respect one another with respect and dignity. Many of these will apply to the areas of human interaction covered by the CHRA. This means that preparedness as referenced in section 4 must include planning and dialogue between First Nations and federal decision-makers such as the Canadian Human Rights Commission and the Canadian Human Rights Tribunal to harmonize the CHRA as much as possible with First Nations legal traditions and customary laws. This work will require examining procedural and evidentiary issues as well as First Nations contributions on how to best implement and restore First Nations values respecting equality, including gender equality, while respecting the minimum standards set by international human rights norms. Again, current levels of funding are not sufficient to accomplish this task.

States and their human rights commissions are required under international norms to support the human rights system at the international level. The CHRC has stated: "The Paris Principles oblige human rights commissions to work with and support the international human rights system. Human rights commissions are key elements of effective national human rights protection systems, and are required to ensure not only internal compliance with national human rights laws and practices, but also compliance with international human rights norms."[23]

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22 CERD. CERD/C/CAN/CO/18, 25 May 2007.

23 Canadian Human Rights Commission, *Framework for Documenting Equality Right*s, (Ottawa: The Commission, 2010) p. 7, citing Paris Principles relating to the Status and functioning of National Institutions for Protection and Promotion of Human Rights ("Paris Principles"), GA Res. 48/134, UN GAOR, 48th Sess., UN Doc. A/RES/48/134 (1993); UN GA, National Institutions for the Promotion and Protection of Human Rights: Report of the Secretary-General, UN GAOR, 13th Sess., UN Doc. A/HRC/13/44 (2010).

More specifically, ensuring equality rights are realized for First Nations people both within their communities and within Canada will require an approach to the interpretation and application of the CHRA that ensures consistency with international human rights norms. These now include the *UN Declaration on the Rights of Indigenous Peoples*. This will require dialogue between First Nations governments and the statutory bodies charged with implementing the *Canadian Human Rights Act*. The task of reconciling the CHRA with the fundamental collective and human rights of First Nations will be complex. The imposition of the CHRA, the *Indian Act* and many other laws undermine the enjoyment of the equality rights that First Nations are entitled to, as individuals, and as peoples under international law.

The Meaning of Preparedness

Preparedness needs cannot be assessed or achieved without having some notion of the scope of the CHRA and how it may apply to First Nations governments, as AFN's jurisprudential review shows. The purpose of section 4 is therefore tied to the larger purpose of the CHRA and amendments made in 2008.

First Nations people cannot fully enjoy equality as individuals or as peoples and nations if First Nations are treated as if they do not have cultural values or lawmaking capacity to ensure the protection of equality rights in a manner consistent with international human rights law. Just as the provincial and federal governments that are controlled by non-Aboriginal people are entitled, and obliged, to enact their own distinct human rights laws in their areas of jurisdiction, so too are First Nations governments. The 2008 amendments recognize that the repeal of section 67 alone is not sufficient to protect the equality rights of First Nations peoples in a way that would meet the requirements of international human rights law. Canada must support First Nations in developing their own human rights protections mechanisms; and must support the dialogue that must take place between First Nations, the Commission and the Tribunal to properly apply the CHRA in a First Nations context. Ultimately, First Nations human rights law must replace the CHRA.

We must consider what preparedness means in the context of the broader and different application of the CHRA created by the 2008 amendments and we must ask Canada what the fiscal plan is to achieve preparedness. Existing funding supports for "band governance" were inadequate prior to the 2008 amendments and nothing has changed since.

AFN Needs Assessment Activities (2009-2011)

In 2009-2010 and in 2010-2011, activities were undertaken by the AFN within the limits of federal funding, to identify some of the preparatory activities and the capacity and

fiscal and human resources required to ensure that First Nations can comply with the CHRA as it applies to First Nations. (In each of these years, funding was received late in the fiscal year).

AFN's review and analysis activities were undertaken as part of AFN's contribution to the report to Parliament called for by s. 4 of the 2008 amendments. (AFN Resolution No. 05/2008, Implementation of Bill C-21, Repeal of s. 67 of the Canadian Human Rights Act, July 16, 2008).

AFN Needs Assessment Survey Methodology

Nine regional engagement sessions were held between January and March 2010, attended by a total of 216 persons. An initial round of 52 survey responses was collected from people attending these sessions in early 2010. An additional 27 questionnaire responses were collected in November 2010, for a total of 79 completed questionnaires.

In terms of population coverage, the survey respondents were from communities/tribal councils of varying sizes. (See Table 1) Most respondents were from small communities (0 to 500 people) and intermediate communities (1,001 to 3,000) at 27.8% each of total surveys. Twenty percent of surveys were in the 3,000+ population group. The nine surveys from communities and tribal councils in this group included five respondents with populations between 10,000 and 24,000, and resulted in this group representing 72.3% of the surveys by population.

Table 1: Population Distribution of Community/Tribal Council Respondents

Population Groups	Number of Surveys	Distribution by Size	Population of Group	Percent of National Survey Population
0–500	22	27.8%	6,675	3.2%
501–1,000	14	17.7%	10,137	4.9%
1,001–3,000	22	27.8%	41,140	19.7%
Over 3,000	16	20.3%	150,984	72.3%
No Answer	5	6.4%		
Total	79	100.0%	208,936	100.0%

Table 2 illustrates the geographic variability of these responses. The INAC zone classification of service centres[24] was used in the survey as an indicator of geographic proximity or isolation of First Nations communities:

___ Zone 1 (within 50 km of a service centre)
___ Zone 2 (between 50 km and 350 km from a service centre)
___ Zone 3 (over 350 km from a service centre)
___ Zone 4 (air, rail or boat access is required to a service centre)

Almost all respondents (84.8%) were from Zone 1 and Zone 2, at 54.4% and 30.4% respectively of the survey population. Three responses were obtained from Zone 3, and seven from Zone 4. Due to the small numbers of these responses, Zone 3 and 4 community responses are shown as a single remote and isolated group (10 responses, 12.7%) in the presentation of results below.

Table 2: Geographic Zone of Respondent Communities

Geographic Zone	# Surveys	% of Surveys
Zone 1	43	54.4%
Zone 2	24	30.4%
Zone 3	3	3.8%
Zone 4	7	8.9%
No Answer	2	2.5%
Total	79	100.0%

The distribution of surveys was uneven across the regions. Most of the survey responses came from the Quebec, Atlantic, British Columbia and Ontario regions. All regions except one were represented, albeit at very low levels for some.
In the regional engagement sessions, 52 responses were received, and if viewed from the perspective of 209 regional participants, represented a response rate of 24.8%. A further 27 surveys were obtained in the November 2010 process and has boosted by 50% the rate of return, and also increased the input from Zone 3 and 4 communities.

24 Service Centre: A community where the following services are available: a) - supplies, material and equipment (i.e. for construction, office operations, etc.); b) - a pool of skilled or semi-skilled labour; c) - at least one financial institution, bank, trust company, credit union, etc.; d) - provincial services (such as health services, community and health services, environment services); and e) - Federal services (such as Canada Post, employment centre)

Summary of Findings of AFN Needs Assessment

There were five main areas of opinion targeted in the survey:

1. Community communication and education needs (understanding the level of awareness of communities about the CHRA and the repeal of section 67);
2. Policy review and legal support needs at the community level;
3. Training Needs of First Nations Governments;
4. Developing First Nations human rights mechanisms;
5. Community Infrastructure Needs to Accommodate Persons with Disabilities.

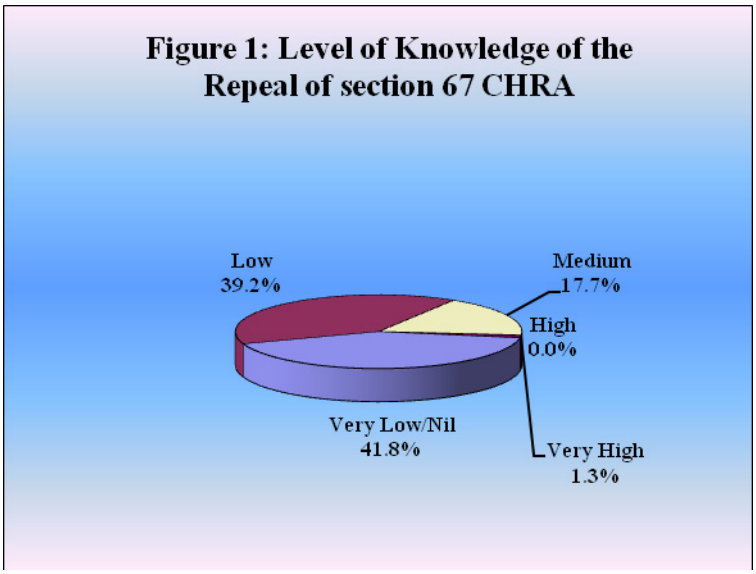
These areas were probed in a series of regional sessions and through a survey. The results of AFN's needs assessment study are provided in a December 2010 report entitled *Assessing the Readiness of First Nations Communities for the Repeal of Section 67 of the Canadian Human Rights Act*. A summary of this report is set out below.

Community Communication and Education Needs

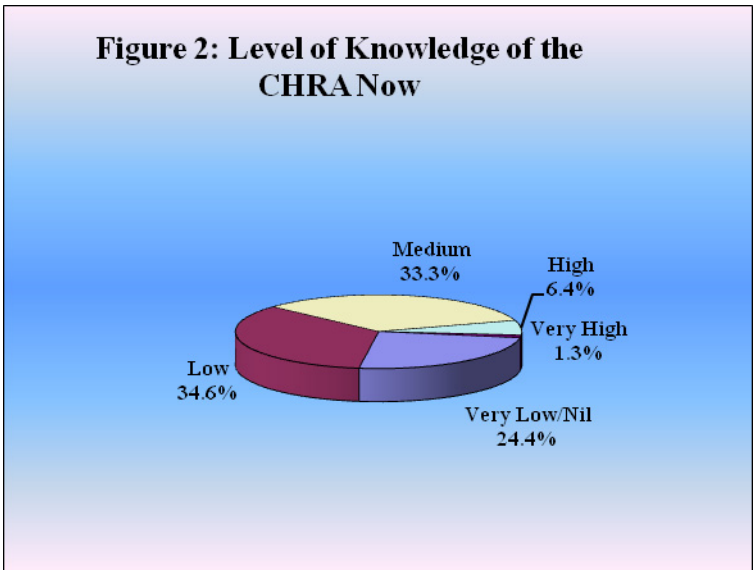
The AFN regional discussion sessions and the AFN needs assessment survey both indicate there is a low level of awareness of the CHRA and the repeal of s. 67 by leadership, staff and community members.

Raising awareness among community members about how the CHRA can apply to them, and what mechanisms are available for dispute resolution, will first require increased awareness by First Nations leadership and staff followed by the development and implementation of communication strategies by First Nations leadership and staff.

Prior to the adoption of the 2008 amendments, First Nations were not successful in convincing the federal government to undertake a proper consultation process directly with First Nations. The consequences of this lack of direct consultation are evident in the survey results. A large majority of respondents (81.0%) reported that Band or tribal council employees in their organization had a low or very low of knowledge regarding the repeal of section 67 in the CHRA.



Regarding knowledge of the CHRA prior to the 2008 amendments, most respondents estimated the staffs' level of knowledge to be very low or low (59.0%). Communication and training activities respecting the CHRA generally and the 2008 amendments in particular will be a critical part of preparedness going forward.



Communication needs to prepare for the application of the CHRA exist at two levels. First, staff and Chief and Council need to be provided technical and legal information and training; secondly, resources are needed to engage community members to make them aware of their rights.

Overall, a strong communication protocol was envisioned, that should be led by Chief and Council who should be visible and carry a consistent message. This would be

followed by workshops for staff (requiring training, an issue discussed in more detail below) and targeting those persons who are on the front line delivering service. Communication activities must reach into community and could involve schools. However, participants in the regional engagement sessions pointed out that First Nations governments have limited funds for communication activities and there are a wide range of complex matters requiring community discussion at any time.

In AFN's December 2010 report, estimates were provided to implement an AFN communications strategy ($122,400) and to assist in the development of materials to support First Nations in policy review activities ($688,740). These estimates for proposed activities by the AFN do not include the costs First Nations would incur in actually carrying out their own communication activities and policy and legal reviews relating to CHRA compliance issues. An increase in the band governance support program dedicated to CHRA compliance should be provided to support the needs of First Nations governments in these areas.

In the regional sessions, it was evident that the recognition of First Nations' human rights practices grounded in traditional law and values was a primary interest of participants. Participants linked progress in the area of human rights for First Nation people to fundamental principles of self-determination, and further to the inherent right of self-government as an existing Aboriginal right under section 35 of the *Constitution Act, 1982*. The 2008 amendments to the CHRA directly affect the authority of a First Nation's governance functions as well as the collective rights of its members. Consequently, addressing community readiness needs and developing human rights mechanisms must be carried out through the implementation of inherent rights of self-government and international human rights law. Communication activities should include discussions on approaches to realizing First Nations human rights laws and mechanisms within the Canadian legal framework but the Canadian legal framework must be consistent with international human rights law including the *United Nations Declaration on the Rights of Indigenous Peoples*.

Some participants at the regional sessions, considered the 2008 amendments a good beginning (in that it at least thinks about the issue of equality rights in a First Nation context) but insufficient to ensure the equality rights of First Nations people consistent with international human rights norms. The first problem is the fact that the CHRA leaves First Nations human rights decisions to be made externally and in the hands of a Tribunal with little or no knowledge of First Nation legal traditions and customary law. A second problem is the lack of recognition and opportunities for the principles of self-government and development of First Nation specific human rights mechanisms. In other words, the CHRA addresses some equality rights issues but in a manner that is largely disconnected from the much larger pattern of human rights violations First Nations

people suffer under the *Indian Act* as a whole, and under federal legislation more broadly.

Policy Review and Legal Support Needs

The broader scope of CHRA compliance requirements arising from the repeal of section 67 affects all First Nations.

First Nations governments, and First Nations service organizations that fall under federal jurisdiction, have varying levels of capacity to develop new and review existing policies to ensure compliance with the CHRA as well as First Nations human rights values.

The engagement sessions and the survey indicate that First Nations require fiscal support to undertake two types of policy reviews:

a) A review of policies in areas that are already protected by the CHRA. For example, this includes anti-harassment, and duty to accommodate policies (e.g. maternity/parental leave, parental leave for same sex parents, Aboriginal-only hiring policy); and

b) A review of policies and laws previously shielded by section 67 of the CHRA.

Examples of areas requiring review for CHRA compliance because of the repeal of section 67 include:

- Band membership codes (re: eligibility of persons for membership in the Band);
- Band council elections under the *Indian Act* (e.g. is voting allowed for all Band members regardless of residence);
- custom leadership selection codes;
- bylaws made under section 81 of the *Indian Act;*
- management of moneys held in trust for Bands (e.g. access to funds of those who are denied membership);
- land management (individual holdings) in respect of land allotment; land use, occupation and residency; environmental management; and other land issues;
- access to programs and services, including housing, education and income assistance; and
- infrastructure with respect to accessibility for persons with physical disabilities.

The survey results suggest levels of preparedness are low in some critical areas. For example, of those participating in the survey, only 28.3% of communities had policies relating to accessibility of public buildings for persons with disabilities.

In addition, there are policy gaps in areas where the CHRA already was being applied to First Nations. For example, less than half of survey respondents said their First Nation has anti-harassment (46.8%) and duty to accommodate (35.4%) policies in their workplace (note: in a follow up question, 84% of communities requested training in these two areas).

A high proportion of communities requested training for their staff on general aspects of the CHRC and Tribunal (92%) and a similar percent of respondents also requested training on the repeal of section 67 and the associated policy review. Three-quarters of respondents reported a need for training on anti-harassment and duty to accommodate policy review and development.

All regions stressed the need for appropriate financing and/or legal support to undertake a policy review.

An increase in the band governance support program dedicated to CHRA compliance should be provided to support the needs of First Nations governments in these areas. A costing exercise based on a representative sample of First Nations governments needs to be carried out in order to estimate what these costs are likely to be. An estimate for AFN activities to support First Nations in policy review activities is $688,740. As mentioned above, this does not include the costs First Nations would actually incur to conduct their respective policy and legal reviews relating to CHRA compliance issues.

Table 3 shows the response to the survey question on the type of policies in existence in communities:

Table 3: Policies for Review

Type of Policy	Percent of Respondents
Policies regarding access to housing, education and income assistance programs and services	70.0%
Membership code	64.6%
Policies for land management	48.3%
Anti-harassment policy	46.8%
Election code approved under the *Indian Act*	45.6%
Duty to accommodate policy	35.4%
Custom leadership selection code	33.3%
Policies regarding access of members to moneys held in trust for Bands	31.7%
Policies related to accessibility of public buildings for persons with disabilities	28.3%
Section 81 bylaws	24.1%

Further complicating the challenge of meeting the known compliance requirements is the fact that there is a significant area of uncertainty about the scope of the compliancy challenge arising from the repeal of section 67.

Section 5 of the CHRA prohibits discrimination in the provision of services which are customarily available to the general public. There is uncertainty in the current state of the law about which decisions made under the authority of a federal statute constitute a "service" within the meaning of the CHRA. As one example, if the determination of entitlement to Indian registration under the *Indian Act* is not a "service" within the meaning of the CHRA as the federal government argues, then a similar argument can be made with respect to the decision-making under First Nation lawmaking in respect to band membership. Similar issues might arise with respect to a number of subject-matters under the bylaw sections and other sections of the *Indian Act*.

Another issue affecting the scope of application of the CHRA is the inherent jurisdiction of First Nations over human rights generally.

Training Needs of First Nations Governments

The engagement sessions and the survey both revealed a significant need for training in order for First Nations governments to meet the challenge of CHRA compliancy. The results of the survey suggest that 6,387 persons will require training in some aspect of the CHRA and its impact on communities. This works out to an average of 10 persons per community.

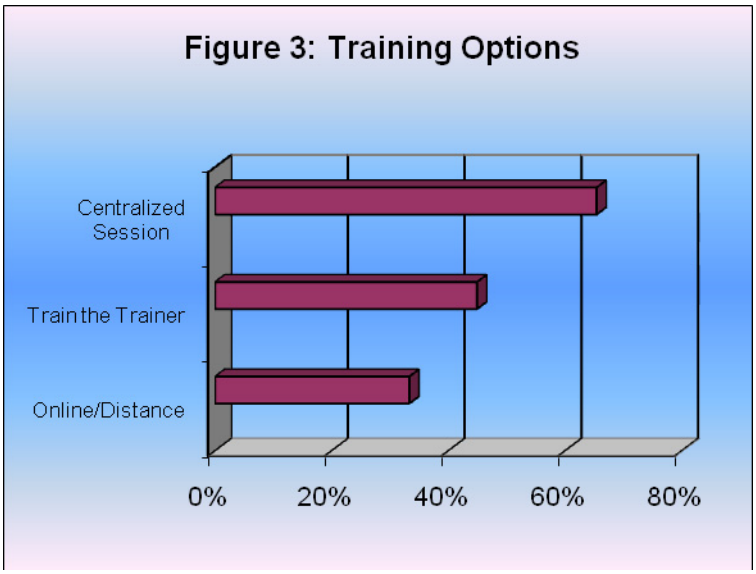
A high percentage of respondents to the survey saw a need for the training of staff on matters relating to CHRA compliance: "A high proportion of communities requested training for their staff on general aspects of the CHRC and Tribunal (92%) and a similar percent of respondents also requested training on the repeal of section 67 and the associated policy review. Three-quarters of respondents reported a need for training on anti-harassment and duty to accommodate policy review and development."[25]

Estimates to meet training needs through a national initiative based on two options and on suggested training approaches from the regional engagement sessions were developed by the AFN. Option 1 has an estimated cost of $6.5m and Option 2 has an estimated cost of $2.9m.

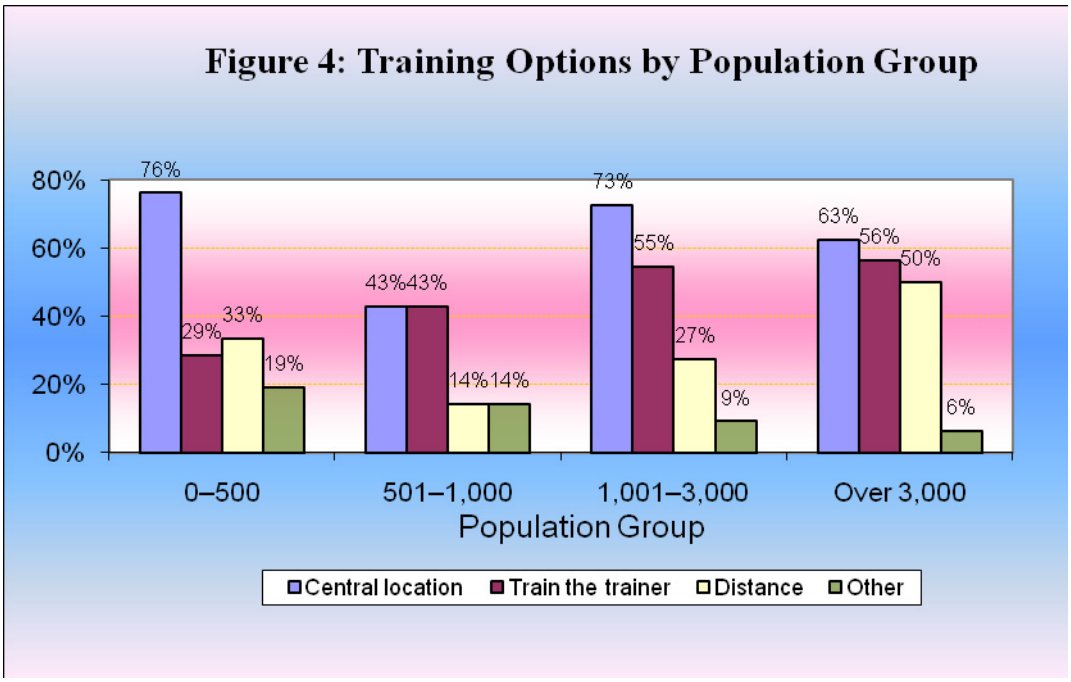
The survey also asked respondents their opinion about the best models for delivering training (Figure 3). Most respondents (65.4%) preferred that the relevant staff attend a

[25] Assembly of First Nations, Assessing the Readiness of First Nations Communities for the Repeal of Section 67 of the Canadian Human Rights Act, December 2010.

centralized session, such as regional or tribal council venues. The second most popular option was train the trainer (44.9%), which, given the high numbers of persons requiring training, would appear to be the most practical and cost effective option.

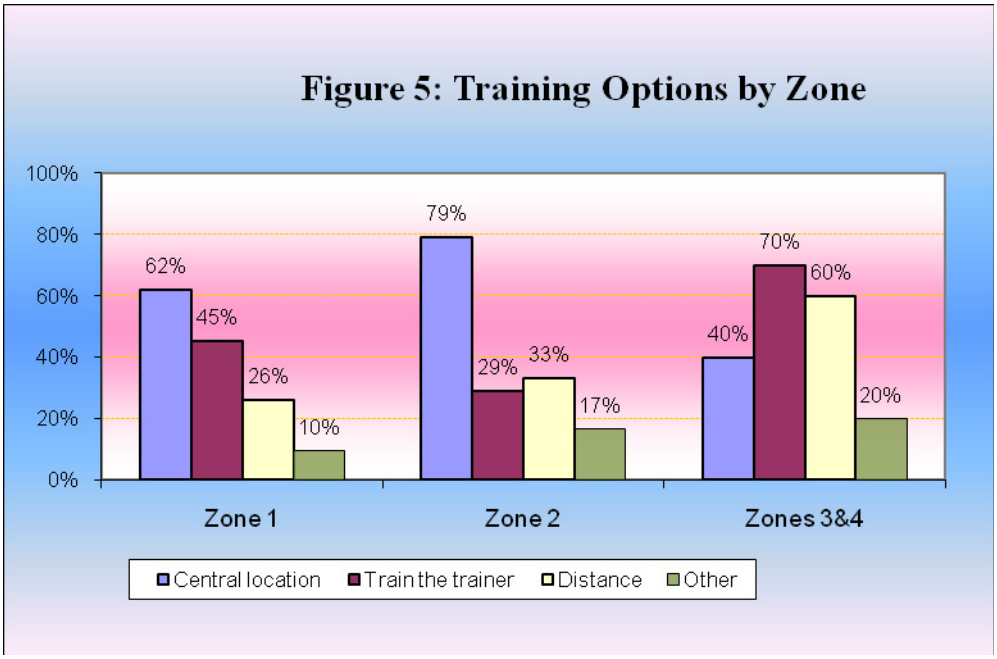


As is shown in Figure 4, respondents from larger population groups were more favourable to a train the trainer approach than those from smaller populations (range from 56% to 29%), although centralized training was the preferred option for all. The least favourite was distance training, such as on-line education or videoconferencing.



In the category of "other," offered options were essentially elaborations on the three suggested types of training, such as having customized workshops for boards delivered by teams of legal and other specialists, working with First Nations in close geographic proximity in joint training, and having customized DVDs and links to educational websites. In the regional meetings, it was suggested that training be cohort-based, to allow persons to train in groups, support each other, and provide cultural safety.

Figure 5 presents training preferences reported by zone of respondents. Respondents from remote and isolated communities clearly favoured train the trainer and distance modes of training (at 70% and 60 % of respondents respectively), whereas Zones 1 and 2 respondents' preferred option was training provided in a centralized location.



Developing First Nations Human Rights Institutions

Realizing equality rights within First Nations communities will require the development of First Nations Human Rights Institutions. The task of realizing equality rights and encouraging a culture of compliance must involve the restoration of First Nations values on the right way for people to treat one another. The realization of equality rights within First Nations communities will require institution/process building within First Nations governments.

The following activities have been put forward to encourage the development of First Nations Human Rights Institutions:

- Conducting an environmental scan or analysis of First Nation community human rights mechanisms.
- Developing guidelines for conflict resolution processes at community and nation/region levels (for use by the First Nations Human Rights Centre when established).
- Designing and implementing a national communication strategy
- Establishment of an Elders Council to advise on the s. 1.2 interpretive clause
- Establishment of a First Nations Human Rights Centre.

A budget for these activities is estimated to be $1.1m for the first 12 months.

These activities would be a first step to actually assessing the costs of implementing the CHRA in First Nations communities. For example, an analysis of existing First Nations dispute resolution mechanisms and a costing exercise based on a representative sample of First Nations governments is required in order to estimate what it will actually cost to support community-based dispute resolution concerning CHRA matters in First Nations communities.

Community Infrastructure Needs to Accommodate Persons with Disabilities

Management of First Nation-owned infrastructure, including First Nation-owned housing, has been shielded from review under the CHRA by section 67. With the s. 67 exemption removed, it seems likely that complaints of discrimination against First Nations governments will arise where infrastructure and housing cannot accommodate persons with disabilities.

Research suggests that First Nations people experience disabilities at twice the rate of non-Aboriginal people. In the case of adults overall, this means over thirty per cent have a disability. In the case of young adults, rates of disability are three times those for non-Aboriginal people.[26]

There is a critical lack of current data on the numbers of First Nations people on reserves living with physical disabilities and the cost of retrofitting public buildings in First Nations communities to meet the accessibility needs of persons with disabilities.

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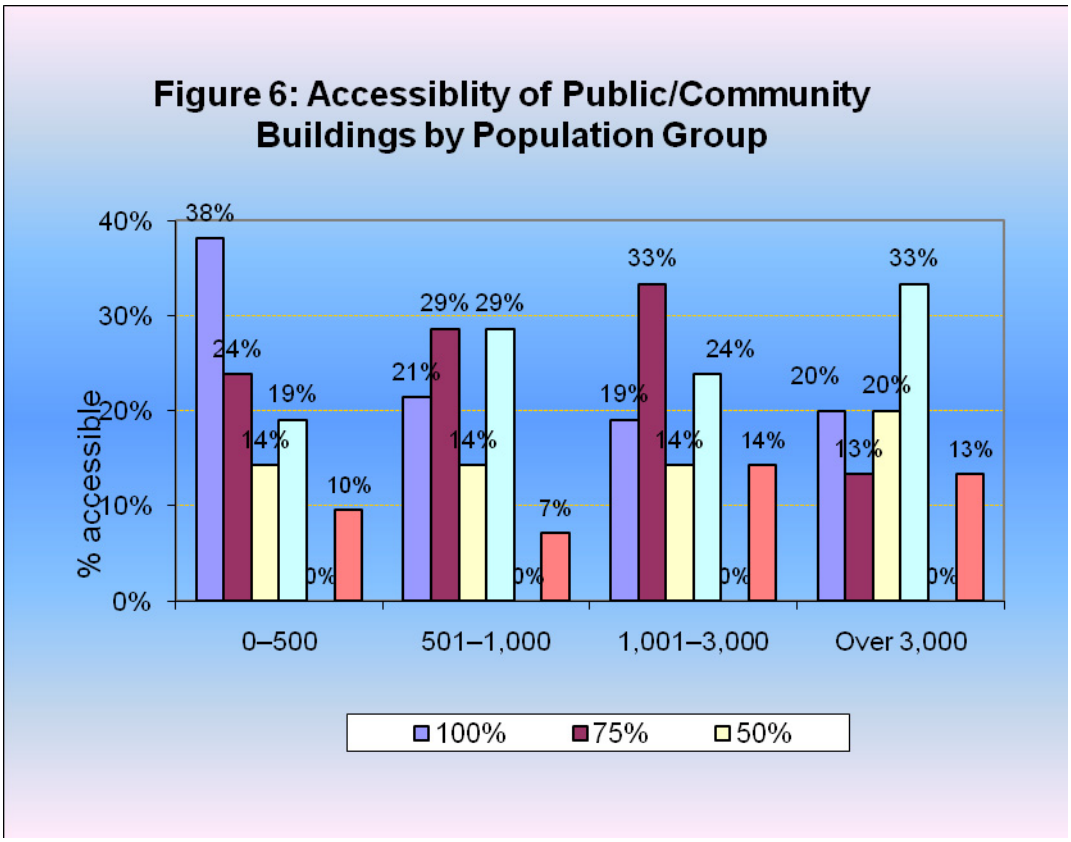
[26] Canada, In Unison 2000: Persons with Disabilities in Canada (2000).

The AFN concludes that an infrastructure asset review of accessibility needs and associated costs on a community-by-community basis should be undertaken in order to benchmark the existing need for infrastructure modification and to demonstrate a proactive approach if communities and/or INAC are investigated as part of a disability-related complaint. An asset review of all relevant infrastructures is a costly process, and a statistically sound sampling of communities is recommended. AFN estimates that an infrastructure asset review would cost $1.1million.

In the absence of a proper infrastructure asset review, the AFN undertook a rough estimate based on responses to questions in this area, provided by respondents to the survey. Seventy-nine respondents answered these questions.

Just over one-fifth (22%) of respondents said that all of their public/community buildings are accessible. The majority said that some of these buildings were accessible: 30% estimated that three quarters were accessible; 20% estimated half, and 28% estimated a quarter. These results are displayed by community size in Figure 6.



The cost per building to make the necessary renovations were rough estimates by respondents, and ranged from $1,000 to $75,000 with two additional respondents estimating that the per-building cost to be $150,000 or greater. The number of homes

requiring modification was highly variable, with some respondents unsure of the need in their community.

Estimates were developed for two categories of buildings on reserves:

(1) First Nation-owned buildings available to the public and to staff with disabilities, and
(2) First Nation-owned housing.

Approximately 1636 **public** buildings were estimated to require modification. The overall estimated cost of building modifications to accommodate persons with physical disabilities in First Nations communities is $50,562,128 (1,636 buildings at $30,898 each). If a five-year time line is assumed to roll out these improvements, the additional cost related to inflation is estimated to be $4,106,132 for a total commitment of $54,668,260.

In regard to band-own housing on reserve, a total ten year cost of funding additional home modification (excluding the costs from CMHC) is estimated to be $332.4 million, with annual funding commitments of $30.1 million in year one, increasing to $42.1 million in year 9, and a dropping to $7.1 million in year 10.[27]

In the regional sessions, it was noted that infrastructure modification will require a process, timeline and work plan. Teams will be needed, which include insurers, architects, builders and others. The composition of these teams will depend on which jurisdiction applies, and the existing building standards. Health and safety committees should be involved. Ensuring access can require structural modification (ramps, door access, taps, elevators, stairways) and also the creation of safety policies such as those which prevent obstructions in hallways. Access can also include road/lighting needs.

In the Yukon meeting, participants explained that as part of the requirement in signing self-government agreements, it was mandatory that First Nations accept the Band buildings in their existing condition.

One survey respondent described some accessibility problems in his/her community:

- *One administration building is partly accessible by the back, but there is not an automatic access on all the entrance doors. So you will have to find someone to assist you with a door once you are in. There is a wheelchair elevator that is shaky and has one jerk part way up and is frightening for a*

[27] Infrastructure modification and other needs for persons with disabilities were covered in more depth in a disability case study (*Case Study: Ensuring the Inclusion of Persons with Disabilities in First Nations Communities*).

person who is not using a chair, because there is not a good place to hang on. Also you will have to find someone with a key and the ability to operate it. The front does not have an automatic door or a handrail to the bottom of both sets of steps.

- *A second administration building is partly accessible at the ground level, but not all floors and venues are accessible.*
- *A third building does not always have the automatic door turned on. Handicap accesses/ramps are far away from the door and often blocked by vehicles. Bathroom is difficult to get out of because of handle and strength of the door.*
- *A building containing justice services is difficult to access at both levels. Stairs are steep. A ringer before the stairway (with a sign) accommodates a person with disabilities. We come down to assist the person.*
- *Post office is difficult to access.*
- *Not all bathrooms or meeting rooms have handicapped handles and many doors are too heavy or handles are too high to open or not made for handicap people to grasp.*
- *There is an MCR to accommodate signing at meetings*.

All First Nations are concerned about meeting the needs of persons with disabilities in regard to public buildings, as well as band-owned homes. Participants in regional sessions spoke of the poor condition of infrastructure in general in too many First Nation communities. Identified needs included the following: wheelchair accessibility buildings and washrooms, electronic controls on doors, ramps, signage, and telecommunications devices for the deaf (TDD), and phone services for hard of hearing and deaf individuals. The participants also spoke about the need for disability and accessibility audits; however the cost for such audits has historically been too high to access.

Conclusion

There is considerable work outstanding to properly assess and prepare for the changes to the CHRA in a way that will ensure First Nations capacity to comply with the Act as a whole. This work must include commitments from the Government of Canada to provide new, dedicated sources of funding support to First Nations governments to support the protection of equality rights and human rights more generally.

There has so far been a lack of resources for First Nations to prepare at the community level for the application of the CHRA and to meet the new responsibilities flowing from the repeal of section 67. AFN's needs assessment provides an initial picture of the scope of the work that needs to be done and this includes much needed costing exercises.

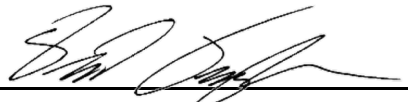
During the 36-month transition period, there has been no indication at all from the Government of Canada of what funding transfers will be made available to address these needs. This is a key concern identified by First Nations during the engagement

sessions and specifically applies to needs for developing communications strategies, community education, addressing infrastructure needs, carrying out much needed First Nations' policy reviews and the development of internal human rights mechanisms. The lack of resources to actually address the lack of preparedness has limited the effectiveness of the three year transition period.

The transition period mandated by the 2008 amendments was intended to provide First Nations with an opportunity to prepare for the repeal of section 67. However, the federal government has only seen fit to fund a needs assessment study by the AFN, and has not undertaken any preparations or a review of funding formula issues with First Nations to ensure that First Nations governments have the resources required to ensure compliance.

First Nations are eager to improve and develop human rights and dispute resolution mechanisms within their communities and expect Canada to comply with all international human rights norms.

This is **Exhibit "C"**
to the affidavit of
Doreen Navarro
affirmed before me via Microsoft Teams
this 11th day of October, 2022



A Commissioner for Taking Affidavits

David P. Taylor
LSO# 63508Q

BC ASSEMBLY OF FIRST NATIONS

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

BCAFN ANNUAL GENERAL MEETING
September 21, 22, & 23, 2022
Hybrid - In person & online via Zoom

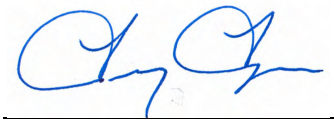
Resolution 33/2022

SUBJECT:	**COMPENSATION FOR CHILDREN AND FAMILIES WHO SUFFERED DISCRIMINATION IN THE DELIVERY OF FIRST NATIONS CHILD & FAMILY SERVICES AND JORDAN'S PRINCIPLE SERVICES**
MOVED BY:	**CHIEF CAMERON STEVENS, KISPIOX BAND**
SECONDED BY:	**CHIEF LEE SPAHAN, COLDWATER INDIAN BAND**
DECISION:	**CARRIED**

WHEREAS:

A. The United Nations Declaration on the Rights of Indigenous Peoples states:
   i. 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.
   ii. Article 7: 1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person. 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.
   iii. 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.

Certified copy of a resolution adopted on the 23rd day of September 2022



Terry Teegee, BC Regional Chief

B. The First Nations Child & Family Caring Society (Caring Society) and the Assembly of First Nations (AFN) filed a discrimination complaint 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.

C. 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.

D. The AFN passed Resolution 85/2018 calling for the maximum allowable compensation ($40,000) for victims of discrimination under the FNCFS Program;

E. The Canadian Human Rights Tribunal ordered Canada to pay $40,000 per eligible victim for Canada's "willful and reckless" discrimination of the "worst order";

F. Compensation orders in 2019 CHRT 30 and 2021 CHRT 7 were upheld by the Federal Court (T-1621-19 in 2021 FC 969);

G. The Government of Canada appealed the Federal Court Decision (2021 FC 969) and subsequently announced its wishes to address the human rights damages in combination with two larger class actions: Moushoum et al. v. Attorney General of Canada and the Assembly of First Nations class action;

H. Canada and counsel for both class actions announced an Agreement in Principle on the compensation on December 31, 2021, with an intent to develop a Final Settlement Agreement to resolve the compensation issue for both the human rights damages and the class actions;

I. The AFN Chiefs did not pass any resolutions supporting the Agreement in Principle on compensation or authorizing negotiators the deviate from the CHRT orders on compensation or from the AFN's resolution calling for the maximum allowable amount for every victim of discrimination under the FNCFS program;

J. The First Nations Summit passed a resolution on June 16, 2022 (FNS Resolution #0622.23) affirming that the AFN and Canada are not authorized to modify the CHRT's compensation entitlement order without the free, prior and informed consent of First Nations in British Columbia;

K. On June 30, the AFN, class action parties and the Government of Canada reached a Final Settlement Agreement on compensation and immediately (without seeking the free, prior and informed consent of First Nations or their chiefs) filed a motion with the Canadian Human Rights Tribunal seeking an expedited hearing regarding the Tribunal's compensation orders;

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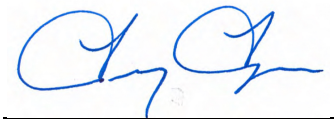

Terry Teegee, BC Regional Chief

L. Article 10 of the Final Settlement Agreement on compensation requires the AFN, among other things, "to take all reasonable steps to publicly promote and defend the Agreement";

M. At the Tribunal hearing, which took place on September 15 and 16, 2022, the Caring Society argued that the Final Settlement Agreement negatively impacts the rights of a number of children and families by reducing or eliminating their right to CHRT compensation and by waiving their rights to litigate against Canada for the harms they experienced flowing from Canada's discrimination—even if they receive no financial compensation under the Final Settlement Agreement;

N. During the Tribunal hearing on September 16, 2022, AFN legal counsel was asked by the Tribunal if there were any objections to the Final Settlement Agreement by First Nations or others, and though they were in possession of the FNS resolution the AFN counsel did not disclose the FNS's objections in answer to the question.

O. Chiefs in British Columbia have not been consulted on the Final Settlement Agreement and are therefore unable to exercise free, prior, and informed consent on any changes to the CHRT compensation orders.

THEREFORE BE IT RESOLVED THAT:

1. The BCAFN Chiefs-in-Assembly call upon Canada to immediately pay the CHRT-ordered compensation in the amount of $40,000 plus interest owed to eligible victims and provide necessary supports pursuant to the CHRT orders;

2. The BCAFN Chiefs-in-Assembly affirm that AFN negotiators are not authorized to seek a reduction in the compensation amounts for eligible victims who are members of BC First Nations and must respect the compensation framework agreement and compensation entitlement order as set out in 2019 CHRT 39 and 2021 CHRT 7;

3. The BCAFN Chiefs-in-Assembly express concern regarding the AFN's agreement to Article 10 in the Final Settlement Agreement as it abrogates the AFN's duty to represent the interests of First Nations as authorized by the AFN Chiefs in Assembly and direct that the AFN:

    a. withdraw its consent to this section of the agreement or in the alternative
    b. fully disclose this obligation to First Nations governments, First Nations experts, the Courts and Tribunal, and the public and that an independent panel of experts and lawyers be appointed by the BCAFN to examine the Final Settlement Agreement and inform positions arising from it;

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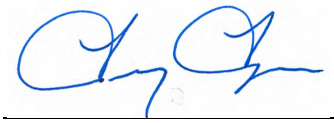


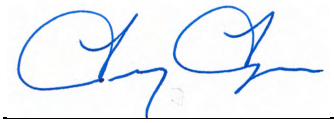
Terry Teegee, BC Regional Chief

4. The BCAFN Chiefs-in-Assembly affirm that the AFN is not authorized to sign provisions such as Article 10 of the Final Settlement Agreement on behalf of BCAFN Chiefs-in-Assembly without their free, prior, and informed consent;

5. The BCAFN Chiefs-in-Assembly direct the AFN negotiators to seek the free, prior and informed consent of BC First Nations Chiefs before making any legal representations on any Final Agreement on Compensation that may have an impact on First Nations children, youth and families in British Columbia; and

6. The BCAFN Chiefs-in-Assembly direct that any negotiations with Canada or class action counsel on any matters arising from 2016 CHRT 2 and subsequent orders or legal proceedings affecting BC First Nations children, youth, and families must be conducted in an open and transparent manner consistent with free, prior and informed consent of First Nations.

Certified copy of a resolution adopted on the 23rd day of September 2022



Terry Teegee, BC Regional Chief

This is **Exhibit "D"**
to the affidavit of
Doreen Navarro
affirmed before me via Microsoft Teams
this 11th day of October, 2022

A Commissioner for Taking Affidavits

David P. Taylor
LSO# 63508Q

OUR LAND IS OUR FUTURE

UNION OF BRITISH COLUMBIA INDIAN CHIEFS

FOUNDING HEAD OFFICE
209 - 345 Chief Alex Thomas Way
Kamloops, B.C. V2H 1H1
Tel: 250-828-9746
Fax: 250-828-0319

VANCOUVER OFFICE
401 - 312 Main Street
Vancouver, B.C. V6A 2T2
Tel: 604-684-0231
Fax: 604-684-5726
1-800-793-9701
Email: ubcic@ubcic.bc.ca
Web: www.ubcic.bc.ca

UNION OF B.C. INDIAN CHIEFS
54TH ANNUAL GENERAL ASSEMBLY
SEPTEMBER 27TH TO 29TH, 2022
MUSQUEAM COMMUNITY CENTRE, XʷMƏƟKʷƏYƛƏM (MUSQUEAM TERRITORY)

Resolution no. 2022-67

RE: 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

WHEREAS numerous reports—including the *Joint National Policy Review Final Report*, June 2000—have documented federal/provincial jurisdictional disputes and the federal government's underfunding of the First Nations Child & Family Services (FNCFS) program and the resulting constraints on FNCFS agencies and egregious harms to children and families;

WHEREAS the First Nations Child & Family Caring Society (Caring Society) and the Assembly of First Nations (AFN) filed a discrimination claim in 2007 alleging Canada's inequitable funding of First Nations child and family services and its choice to not implement Jordan's Principle were discriminatory;

WHEREAS the *United Nations Declaration on the Rights of Indigenous Peoples* (UN Declaration), which the government of Canada has adopted without qualification, and has, alongside the government of BC, committed 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(1):** Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.

Certified copy of a resolution adopted on the 28th day of September of 2022 in xʷməθkʷəy̓əm (Musqueam) territory

Grand Chief Stewart Phillip, President

(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;

WHEREAS the United Nations Human Rights Council, along with numerous other international human rights bodies, has criticized Canada's implementation of human rights norms and standards;

WHEREAS the Canadian Human Rights Tribunal (CHRT) substantiated the discrimination claim 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;

WHEREAS the Canadian Human Rights Tribunal ruling establishes that First Nations children and families are legally entitled to receive prevention services and least disruptive measures in a manner that is free of discrimination and accounts for unique community circumstances;

WHEREAS Canada chose not to comply with the order resulting in 21 non-compliance and procedural orders and 3 Federal Court orders against Canada since 2016;

WHEREAS in the wake of First Nations and public pressure following the confirmation of unmarked graves near residential schools and the Federal Court's dismissal of two of Canada's appeals, the federal government finally admitted that the discrimination was ongoing in the fall of 2021 and asked the parties to negotiate a resolution;

WHEREAS the complainants (Caring Society & AFN) and the interested parties (Chiefs of Ontario & Nishnawbe Aski Nation) and Canada entered negotiations to resolve outstanding discrimination and prevent its recurrence pursuant to the Canadian Human Rights Tribunal orders;

WHEREAS on December 31, 2021, an Agreement in Principle (AIP) including funding commitments of $19.08 Billion over 5 years was signed as a framework for the negotiation of a Final Agreement on First Nations child and family services, Jordan's Principle, and reform of Indigenous Services Canada;

WHEREAS the AIP establishes the culturally based safety and well-being of First Nations children, youth, young adults and families as the paramount consideration and sets December 31, 2022, as the end of the Canadian Human Rights Tribunal's jurisdiction and April 1, 2023, as the implementation date for the "fully reformed' First Nations child and family services;

WHEREAS building on previous orders, the Canadian Human Rights Tribunal issued an order (2022 CHRT 8) by consent of the parties providing prevention, post-majority and other immediate measures

coupled with an order on capital (2021 CHRT 41) securing in legal orders 75% of the $19.08 billion over 5 years announced as part of the AIP;

WHEREAS community driven research to inform long term funding solutions for First Nations child and family services for First Nations, with and without agencies, is not due to be completed until the Spring of 2023 and dates for a final funding approach on Jordan's Principle are still being defined;

WHEREAS many First Nations not served by First Nations child and family service agencies are members of UBCIC and work to determine a long-term non-discriminatory funding approach for said First Nations is in the very early stages;

WHEREAS the Final Agreement will have a direct impact of unprecedented magnitude on the lives of First Nations children and their families and communities; and

WHEREAS the CHRT compensation orders are a minimum standard. No party is authorized to reduce or eliminate compensation amounts or supports for victims who are already legally entitled to $40,000 plus interest in Canadian Human Rights Act compensation, and any changes must be aligned with the standard of Article 19 of the *UN Declaration and the Convention on the Rights of the Child*.

THEREFORE BE IT RESOLVED the UBCIC Chiefs-in-Assembly call on Canada to:

a. Immediately release the full $19.08 billion dollars in funding, in accordance with and as provided for in the Agreement-in-Principle on First Nations Child and Family Services (AIP), Jordan's Principle, and Indigenous Services Canada (ISC) departmental reform;
b. Ensure that the Final Agreement must include provisions to cease Canada's operational and administrative discrimination in child and family services and Jordan's Principle and prevent the recurrence of discrimination on an ongoing basis beyond the 5-year funding provided for in the AIP;
c. Ensure the Final Agreement protects the benefits for children, youth, and families as well as First Nations and First Nations agency service providers arising from the Canadian Human Rights Tribunal and associated orders as a minimum standard on an ongoing basis;
d. Engage directly with British Columbia First Nations on proposed long-term funding approaches, including for First Nations without agencies and Jordan's Principle supports, and ensure that consultation and collaboration is informed and meets the requirements of Article 19 of the UN Declaration;

THEREFORE BE IT FURTHER RESOLVED the UBCIC Chiefs-in-Assembly direct the UBCIC Executive to advocate that:

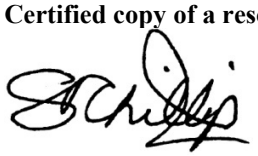
a. Implementation of the Final Agreement in areas affecting individuals who are First Nations children, youth and families who are citizens of First Nations in British Columbia be conducted with transparency and accountability to First Nations and permit First Nations an opportunity to engage with experts in British Columbia to assess the options and path forward;

b. The Assembly of First Nations take ongoing steps to include the National Advisory Committee on First Nations child welfare, Indigenous governing bodies and First Nation Title and Rights holders, and BC Indigenous Child & Family Services Directors in any proposals affecting First Nations' Child and Family Services and Jordan's Principle in British Columbia; and
c. The Assembly of First Nations not sign any agreements that fetter its disclosure of information required by First Nations leadership to determine if they support the Final Agreement; and

THEREFORE BE IT FINALLY RESOLVED the UBCIC Chiefs-in-Assembly affirm that the Assembly of First Nations must advance positions consistent with the individual and collective rights of First Nations peoples, including a the standard of Article 19 of the UN Declaration and the Convention on the Rights of the Child.

Moved: **Chief Greg Gabriel, Penticton Indian Band**
Seconded: **Louise Gordon, Taku River Tlingit First Nation (Proxy)**
Disposition: **Carried**
Date: **September 28, 2022**

Certified copy of a resolution adopted on the 28th day of September of 2022 in xʷməθkʷəy̓əm (Musqueam) territory



Grand Chief Stewart Phillip, President