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## Assembly of First Nations

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## Assemblée des Premières Nations

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December 9, 2024

***By Email***

Judy Dubois  
Registry Operations  
Canadian Human Rights Tribunal  
240 Sparks Street, 6<sup>th</sup> Floor West  
Ottawa, ON K1A 1J4

Dear Panel:

**RE: First Nations Child and Family Caring Society et al v. Attorney General of Canada  
Tribunal File: T1340/7008**

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We write to you today on behalf of the Assembly of First Nations (“AFN”) in response to the Panel’s November 21, 2024, summary ruling with respect to the motion and cross-motion on Jordan’s Principle’s implementation, as well as the Panel and Chairperson’s follow up to the parties dated December 5 and December 6, 2024.

As the Panel may be aware, the AFN had been extensively engaged with respect to the negotiation of a Final Settlement Agreement (“FSA”) on the long-term reform of the First Nations Child and Family Services Program. The FSA was presented to the First Nations-in-Assembly at a Special Chiefs Assembly called for the purposes of its consideration. The FSA was ultimately rejected. The Chiefs took issue with the negotiation process and its settlement privileged nature, as well as a desire to seek a revised mandate from Canada to address issues including, but not limited to, funding for off-reserve children not covered by the FNCFS Program, the indefinite continuation of the actuals process, allocation of prevention funding to FNCFS agencies, as well as the indeterminate oversight of the CHRT over the implementation of any Final Agreement.

We attach resolution 60-2024 *Addressing Long-Term Reform of the First Nations Child and Family Services Program and Jordan's Principle* and resolution 61-2024 *Meaningful Consultation on Long-Term Reform of First Nations Child and Family Services* hereto for your information, which we would note were strongly supported by the Caring Society further to their presentations at the October Special Chiefs Assembly in Calgary, and as recently as this past week during the AFN’s December Special Chiefs Assembly in Ottawa. At the December 2024 Special Chiefs Assembly, the Chiefs adopted Resolution 38, affirming their desire to move forward further to the mandates of resolutions 60 and 61-2024. Resolution 38, and an accompanying Resolution 41, speaking to the implementation of Resolutions 60 and 61-2024, will

not be officially available until formally ratified and signed by the National Chief, however we have included draft copies of same for the Panel's consideration, along with emergency resolution 02-2024 which also has bearing on the AFN's mandate on these proceedings moving forward.

The said resolutions also call for the establishment of a Children's Chiefs Commission who would have oversight of the negotiations of all long-term reform agreements, extending both to long-term reform of the FNCFS Program and Jordan's Principle. The Resolutions also call for a new legal team to support said Commission's efforts. We understand that the Caring Society has been instrumental in crafting associated terms of reference relating to such efforts and should certainly be aware of the complexities with advancing same. Canada and the other parties have also been apprised of these revised AFN mandates and the state of negotiations generally at this time are in need of clarity, given the AFN has not received confirmation from Canada that they have a new negotiation mandate, along with the lack of clear source of funding to implement some aspects of these new resolutions.

As the AFN's December Special Chiefs Assembly has just concluded this past week, the AFN must now take stock of the new mandates adopted therein and the interplay with resolutions 60/2024 and 61-2024. As said resolutions call for the creation of an entirely new entity, with a new negotiation and new legal team, the AFN is currently not in a position to move forward on this matter as set out in the Panel's letter decision. The AFN must consider how the resolutions can ultimately be given effect. The resolutions are complex and will require significant consideration by the AFN with respect to their implementation, which includes issues relating to resourcing and staffing, which are further complicated by the AFN's focus on this past week's Special Chiefs Assembly and upcoming two week shut down for the holidays.

The AFN is therefore requesting that the Tribunal extend all timelines provided for in its summary ruling on the Jordan's Principle non-compliance motion and cross-motion to commence on **March 31, 2025** to give the AFN sufficient time to take the necessary action(s) to fully consider and work towards implementation of the aforementioned resolutions, further to the will of the Chiefs. We would stress that this request is not being undertaken lightly, however, in light of the scope of the resolutions and their potential impacts on AFN governance, resourcing and staffing, including the potential for the appointment of new legal counsel, it is essential that the AFN be provided with sufficient time to clarify its role and mandate in these proceedings moving forward.


The AFN certainly understands that time is critical in this matter- the backlog of cases, particularly with respect to urgent requests, and delays with respect to reimbursement remain of critical concern and the AFN would expect that Canada would continue to take all necessary action in the interim to continue to address these issues further to the Panel's summary decision.

While moot in light of Canada's position and our present consensus-based process, the AFN would also support the participation of the First Nations Leadership Council in the context of discussions relating to the interim solutions directed by the Tribunal in these matters. The AFN is also fully supportive of mediation with Member Harrington, once the AFN is in a position to participate in those discussions.

In light of the aforementioned complexities and direction from the Chiefs, and involvement by some of the parties relating to their implementation, the AFN is hopeful that each of the parties will also agree to this needed and reasonable extension.

The AFN remains available to both the Panel and the parties to discuss this request, including the potential for a case management conference should the Panel feel it warranted.

Sincerely,

FOR:   
Stuart Wuttke,  
General Counsel

Encls.

cc. Maggie Wente, Darian Baskatawang  
*Counsel for Chiefs of Ontario*

Julian Falconer, Meaghan Daniel  
*Counsel for Nishnawbe Aski Nation*

Paul Vickery, Christopher Rupar, Sarah-Dawn Norris, Dayna Anderson, Kevin Staska, Samantha Gergely  
*Counsel for the Attorney General of Canada*

Sarah Clarke, David Taylor  
*Counsel for the First Nations Child and Family Caring Society*

Anshumala Juyal  
*Counsel for the Canadian Human Rights Commission*

Justin Safayeni and Stephen Aylward  
*Counsel for the interested party Amnesty International*

Crystal Reeves  
*Counsel for the First Nations Leadership Counsel*



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

**Resolution no. 60/2024**

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

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

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

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**DECISION** Carried; 7 opposition; 10 abstention

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**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 irremediable harms.
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*Cindy Woodhouse*

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**CINDY WOODHOUSE NEPINAK, NATIONAL CHIEF**

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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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*Cindy Woodhouse*

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**CINDY WOODHOUSE NEPINAK, NATIONAL CHIEF**

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

**Resolution no. 61/2024**

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**TITLE:** **Meaningful Consultation on Long-Term Reform of First Nations Child and Family Services**

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**MOVED BY:** Proxy, Judy Wilson, Skawahlook First Nation, BC

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**SECONDED BY:** Chief Carolyn Wahobin, Nekaneet First Nation, SK

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**DECISION** Carried; 6 opposition; 4 abstention

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**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.** First Nations Chiefs are elected by the citizens of their Nations to make informed decisions on their behalf.
- C.** The Assembly of First Nations, Chiefs of Ontario, Nishnawbe Aski Nation and Canada have reached a counsel-endorsed draft Final Settlement Agreement on long-term reform of the First Nations Child and Family Services Program (FSA).
- D.** The draft FSA, if accepted by the First Nations-in-Assembly and the Canadian Human Rights Tribunal, 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.

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- E. First Nations Chiefs and their advisors need adequate time to review, consider, comment, and give direction to make amendments to the draft FSA.
- F. A failure to provide adequate time for Chiefs to review and consider the draft FSA contravenes article 18 of the UN Declaration and impedes Chiefs in discharging their responsibility to make the best, fully-informed decisions possible on behalf of their citizens.

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

1. Reject the draft Final Settlement Agreement (FSA) on Long-Term Reform of the First Nations Child and 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 direct the Children's Chiefs Commission (as defined in Assembly of First Nations (AFN) Draft Resolution 02/2024) to renegotiate the draft FSA in keeping with the directions of First Nations-in-Assembly including but not limited to:
  - a. Amend the purpose and associated text of the agreement to clarify that the agreement is intended to hold Canada accountable to stop the discrimination and prevent its recurrence;
  - b. Restore First Nations Chiefs as the key decision-makers on long-term reform;
  - c. Expand the principles to include honour of the Crown, Canada's responsibility to fully end discrimination and ensure it never happens again, intergenerational equity, transparency, accountability and inclusivity;
  - d. Make governance of long-term reform transparent and accountable to First Nations Chiefs;
  - e. Incorporate ongoing and meaningful oversight by, and consultation with, the National Advisory Committee on Long-Term Reform of the First Nations Child and Family Services (FNCFS) Program;
  - f. Preserve the mandate and independence of the Expert Advisory Committee to reform Indigenous Services Canada (ISC);
  - g. Expand the scope and strengthen the role of the Dispute Resolution Tribunal and ensure the remedies available to the Canadian Human Rights Tribunal (CHRT) are also available to the Dispute Resolution Tribunal;
  - h. Strengthen the Regional Modifications provisions to align with the CHRT orders that First Nations children must have access to and receive needs based, substantively equal, culturally appropriate services that account for the distinct circumstances of their communities;
  - i. Ensure that the definition of "First Nations child" as defined in 2020 CHRT 36 is considered and incorporated into the FSA;
  - j. Ensure that prevention funding is allocated as follows:
    - i. to First Nations to develop and deliver prevention programming in line with their self-determined service delivery model(s); and

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- ii. to FNCFS agencies to ensure they can deliver prevention in a substantively equitable manner in keeping with legislative requirements to meet the needs of First Nations children and their unique cultural circumstances.
  - k. Ensure there is an evidence-informed, needs-based funding structure that is responsive to the distinct circumstances and needs of First Nations children and their families and can be upwardly adjusted to address those needs and circumstances on a First Nations, regional or sub-regional basis;
  - l. Ensure there is a region-specific, independent First Nations-led technical secretariat for each province/territory;
  - m. Ensure that Canada puts in place sufficient liability coverage and statutory immunity for First Nations and FNCFS Agencies in relation to the services they provide, and ensuring that Canada shall be the insurer of last resort for First Nations and FNCFS Agencies that have exercised good-faith decision-making;
  - n. Ensure that Canada discloses all federal-provincial-territorial service level agreements during the negotiation process and consults with those affected First Nations throughout the negotiation process; and
  - o. Ensure the CHRT retains jurisdiction over implementation of any FSA.
2. Call upon Canada to obtain a new negotiation mandate to address the matters in this resolution.
  3. Direct Canada to fully implement the funding principle of predictable, stable, sustainable, needs-based funding in the form of an unconditional grant consistent with the principles of substantive equality and cultural continuity in line with the CHRT orders to secure long-term positive outcomes for First Nations children, families and societies.
  4. Direct Canada and the AFN to refrain from bringing any motions or seeking direction from the CHRT to set aside existing CHRT orders, including but not limited to 2018 CHRT 4, 2021 CHRT 41 and 2022 CHRT 8, without the prior approval of First Nations-in-Assembly.
  5. Direct the Children's Chiefs Commission to ensure that any FSA does not abrogate or derogate from First Nations' title rights, treaty rights or in any way limit or diminish Canada's duty to consult, fiduciary obligations to First Nations or the honour of the Crown.

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# DRAFT RESOLUTION # 38 / 2024

## AFN Special Chiefs Assembly, December 3-5, 2024, Ottawa, ON

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<b>TITLE:</b>	<b>Implementing the Chief's Direction to End Canada's Discrimination in First Nations Child and Family Services</b>
<b>SUBJECT:</b>	Social Programs; Children and Families
<b>MOVED BY:</b>	Chief Trevor Prince, Sandy Bay Ojibway First Nation, MB
<b>SECONDED BY:</b>	Chief Jason Daniels, Swan Lake First Nation, MB

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### WHEREAS:

- A. Affirming the love we have for our children and our collective goal of ensuring that they grow up proud of who they are, able to speak their languages and free of the multi-generational burden of Canada's discrimination;
- B. Honouring the Residential School Survivors and the Truth and Reconciliation Commissioners who included child and family services and Jordan's Principle as the top Calls to Action;
- C. Honouring the Murdered and Missing Women and Girls and Members of the 2SLGBTQAI community who identified child and family services and Jordan's Principle as priorities in the MMIWG Final Report Calls to Justice;
- D. Recognizing that Canada's widespread and ongoing discrimination towards First Nations children through Residential Schools, the 60's Scoop and its contemporary underfunding of vital public services for First Nations fuel factors such as multi-generational trauma, addictions, poverty, poor housing and domestic violence that contribute to First Nations children going into care at 19.2 times higher rates than non-Indigenous children and other harms.
- E. Recognizing that 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.
  - 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 honor and respect such treaties, agreements, and other constructive arrangements.

## DRAFT RESOLUTION # 38 / 2024

### AFN Special Chiefs Assembly, December 3-5, 2024, Ottawa, ON

- F. In 2016 CHRT 2, the Canadian Human Rights Tribunal (CHRT) substantiated a human rights complaint filed by the First Nations Child and Family Caring Society (Caring Society) and the Assembly of First Nations (AFN) in 2007 regarding Canada's discriminatory and inequitable First Nations Child and Family Services (FNCFS) and its repeated failure to respect and implement Jordan's Principle named after Jordan River Anderson of Norway House Cree Nation. Canada was ordered to immediately cease its discriminatory conduct. Canada failed to do so and over 20 procedural and non-compliance orders have been issued to date.
- G. 2016 CHRT 2 and subsequent CHRT orders have confirmed that Canada must take account of the distinct circumstances of the child and family and ensure services are culturally appropriate.
- H. The parties (CHRT Parties) to the 2007 Canadian Human Rights Act complaint included:
  - i. Complainant: AFN;
  - ii. Complainant: Caring Society;
  - iii. Commission: Canadian Human Rights Commission; and
  - iv. Interested Parties: Amnesty International (granted in 2009 to address international human rights law), Chiefs of Ontario (granted in 2009 respecting the 1965 Indian Welfare Agreement), Nishnawbe Aski Nation (NAN): (Granted in 2016 regarding remoteness in NAN territory) and the BC Leadership Council (Granted 2024 respecting Jordan's Principle affecting First Nations in British Columbia).
- I. In December of 2023, Canada entered into confidential negotiations with some of the CHRT Parties hereinafter referred to as the FSA 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, Canadian Human Rights Commission, and Amnesty International).
- J. The Caring Society was not a party as Canada had breached the Agreement in Principle (AIP) providing a framework for the negotiations by not complying with Jordan's Principle resulting in tragic harms and deaths of children. The Caring Society filed a non-compliance motion against Canada to address its failure to follow through on CHRT orders on Jordan's Principle – a step that was prohibited under the AIP framework.
- K. The negotiations failed to implement the direction of the First Nations-in-Assembly who adopted AFN Resolution 40/2022, *To Ensure Quality of Life to the First Nations Child and Family Services Program and Jordans Principle*, requiring that the CHRT parties retain the right to return to the Tribunal to address Canada's discrimination, regional experts inform the draft FSA and that the parties return with options for First Nations Leadership to consider.
- L. On July 11, 2024, the FSA Parties released an incomplete draft of the FSA (draft FSA) in English only. The French version followed about a month later. The FSA Parties did not entertain substantive amendments, and the proposed approach had significant flaws in governance, funding durability and security, and ensuring non-discrimination. Paragraph 45 of the draft FSA also provided for regional approaches, but Canada was not obligated to provide additional funding to ensure those regional variations that are essential to taking full account of the distinct circumstances of the child and ensure services are culturally appropriate.

# DRAFT RESOLUTION # 38 / 2024

## AFN Special Chiefs Assembly, December 3-5, 2024, Ottawa, ON

- M. Contrary to Canada's obligations under Inherent rights, the UN Declaration and Treaty Rights, the draft FSA also required that First Nations cede their decision making over the reformed funding approach that would directly affect First Nations children to a secret committee.
- N. Paragraph 379 of the draft FSA required approval by First Nations Leadership. After conducting due diligence by consulting independent legal and child and family services experts, the First Nations-in-Assembly rejected the draft FSA and voted to reset the negotiation process.
- O. The Assembly of First Nations has not yet publicly and clearly agreed to implement the direction in the resolutions adopted by the First Nations-in-Assembly.

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

- 1. Call on Canada and direct the Assembly of First Nations (AFN) to publicly and fully commit to respecting and following the direction of the First Nations-in Assembly arising from the rejection of Draft Resolution 01-2024, and adoption of Draft Resolutions 04-2024 and 06-2024 at the Special Chief's Assembly held on Treaty 7 Territory on October 16-18, 2024.
- 2. Direct the AFN Executive to adopt an approach that:
  - a. Ensures that any new proposal for long term reform in First Nations child and family services provide for a national umbrella agreement to ensure non-discrimination with regional agreements that take full account of the children's distinct circumstances, cultures and the inherent rights of the children and the First Nations they belong to;
  - b. Ensures that such regional agreements are funded in a manner that safeguards First Nations children, youth and families from discrimination now and forever.
- 3. Require Canada to discharge its duty to consult and AFN to reject any proposal to supplant and/or adversely affect Canada's duty to consult, Honor of the Crown and other obligations to First Nations.

### **Safeguarding First Nations rights and approval processes:**

- 4. Direct the AFN to ensure that First Nations Chiefs and Proxies can vote on the Long-Term Reform (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 and that no changes are to be made to the voting procedure, including quorum or approval thresholds, or undertake other measures that adversely affect the direction given by the First Nations-in-Assembly at the meeting on October 16-18, 2024 on Treaty 7 territory .
- 5. Direct the AFN Executive to support the First Nations Child and Family Caring Society to lead any process to achieve non-discrimination (also known as long term reform) for child and family services and Jordan's Principle in keeping with the Resolutions passed at the Special Chiefs Assembly on October 16-18, 2024.

### **Respect**

# DRAFT RESOLUTION # 41 / 2024

## AFN Special Chiefs Assembly, December 3-5, 2024, Ottawa, ON

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<b>TITLE:</b>	<b>Renewing Negotiations Toward Long-Term Reform of First Nations Child and Family Services and Jordan's Principle</b>
<b>SUBJECT:</b>	Child Welfare
<b>MOVED BY:</b>	Khelsilem, Council Chairperson, Squamish Nation, BC
<b>SECONDED BY:</b>	Chief Erica Beaudin, Cowessess First Nation, SK

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### 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.
  - 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 thereof 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 irremediable harms.
- D.** The Canadian Human Rights Tribunal (CHRT) substantiated the discrimination claim in 2016 CHRT 2 and ordered Canada to cease its discriminatory conduct immediately.
- E.** 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 Program, Jordan's Principle, and the reform of Indigenous Services Canada.
- F.** 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.

# DRAFT RESOLUTION # 41/2024

## AFN Special Chiefs Assembly, December 3-5, 2024, Ottawa, ON

- G.** Canada, the AFN, Chiefs of Ontario (COO) and Nishnawbe-Aski Nation (NAN) completed a draft Final Settlement Agreement, which was made public on July 11, 2024 in English only and on August 14, 2024 in French and was rejected by First Nations-in-Assembly on October 17, 2024.
- H.** On October 18, 2024, the First Nations-in-Assembly rejected the resolution to adopt the draft FSA and adopted AFN Resolution 60/2024, *Addressing Long-Term Reform of the First Nations Child and Family Services Program and Jordan's Principle* and AFN Resolution 61/2024, *Meaningful Consultation on Long-Term Reform of First Nations Child and Family Services*.
- I.** Resolution 60/2024 directs the AFN Executive Committee to adopt the following approach to the negotiation of agreements related to the FNCFS Program and Jordan's Principle (the LTR Agreements):
- i. Establish a national Children's Chiefs Commission with representation from all regions to oversee and provide strategic direction in relation to the LTR Agreement negotiations, reporting back to the First Nations-in-Assembly;
  - ii. 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;
  - iii. 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
  - iv. The Children's Chiefs Commission will report to the First Nations-in-Assembly in December 2024 as to its anticipated timeframes for the completion of negotiations in relation to the FNCFS Program and on the anticipated timeframes for the Terms of Reference for Jordan's Principle.
- J.** The 2021 Agreement-in-Principle (AIP) includes provisions that conflict with the negotiation priorities and directives established by the First Nations-in-Assembly, specifically:
- i. the AIP's reliance on a population-based funding formula for prevention is inconsistent with the First Nations-in-Assembly's call for a needs-based funding structure to ensure equitable resource allocation;
  - ii. the AIP's proposed conflict resolution mechanism excludes the unconditional participation of the First Nations Child and Family Caring Society, contrary to the First Nations-in-Assembly's directive to include the Society in all negotiations; and
  - iii. the AIP's stipulation that, upon signing a Final Settlement Agreement, the Parties will seek to terminate the jurisdiction of the CHRT directly opposes the First Nations-in-Assembly's call for the CHRT to retain jurisdiction to oversee and ensure the effective implementation of any agreement.
- K.** A draft terms of reference for the Children's Chiefs Commission's has been developed, key elements of which include:
- i. **Accountability:** the Children's Chiefs Commission will be accountable to First Nations-in-Assembly, First Nations youth, and to First Nations who are not members of the AFN, through processes that it establishes;



## DRAFT RESOLUTION # 41 / 2024

### AFN Special Chiefs Assembly, December 3-5, 2024, Ottawa, ON

- ii. **Objectives:** the draft terms of reference set out certain substantive objectives that must be met through the negotiation of the LTR Agreements to fully eliminate Canada's systemic discrimination in FNCFS and Jordan's Principle and ensure it does not reoccur;
  - iii. **Guiding principles:** the draft terms of reference set out principles that will guide the Children's Chiefs Commission's work;
  - iv. **Composition:** the Children's Chiefs Commission will be comprised of: (i) one (1) regional representative, an alternate, and their technician(s) from each of the 11 AFN regions; (ii) one (1) regional representative, an alternate, and their technician(s) for every region not represented by AFN; (iii) an Elder/Knowledge Keeper representative; and (iv) and a youth representative;
  - v. **Inclusion and representation:** the Children's Chiefs Commission will take positive and effective measures to seek out the input and expertise of: (i) First Nations and their rightsholders; (ii) First Nations child and family service providers; (iii) Elders and Youth; (iv) The National Advisory Committee (NAC) and Expert Advisory Committee (EAC); (v) regional and independent experts, including the Jordan's Principle Operations Committee Caucus; and (vi) non-AFN member First Nations;
  - vi. **Reporting and accountability:** the Children's Chiefs Commission will regularly report to First Nations-in-Assembly, First Nations not represented by the AFN, and the AFN Executive on its progress in relation to the LTR Agreements;
  - vii. **Meetings:** the Children's Chiefs Commission will meet monthly or more frequently as and when required;
  - viii. **Decision-making:** the Children's Chiefs Commission will operate by consensus wherever possible in providing strategic direction and oversight of the LTR Agreements negotiations, respecting traditional First Nations decision-making processes;
  - ix. **Deliverables:** the Children's Chiefs Commission will present key deliverables to the First Nations-in-Assembly and First Nations who are not members of the AFN for their review, consideration, and approval; and
  - x. **Funding:** the Children's Chiefs Commission will work with Indigenous Services Canada to secure funding for their work including independent legal and technical assistance, ensuring all First Nations have adequate resources to understand and contribute to the LTR Agreements.
- L. A draft terms of reference for the negotiation team has also been developed, key elements of which include:
- i. **Accountability:** the negotiation team will operate under the direction of the Children's Chiefs Commission and will be accountable to the First Nations-in-Assembly and First Nations not represented by AFN;
  - ii. **Objectives:** the draft terms of reference set out certain substantive objectives that must be met through the negotiation of the LTR Agreements to fully eliminate Canada's systemic discrimination in FNCFS and Jordan's Principle and ensure it does not reoccur;

## DRAFT RESOLUTION # 41 / 2024

### AFN Special Chiefs Assembly, December 3-5, 2024, Ottawa, ON

- iii. **Deliverables:** the negotiation team will present key deliverables to the Children's Chiefs Commission for its review and consideration;
  - iv. **Composition and qualifications:** the draft terms of reference set out required qualifications for persons the Children's Chiefs Commission will appoint to the negotiation team;
  - v. **Inclusion and representation:** the negotiation team will take positive and effective measures to seek out the input and expertise of: (i) First Nations and their rightsholders; (ii) national and regional FNCFS and Jordan's Principle service providers and experts; (iii) Youth in and from Care; (iv) the National Advisory Committee (NAC) and Expert Advisory Committee (EAC); and (v) non-AFN member First Nations;
  - vi. **Roles and responsibilities:** the draft terms of reference sets out roles and responsibilities for a lead negotiator, assistant negotiator, legal team, technical experts, support team, and secretarial support;
  - vii. **Decision-making:** the negotiation team will operate by consensus wherever possible;
  - viii. **Reporting:** the draft terms of reference set out various reporting requirements and mechanisms for the negotiation team to report to the Children's Chiefs Commission;
  - ix. **Final draft approval process:** the draft terms of reference set out a process the negotiation team must follow to prepare draft LTR Agreements for review by the First Nations-in-Assembly as well as First Nations not represented by AFN to ensure compliance with Resolutions 60/2024 and 61/2024; and
  - x. **Conflicts of interest:** the draft terms of reference set out a process for addressing conflicts of interest.
- M.** A number of AFN regions have appointed their representatives to the Children's Chiefs Commission, but the Commission has not yet met with all representatives present to review and discuss the draft terms of reference for the Children's Chiefs Commission and the negotiation team.
- N.** The AFN Executive has raised certain legal concerns about the interpretation of Resolution 60/2024 that the First Nations-in-Assembly may wish to clarify.

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

1. Reject all sections of the Agreement in Principle (AIP) on Long-Term Reform (LTR) of the First Nations Child and Family Services (FNCFS) Program and Jordan's Principle completed on December 31, 2021 that are in conflict with resolutions passed by the First Nations-in-Assembly as described above.
2. Clarify that, by way of Article 2 of Resolution 60/2024, the First Nations-in-Assembly called for, and themselves established, the national Children's Chiefs Commission rather than directing the AFN Executive Committee to establish the Commission.

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## AFN Special Chiefs Assembly, December 3-5, 2024, Ottawa, ON

3. Support the Children's Chiefs Commission in establishing a negotiation team, pursuant to Resolution 60/2024, to carry out the negotiations for the LTR Agreements. That negotiation team will work with the following guidelines:
  - a. **Accountability:** The negotiation team will report to the Children's Chiefs Commission, First Nations-in-Assembly and represent the interests of all First Nations, and First Nations youth, including those not connected to the AFN; and
  - b. **Mandate:** The negotiation team's goal is to eliminate discrimination by Canada and ensure it never happens again, promote fairness, uphold First Nations' rights to self-determination, and respect their jurisdiction over their own affairs. They will ensure their work aligns with international standards affirmed by the *United Nations Declaration on the Rights of Indigenous Peoples* and the *United Nations Convention on the Rights of the Child*, complies with orders from the CHRT, and maintains a clear, open process that meaningfully involves First Nations communities and First Nations youth.
4. Approve, in principle, the draft terms of reference for the Children's Chiefs Commission and the negotiation team, summarized in the Whereas clauses above, and direct the Children's Chiefs Commission to meet as soon as practicable to: (i) immediately commence its work on the LTR Agreements; and (ii) review the terms of reference and thereafter recommend them to the First Nations-in-Assembly for final approval, including any potential amendments.
5. Directs the Children's Chiefs Commission to report to First Nations-in-Assembly at every Assembly until their work is complete.

**AFN Special Chiefs Assembly, December 3 - 5, 2024, Ottawa, ON**

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<b>TITLE:</b>	<b>Safeguarding First Nations Children and Holding Canada Accountable for its Canadian Human Rights Tribunal Legal Obligations</b>
<b>SUBJECT:</b>	Child Welfare
<b>MOVED BY:</b>	Chief Vicky Chief, Timiskaming First Nation, QC
<b>SECONDED BY:</b>	Proxy Aaron Nicholas, Tobique First Nation, NB

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**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. 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 irremediable harms.
- C. The Canadian Human Rights Tribunal (the Tribunal) substantiated the human rights complaint in 2016 and ordered Canada to cease its discriminatory practices, reform the FNCFS program and immediately implement the full scope of Jordan’s Principle.
- D. The Tribunal has retained jurisdiction over the human rights complaint and has provided numerous additional orders to guide a dialogic process through which the Parties to the complaint negotiate long-term reform that will end Canada’s discrimination and prevent any reoccurrence of the discrimination.
- E. Since 2016, the Tribunal has issued 31 procedural and non-compliance orders.
- F. On December 12, 2023, the Caring Society filed a non-compliance motion with the Tribunal to address Canada’s chronic breaches of existing orders on Jordan’s Principle, causing serious harms to First Nations children, youth and families. The matter was heard on September 10-12, 2024.

# **E M E R G E N C Y   D R A F T   R E S O L U T I O N   # 0 2 / 2 0 2 4**

## **AFN Special Chiefs Assembly, December 3 - 5, 2024, Ottawa, ON**

- G.** First Nations-in-Assembly voted to reject a draft final settlement agreement (FSA) on long-term reform of the FNCFS program and called for a process to end Canada's discrimination in First Nations child and family services and Jordan's Principle and make sure it does not happen again in AFN Resolutions 60/2024 and 61/2024.
- H.** On November 21, 2024, the Tribunal issued a letter decision with reasons to follow on the Caring Society's non-compliance motion filed in December 2023 regarding the Government of Canada's breaches of existing Tribunal orders on Jordan's Principle.
- I.** In its November 21, 2024 ruling, the Tribunal affirmed the presumption of substantive equality as a right owed to First Nations children and ordered Canada to, among other measures, immediately address the backlogs in Jordan's Principle cases, triaging for urgent cases, confirm that First Nations who have taken on Jordan's Principle work have the sufficient resources to do so, reimburse approved Jordan's Principle requests in a timely manner, report on its progress in coordinating federal programs and work with the Parties to install an interim and independent national complaints mechanism.
- J.** The Tribunal also ordered Canada to consult with the Parties on several issues, with the goal of reaching consent order requests, and recognized that it would be beneficial to have all Parties at the table, including First Nations who are not a part of the proceedings.
- K.** The British Columbia First Nations Leadership Council (FNLC), which was granted interested party status and intervened in the non-compliance motion, can only participate in these consultations with the consent of all Parties. On December 4, 2024, Canada has responded that they do not consent to the FNLC participation in the consultations.
- L.** CHRT orders on FNCFS is estimated at \$45B to fund FNCFS and is the minimum amount to ensure non-discrimination and prevent its recurrence.
- M.** All First Nations children on and off reserve and living in self-governing First Nations have a right to receive substantively equal and culturally based child and family services and/or Jordan's Principle and live free of Canada's discrimination now and forever.

### **THEREFORE BE IT RESOLVED that the Chiefs-in-Assembly:**

- 1.** Support the November 21, 2024, Tribunal letter decision on Jordan's Principle to address Canada's non-compliance.
- 2.** Confirm that the \$47.8B is only the floor for negotiations to achieve long-term reform of First Nations Child and Family Services (FNCFS).
- 3.** Direct Canada to obtain a new negotiation mandate within thirty (30) days of this resolution passing to achieve Long Term Reform of FNCFS and Jordan's Principle in full alignment with AFN Resolutions 60/2024 and 61/2024.
- 4.** Support regions, parties and the National Children's Chiefs Commission (NCCC) to undertake any legal action should Canada fail to obtain an adequate new negotiation mandate within thirty (30) days, the First Nations-in-Assembly will deem Canada to be dishonorably in violation of the duty of diligent implementation flowing from the honour of the Crown constitutional principle.

# **E M E R G E N C Y   D R A F T   R E S O L U T I O N   # 0 2 / 2 0 2 4**

## **AFN Special Chiefs Assembly, December 3 - 5, 2024, Ottawa, ON**

5. Direct Canada to provide adequate funding, including reimbursement of legal fees at actual cost, to an entity(ies) determined by the NCCC to support its work.
6. Call on Canada to not seek judicial review of the November 21, 2024 Tribunal letter decision on Canada's non-compliance on Jordan's Principle.
7. Call on Canada to take immediate and effective measures to fully implement all Tribunal orders including the November 21, 2024 Tribunal letter decision on Jordan's Principle.
8. Support the NCCC participation in further legal proceedings, including before the Tribunal, to ensure First Nations children, youth and families receive the full benefit of existing Tribunal orders and to seek additional remedies as required.
9. Fully and publicly support the British Columbia First Nations Leadership Council (FNLC) participation in the consultations ordered in the November 21, 2024 Tribunal letter decision on Canada's non-compliance on Jordan's Principle, as well as any request, from any other regions, to seek interested party status in this Canadian Human Rights Tribunal case.
10. Call on Canada to retract their opposition, and to support the FNLC participation in the consultations ordered by the Tribunal in the November 21, 2024 letter decision on Jordan's Principle.

## **D R A F T   R E S O L U T I O N   # 3 8 / 2 0 2 4**

### **AFN Special Chiefs Assembly, December 3-5, 2024, Ottawa, ON**

6. Call on AFN to withdraw and apologize for any and all public statements that suggested or implied that First Nations Child and Family Service Agencies led the campaign to defeat the draft Final Settlement Agreement (FSA). Such comments are disrespectful of our front-line workers and of the Chiefs who exercised their due diligence to review the text of the draft FSA and rejected it on that basis alone.
7. Require AFN to get approval for any further public statements from the Children's Chief's Commission once established and by a public and majority vote of the Executive in the interim.